2–16–99
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Pages 7489–7770

Federal Register

Tuesday
February 16, 1999

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WHO: Sponsored by the Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 23, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13113 of February 10, 1999

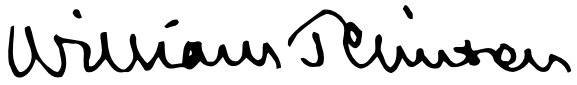
President's Information Technology Advisory Committee, Further Amendments to Executive Order 13035, as Amended

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the High-Performance Computing Act of 1991 (Public Law 102–194), as amended by the Next Generation Internet Research Act of 1998 (Public Law 105–305) (''Research Act''), and in order to extend the life of the President's Information Technology Advisory Committee so that it may carry out the additional responsibilities given to it by the Research Act, it is hereby ordered that Executive Order 13035, as amended (''Executive Order 13035''), is hereby further amended as follows:

Section 1. The preamble of Executive Order 13035 is amended by addition after ''(''Act''),'' the phrase ''as amended by the Next Generation Internet Research Act of 1998 (Public Law 105–305) (''Research Act''),''.

Sec. 2. Section 2 of Executive Order 13035 is amended by adding a subsection ''(a)'' after the heading and before the first sentence and by adding a new subsection ''(b)'' after the last sentence to read as follows: ''(b) The Committee shall carry out its responsibilities under the Research Act in the manner described in the Research Act.''

Sec. 3. Section 4(b) of Executive Order 13035 is amended by deleting ''two years from the date of this order'' and inserting ''February 11, 2001,'' in lieu thereof.



THE WHITE HOUSE,
February 10, 1999.

[FR Doc. 99–3832
Filed 2–12–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 64, No. 30
Tuesday, February 16, 1999

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–81–AD; Amendment 39–11040; AD 99–01–09]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–01–09 which was sent previously to all known U.S. owners and operators of Sikorsky Aircraft Corporation (Sikorsky) Model S–76C helicopters by individual letters. This AD requires, before further flight, installing a placard in the cockpit adjacent to the fuel quantity gauge that states ''No flight operations to be conducted with less than 250 lbs. fuel in each tank.'' This AD must be placed in the Operating Limitations section of the Rotorcraft Flight Manual. This AD also requires, within 50 hours time-in-service (TIS) or 30 calendar days, whichever occurs first, defueling, engine starting, and if necessary, inspecting fuel supply lines. This amendment is prompted by an in-flight engine flame-out that occurred on October 27, 1998. The actions specified by this AD are intended to prevent air from getting into a fuel supply line when there is less than 250 lbs. of fuel in either fuel tank, engine flame-out, and a subsequent forced landing.

DATES: Effective March 3, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–01–09, issued on December 22, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–81–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Wayne Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On December 22, 1998, the FAA issued Priority Letter AD 99–01–09, applicable to Sikorsky Model S–76C helicopters, which requires, before further flight, installing a placard in the cockpit adjacent to the fuel quantity gauge that states ''No flight operations to be conducted with less than 250 lbs. fuel in each tank.'' The AD must be placed in the Operating Limitations section of the Rotorcraft Flight Manual. The AD also requires, within 50 hours TIS or 30 calendar days, whichever occurs first, defueling, engine starting, and if necessary, inspecting fuel supply lines. Flight with less than 250 lbs. in each fuel tank could result in air getting into a fuel supply line, engine flame-out, and a subsequent forced landing.

The FAA has reviewed Sikorsky Aircraft Corporation Alert Service Bulletin No. 76–28–4, dated December 11, 1998, which describes procedures for a fuel line integrity test and an adjustment/replacement, if necessary, of the fuel supply lines.

Since the unsafe condition described is likely to exist or develop on other Sikorsky Model S–76C helicopters of the same type design, the FAA issued Priority Letter AD 99–01–09 to prevent air from getting into a fuel supply line when there is less than 250 lbs. of fuel in either fuel tank, engine flame-out, and a subsequent forced landing. The AD requires, before further flight, installing a placard in the cockpit adjacent to the fuel quantity gauge that states ''No flight operations to be conducted with less than 250 lbs. fuel in each tank.'' The AD must be placed in the Operating Limitations section of the Rotorcraft Flight Manual. The AD also requires, within 50 hours TIS or 30 calendar days, whichever occurs first, defueling, engine starting, and if necessary, inspecting fuel supply lines. The short compliance time involved is required because the previously described critical unsafe condition can result in a forced landing. Therefore, defueling, engine starting, and if necessary, inspecting fuel supply lines are required within 50 hours TIS or 30 calendar days, whichever occurs first. Also, installing a placard and placing this AD in the Rotorcraft Flight Manual are required prior to further flight and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 22, 1998 to all known U.S. owners and operators of Sikorsky Model S–76C helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 7 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per helicopter to placard and inspect the fuel supply lines, and the average labor rate is $60 per work hour. No parts are required. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,260 for all 7 helicopters.

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. 98–SW–81–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 this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–01–09 Sikorsky Aircraft Corporation: Amendment 39–11040. Docket No. 98–SW–81–AD.

Applicability: Model S–76C helicopters, serial numbers 760477, 760479, 760481 through 760487, 760490, 760491 and 760493, 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 (d) 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 helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent air from getting into a fuel supply line when there is less than 250 lbs. of fuel in either fuel tank, engine flame-out, and a subsequent forced landing, accomplish the following:

(a) Before further flight:

(1) Revise the Rotorcraft Flight Manual (RFM) by inserting this AD in the Operating Limitations section of the RFM.

(2) Install a placard, made with block letters on a contrasting background, adjacent to the fuel quantity gauge that states:

''No flight operations to be conducted with less than 250 lbs. fuel in each fuel tank.''

(b) Within 50 hours time-in-service or 30 calendar days, whichever occurs first, perform the following:

(1) Defuel both fuel tanks until the #1 FUEL LOW and #2 FUEL LOW warning lights illuminate.

(2) Start the No. 1 engine with the fuel lever in direct feed position.

(3) Monitor the engine start for the following:

(i) Slow start (N1 speed does not reach 59–65% within 20–40 seconds).

(ii) Loss of fuel prime.

(iii) Sputtering or surging.

(iv) Flameout.

(4) If engine start is normal, shut down the engine and allow it to cool down.

(5) If any of the conditions specified in paragraph (3) is encountered, shut down the engine and allow it to cool down. Inspect all portions of the fuel suction lines for unseated fittings or pitting or corrosion. If corrosion or pitting is present, replace any affected component with an airworthy component. If any fitting is unseated, reinstall it.

(6) Repeat steps (2) through (5) with the fuel lever in the crossfeed position.

(7) Repeat steps (2) through (6) for the No. 2 engine.

(c) After accomplishing paragraph (b), remove this AD from the RFM and remove the cockpit placard. Accomplishment of these actions constitutes a terminating action for the requirements of this AD.

Note 2: Maintenance Manual SA 4047–76C–2, Chapter 28, Paragraph 28–20–02, Step 2, pertains to this AD.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

Note 4: Sikorsky Aircraft Company Alert Service Bulletin 76–28–4, dated December 11, 1998, pertains to this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished provided there is a minimum of 250 lbs. of fuel in each fuel tank.

(f) This amendment becomes effective on March 3, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 99–01–09, issued December 22, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on February 5, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–3587 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

RIN 2120–AA64

[Docket No. 98–SW–39–AD; Amendment 39–11038; AD 99–04–14]

Airworthiness Directives; Schweizer Aircraft Corporation Model 269C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Schweizer Aircraft Corporation Model 269C–1 helicopters, that requires a visual inspection of the bond line between the main rotor blade (blade) abrasion strip (abrasion strip) and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the abrasion strip for debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade. This amendment is prompted by four reports that indicate that debonding and corrosion have occurred on certain blades where the abrasion strip attaches to the blade skin. The actions specified by this AD are intended to prevent loss of the abrasion strip from the blade and subsequent loss of control of the helicopter.

EFFECTIVE DATE: March 23, 1999.

FOR FURTHER INFORMATION CONTACT: Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, Engine and Propeller Directorate, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200, telephone (516) 256–7532, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269C–1 helicopters was published in the **Federal Register** on November 10, 1998 (63 FR 62973). That action proposed to require a visual inspection of the bond line between the blade abrasion strip and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the abrasion strip for debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter states that the references to Hughes Helicopters are unnecessary because the helicopter was, in fact, designed and certificated by Schweizer Aircraft Corporation. The FAA concurs and has removed ''Hughes Helicopters'' from the AD. The same commenter states that a serial number listed in the applicability paragraph is incorrectly referenced as ''S508'' and that it should be ''S509.'' The FAA does not concur because the number is correctly referenced as ''S509.'' Additionally, in the terminating action paragraph (d) ''repair'' has been replaced with ''rebonding'' to more specifically state what repair constitutes terminating action.

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

The FAA estimates that 47 helicopters of U.S. registry will be affected by this AD, that it will take approximately one-third of a work hour per helicopter to conduct the initial inspections; approximately one-third of a work hour to conduct the repetitive inspections; approximately 11 work hours to remove and reinstall a blade; and approximately 32 work hours to repair the blade; and that the average labor rate is $60 per work hour. Required parts (replacement abrasion strips) will cost approximately $57 per main rotor abrasion strip (each helicopter has three main rotor blades). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65,168 per year for the first year and approximately $64,228 for each of the next 5 years thereafter, assuming 24 of the affected blades (approximately 1/6 of the fleet or the blades on 8 helicopters) in the fleet are removed, repaired, and reinstalled with replacement abrasion strips each year, and that all affected helicopters are subjected to one repetitive inspection each year, including the first year.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–04–14 Schweizer Aircraft Corporation: Amendment 39–11038. Docket No. 98–SW–39–AD.

Applicability: Model 269C–1 helicopters with main rotor blades, P/N 269A1185–1, S/N S222, S312, S313, S325, S326, S327, S339, S341, S343, S346, S347, S349 through S367, S369 through S377, S379 through S391, S393, S394, S395, S397, S399, S401 through S417, S419 through S424, S426 through S449, S451 through S507, S509 through S513, S516 through S527, S529 through S540, S542, S544 through S560, S562 through S584, S586 through S595, S597 though S611, S620 through S623, S625, S628, S633, S641 through S644, S646, S653, S658, S664, S665, and S667, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been 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 (e) 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 helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the abrasion strip from a main rotor blade (blade) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), or within 90 calendar days after the effective date of this AD, whichever is earlier, or prior to installing an affected replacement blade, and thereafter at intervals not to exceed 50 hours TIS from the date of the last inspection or replacement installation:

(1) Visually inspect the adhesive bead around the perimeter of each abrasion strip for erosion, cracks, or blisters.

(2) Visually inspect the bond line between each abrasion strip and each blade skin for voids, separation, or lifting of the abrasion strip.

(3) Inspect each abrasion strip for debonding or hidden corrosion voids using a tap (ring) test as described in the applicable maintenance manual.

(b) If any deterioration of an abrasion strip adhesive bead is discovered, prior to further flight, restore the bead in accordance with the applicable maintenance manual.

(c) If abrasion strip debonding, separation, or a hidden corrosion void is found or suspected, prior to further flight, remove the blade with the defective abrasion strip and replace it with an airworthy blade.

(d) Rebonding of an affected blade's abrasion strip is considered a terminating action for the requirements of this AD for that blade. Identify a blade that has a rebonded strip by adding a white dot adjacent to the blade S/N.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(f) 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, provided the abrasion strip has not started to separate or debond from the main rotor blade.

(g) This amendment becomes effective on March 23, 1999.

Issued in Fort Worth, Texas, on February 5, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–3588 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–40–AD; Amendment 39–11039; AD 98–19–04]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109C, A109E, and A109K2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) AD 98–19–04, which was sent previously to all known U.S. owners and operators of Agusta S.p.A. Model A109C, A109E, and A109K2 helicopters by individual letters. This AD requires conducting a tapping inspection of the upperside and lowerside of the main rotor blade (blade) blade tip cap for debonding between the metal shells and honeycomb core; conducting a visual inspection of the upperside and lowerside of the blade tip cap for swelling or deformation between the metal shells and the honeycomb core; and visually inspecting the welded bead along the leading edge of the blade tip cap for cracks. This amendment is prompted by two discoveries of cracks in the leading edge of the blade tip cap of a blade. The actions specified by this AD are intended to prevent blade blade tip cap failure and subsequent loss of control of the helicopter.

DATES: Effective March 3, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–19–04, issued on August 31, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–40–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On August 31, 1998, the FAA issued Priority Letter AD 98–19–04 applicable to Agusta S.p.A. Model A109C, A109E, and A109K2 helicopters, which requires conducting a tapping inspection of the upperside and lowerside of the blade blade tip cap for debonding between the metal shells and honeycomb core; conducting a visual inspection of the upperside and lowerside of the blade blade tip cap for swelling or deformation between the metal shells and the honeycomb core; and visually inspecting the welded bead along the leading edge of the blade blade tip cap for a crack. That action was prompted by two discoveries of cracks in the leading edge of the blade tip cap of a blade. The cracks were discovered after pilots experienced increased vibration during flight. Subsequent investigation revealed that the increased vibration was caused by debonding of the honeycomb material in the blade, which led to deformation and cracking of the blade tip cap. This condition, if not corrected, could result in blade blade tip cap failure and subsequent loss of control of the helicopter.

Agusta S.p.A. has issued Agusta Bolletino Tecnico No. 109–106, dated July 21, 1998, Agusta Bolletino Tecnico No. 109EP–1, Revision A, dated September 9, 1998, and Agusta Bolletino Tecnico No. 109K–22, dated July 13, 1998, applicable to Agusta S.p.A. Model A109C, A109E, and A109K2 helicopters, which specify conducting a tapping inspection of the blade blade tip cap for debonding; conducting a visual inspection of the blade tip cap for swelling or deformation; and visually inspecting the welded bead along the leading edge of the blade tip cap for a crack. The Ente Nazionale di Aviazione Civile (ENAC) classified this service bulletin as mandatory and issued AD 98–271, applicable to Model A109K2 helicopters, dated July 29, 1998; AD 98–275, applicable to Model A109C

helicopters and AD 98–276, applicable to Model A109E helicopters, both dated August 4, 1998, and AD 98–319, applicable to Model A109E helicopters dated September 15, 1998, which superseded AD 98–276, in order to assure the continued airworthiness of these helicopters in Italy.

These helicopter models are manufactured in Italy and are type certificated for operation in the United States under the provision 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 ENAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operations in the United States.

Since the unsafe condition described is likely to exist or develop on other Agusta S.p.A. Model A109C, A109E, and A109K2 helicopters of the same type design, the FAA issued Priority Letter AD 98–19–04 to prevent blade blade tip cap failure and subsequent loss of control of the helicopter. The AD requires, within 10 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS, conducting a tapping inspection of the upperside and lowerside of the blade tip cap for debonding between the metal shells and honeycomb core; conducting a visual inspection of the upperside and lowerside of the blade tip cap for swelling or deformation between the metal shells and the honeycomb core; and visually inspecting the welded bead along the leading edge of the blade tip cap for cracks using an 8-power or higher magnifying glass. If any crack, swelling, deformation, or debonding that exceeds the limits prescribed in the applicable maintenance manual is discovered, replacement of the blade with an airworthy blade is required. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the aircraft. Therefore, the inspections are required within 10 hours TIS, and thereafter at intervals not to exceed 25 hours TIS, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 31, 1998 to all known U.S. owners and operators of Agusta S.p.A. Model A109C, A109E, and A109K2 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. This final rule contains three changes from the priority letter AD. Agusta issued a revision to Bolletino Tecnico No.109EP–1 on September 9, 1998, so references to it in Note 2 have been changed to reflect the revision. The Registro Aeronautico Italiano has become the ENAC, and has issued AD 98–319, dated September 15, 1998, which is applicable to Model A109E helicopters. That AD supersedes AD 98–276. This change is reflected in Note 4. Also, paragraph (a) has been changed to allow the use of a coin to conduct the tap test instead of only a steel hammer as was required in the priority letter AD. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 21 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the inspection, and the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5040 for the initial inspection and for each repetitive inspection of the fleet. This estimate is based on the assumption that no main rotor blade will need to be replaced as a result of these inspections.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–19–04 Agusta S.p.A.: Amendment 39–11039. Docket No. 98–SW–40–AD.

Applicability: Model A109C, A109E, and A109K2 helicopters, with main rotor blades, part number (P/N) 709–0103–01-all dash numbers, having a serial number (S/N) up to and including S/N 1428 with a prefix of either ''EM-'' or ''A5-'', installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been 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 (f) 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 helicopter from the applicability of this AD.

Compliance: Required within 10 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS.

To prevent failure of a main rotor blade (blade) blade tip cap and subsequent loss of control of the helicopter, accomplish the following:

(a) Conduct a tap inspection of the upperside and lowerside of each blade tip cap for debonding between the metal shells and the honeycomb core using a steel hammer, P/N 109–3101–58–1, or a coin (a quarter) in the area indicated as honeycomb core on Figure 1.

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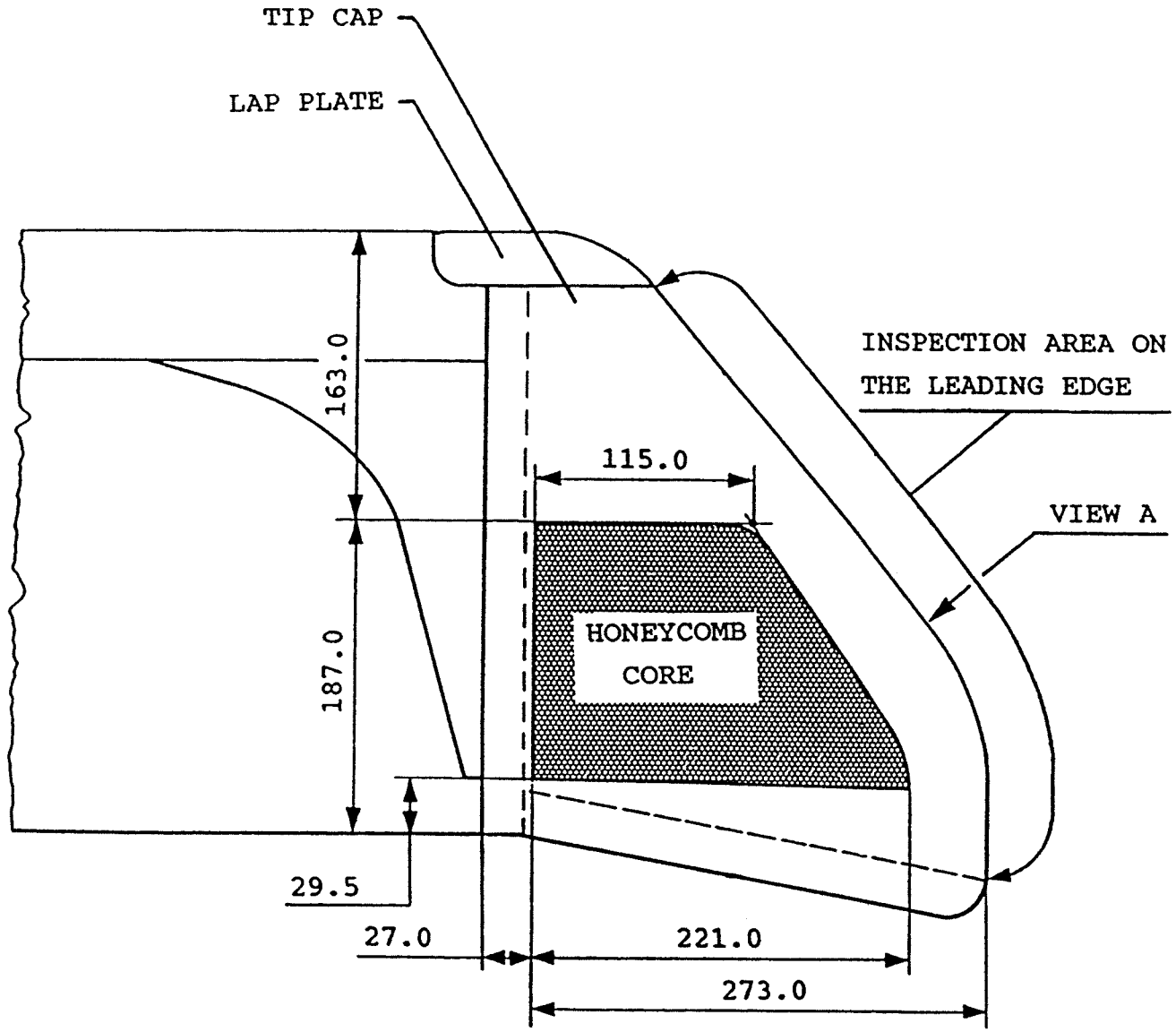

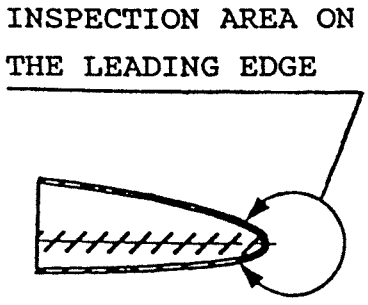

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(b) Visually inspect the upperside and lowerside of each blade tip cap for swelling or deformation.

(c) Using an 8-power or higher magnifying glass, visually inspect the welded bead along the leading edge of each blade tip cap for cracks in the area shown in Figure 1.

(d) If any swelling, deformation, crack, or debonding that exceeds the prescribed limits in the applicable maintenance manual is found, replace the blade with an airworthy blade.

Note 2: Agusta Bolletino Tecnico No. 109–106, dated July 21, 1998, Agusta Bolletino Tecnico No. 109EP–1, Revision A, dated September 9, 1998, and Agusta Bolletino Tecnico No. 109K–22, dated July 13, 1998, which are applicable to Agusta S.p.A. Model A109C, A109E, and A109K2 helicopters, respectively, pertain to the subject of this AD.

(e) Replacement blades affected by this AD must comply with the repetitive inspection requirements of this AD. Replacement of an affected blade with a blade having an airworthy blade tip cap, P/N 709–0103–29–109, is a terminating action for the requirements of this AD for that blade.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA. 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.

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.

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

(h) This amendment becomes effective on March 3, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–19–04, issued August 31, 1998, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Ente Nazionale di Aviazione Civile (Italy) AD 98–271, applicable to Model A109K2 helicopters, dated July 29, 1998; AD 98–275, applicable to Model A109C helicopters and AD 98–276, applicable to Model A109E helicopters, both dated August 4, 1998, and AD 98–319 (which superseded AD 98–276), applicable to Model A109E helicopters, dated September 15, 1998.

Issued in Fort Worth, Texas, on February 5, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–3589 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–61–AD; Amendment 39–11036; AD 99–04–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model 369D, 369E, 369FF, 369H, MD500N, and MD600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Systems (MDHS) Model 369D, 369E, 369FF, 369H, MD500N, and MD600N helicopters, that requires a one-time visual inspection of certain input shaft coupling assemblies for pitting. This amendment is prompted by three operators' reports of discovering pitting on the internal spline teeth. The actions specified by this AD are intended to prevent failure of the spline teeth in the input shaft coupling assembly, loss of drive to the main rotor system, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: March 23, 1999.

FOR FURTHER INFORMATION CONTACT: Bruce Conze, Aerospace Engineer, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712, telephone (562) 627–5261, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to MDHS Model 369D, 369E, 369FF, 369H, MD500N, and MD600N helicopters was published in the **Federal Register** on May 15, 1998 (63 FR 27011). That action proposed to require a one-time visual inspection of certain input shaft coupling assemblies for pitting.

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

One commenter states that the addition of a calendar period to supplement the time-in-service compliance time is necessary to account for the effects of corrosion which caused the internal spline pitting. The FAA does not concur for the following reasons:

- The original corrosion occurred during the manufacturing process due to exposure of unprotected machined parts and porosity in the material. The corrosion was subsequently removed in normal processing and parts coated with dry lube. The corrosion is not a result of time-in-service.
- After examining parts returned from the field, there is no evidence suggesting that the original corrosion damage increases with time.

The same commenter also states that there are no guidelines or references to Boeing instructions, service bulletins, or manuals given to strip the input shaft coupling assembly and perform the visual inspection. The FAA does not concur; Note 2 states that Boeing Service Bulletin SB369H–240, SB369E–085, SB500N–013, SB369D–192, SB369F–072, SB600N–003, dated September 26, 1997, pertains to the subject of the AD. No additional guidelines for stripping shaft coupling assembly and performing the visual inspection are deemed necessary because the corrosion on the input shaft coupling assemblies is obvious and easily discernible with the naked eye without stripping the shaft coupling assembly.

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

The FAA estimates that 82 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $638 per coupling assembly. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $67,076 if the coupling assembly is replaced in all 82 helicopters.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–61–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–04–12 McDonnell Douglas Helicopter Systems: Amendment 39–11036. Docket No. 97–SW–61–AD.

Applicability: Model 369D, 369E, 369FF, 369H, MD500N, and MD600N helicopters, with input shaft coupling assemblies, part number (P/N) 369F5133–1, serial number (S/N) 030829–0126 through 030829–0207, installed on main transmission, P/N 369F5100–503, and on overrunning clutch, P/N 369F5450, 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 helicopter from the applicability of this AD.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent failure of the spline teeth in each input shaft coupling assembly (coupling assembly), loss of drive to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect the coupling assemblies, P/N 369F5133–1, installed on main transmission, P/N 369F5100–503, and on overrunning clutch, P/N 369F5450, for pitting under the solid film lubricant in the spline area of the coupling.

(b) If there is pitting in the splines, replace the coupling assembly with an airworthy coupling assembly, P/N 369F5133–1, that has been inspected as required by paragraph (a) of this AD.

Note 2: Boeing Service Bulletin SB369H–240, SB369E–085, SB500N–013, SB369D–192, SB369F–072, SB600N–003, dated September 26, 1997, pertains to 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, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

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

Issued in Fort Worth, Texas, on February 5, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–3591 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–16]

Removal of Class E Airspace; Anaconda, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Anaconda, MT, which is no longer necessary because of amendments to adjacent airspace areas.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–16, 1601 Lind Avenue SW, Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On November 18, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by removing the Anaconda, MT, Class E airspace area (63 FR 64021). The Anaconda, MT, Class E airspace is no longer required because of airspace changes to adjacent areas. The adjacent areas completely cover the Anaconda, MT, airspace are, thereby making Anaconda, MT, airspace obsolete. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 removes Class E airspace at Anaconda, MT. The intended effect of this rule is designed to provide efficient use of the navigable airspace.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

ANM MT E5 Anaconda, MT [Removed]

* * * * *

Issued in Seattle, Washington, on January 27, 1999.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–3687 Filed 2–12–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 178

[T.D. 99–11]

RIN 1515–AC26

Automated Clearinghouse Credit

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule interim amendments to the Customs Regulations which provided for payments of funds to Customs by Automated Clearinghouse (ACH) credit. Under ACH credit, a payer transmits daily statement, deferred tax, and bill payments electronically through a financial institution directly to a Customs account maintained by the Department of the Treasury. ACH credit allows the payer to exercise more control over the payment process, does not require the disclosure of bank account information to Customs, and expands the types of payments that may be made through ACH.

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ben Robbin, Financial Systems Division, Financial Management Services Center, Office of Finance, U.S. Customs Service (317–298–1520, ext. 1428).

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1998, Customs published T.D. 98–51 in the **Federal Register** (63 FR 29122) setting forth interim amendments to the Customs Regulations to provide for the electronic transfer of funds to Customs for commercial transactions through the Automated Clearinghouse (ACH) credit procedure. Under ACH credit, a payer transmits daily statement, deferred tax, and bill payments electronically through a financial institution directly to a Customs account maintained by the Department of the Treasury. The ACH credit procedure offers a number of advantages when compared to the previously implemented ACH debit procedure provided for in § 24.25 of the Customs Regulations (19 CFR 24.25). These advantages include the fact that ACH credit allows the payer to exercise more control over the payment process, does not require the disclosure of bank account information to the Government, expands the types of payments that may be made through ACH, and does not require action on the part of the Government when an individual payment is effected.

The interim amendments contained in T.D. 98–51 involved (1) the addition of a new § 24.26 (19 CFR 24.26) to cover the ACH credit procedure and (2) a number of consequential wording changes in § 24.25 to clarify when the references to ACH in that section pertain only to the ACH debit procedure and not to the ACH credit procedure of new § 24.26. These interim regulatory amendments went into effect on June 29, 1998, and the notice prescribed a public comment period which closed on July 27, 1998.

No comments were received during the prescribed public comment period. Accordingly, Customs believes that the interim regulatory amendments should be adopted as a final rule without change. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. ACH credit is a voluntary payment procedure that provides increased benefits in efficiency, control, and privacy to payers who elect to make payments to Customs by electronic funds transfer. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0218. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in § 24.26. This information is required in connection with an election to use the ACH credit procedure for making electronic payments of funds to Customs. The information will be used by the U.S. Customs Service to ensure that payments to Customs are properly transmitted, received, and credited. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is .083 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, under the authority of 19 U.S.C. 66 and 1624 the interim rule amending 19 CFR Part 24 which was published at 63 FR 29122 on May 28, 1998, is adopted as a final rule without change, and Part 178 of the Customs Regulations (19 CFR Part 178) is amended as set forth below.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
§ 24.26 ...	Automated Clearinghouse Credit.	1515–0218
* * * * *		

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 15, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–3619 Filed 2–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

[T.D. 99–9]

Establishment of Port of Entry in Fort Myers, Florida

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of the Customs Service by designating Fort Myers, Florida, as a port of entry. The geographical area of the new port consists of both Lee and Collier Counties in Florida, including Southwest Florida International Airport and the foreign trade zone at Immokalee Regional Airport. The change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers and the general public.

EFFECTIVE DATE: March 18, 1999.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, 202–927–0196.

SUPPLEMENTARY INFORMATION:

Background

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** (63 FR 13025) on March 17, 1998, Customs proposed to amend the Customs Regulations pertaining to the field organization of the Customs Service by designating Fort Myers, Florida, as a port of entry. Customs proposed that Fort Myers be designated as a port of entry because it meets the current standards for port of entry designations set forth in T.D. 82–37, as revised by T.D. 86–14 and T.D. 87–65. The geographical boundaries of the proposed port were to be the same as those of Lee County, Florida, including Southwest Florida International Airport. It was also proposed to remove the user fee designation of Southwest Florida International Airport.

Five comments were received in response to the proposal.

Analysis of Comments

Comment: The commenters all supported the designation of Lee County including Southwest Florida International Airport as a Customs port of entry. In addition, they all requested that the port limits be expanded to include Collier County as well as Lee County.

According to the commenters, Collier County is one of the fastest growing areas in the country. Its rapid population growth is projected to continue into the next century, with population doubling by the year 2020. Collier County is involved in international trade by virtue of its foreign trade zone at Immokalee Regional Airport, created by the Department of Commerce in 1997, and the foreign trade zone workload is projected to increase.

Response: Customs believes that the commenters have presented sufficient information about the benefits of including Collier County in the new port to expand the geographical description of Fort Myers to include Collier County. Ample evidence has been provided to convince Customs that because Collier County is a growing county with regard to population, trade and economic structure, the economic viability of a Fort Myers port of entry will be enhanced by the inclusion of Collier County. Customs believes that the new two-county port can be efficiently managed by available Customs resources.

Conclusion

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs is amending §§ 101.3(b)(1) and 122.15(b), Customs Regulations (19 CFR 101.3(b)(1) and 122.15(b)), by designating Fort Myers, Florida, as a port of entry and removing the designation of Southwest Florida Regional Airport as a user fee airport.

Port Limits

The geographic area of the port of Fort Myers consists of Lee County, Florida, including Southwest Florida International Airport, and Collier County, Florida, including the foreign trade zone at Immokalee Regional Airport.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although a notice was issued for public comment on this subject matter, because the subject matter relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Agency organization matters such as this are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above, part 101 and part 122 of the Customs Regulations are amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

2. The list of ports in § 101.3(b)(1) is amended by adding, in alphabetical order under the state of Florida, ''Fort Myers'' in the ''Ports of entry'' column and ''T.D. 99–9 '' in the adjacent ''Limits of port'' column.

PART 122—AIR COMMERCE REGULATIONS

1. The general authority for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.15 [Amended]

2. The list of user fee airports in § 122.15(b) is amended by removing ''Fort Myers, Florida'' from the ''Location'' column and, on the same line, ''Southwest Florida Regional Airport'' from the ''Name'' column.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 15, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–3472 Filed 2–12–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 123

[T.D. 99–10]

RIN 1515–AB88

Foreign-Based Commercial Motor Vehicles in International Traffic

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow certain foreign-based commercial motor vehicles, which are admitted as instruments of international traffic, to engage in the transportation of merchandise or passengers between points in the United States where such transportation is incidental to the immediately prior or subsequent engagement of such vehicles in international traffic. Any movement of these vehicles in the general direction of an export move or as part of the return movement of the vehicles to their base country shall be considered incidental to the international movement. The benefit of this liberalization of current cabotage restrictions inures in particular to both the United States and foreign trucking industries inasmuch as it allows more efficient and economical utilization of their respective vehicles both internationally and domestically.

EFFECTIVE DATE: March 18, 1999.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Glen E. Vereb, Office of Regulations and Rulings,202–927–2320.

Operational aspects: Eileen A. Kastava, Office of Field Operations, 202–927–0983.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1322, vehicles and other instruments of international traffic shall be excepted from the application of the Customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

This statutory mandate pertaining to foreign-based commercial motor vehicles is implemented in § 123.14 of the Customs Regulations (19 CFR 123.14). Section 123.14(a) states that to qualify as instruments of international traffic, such vehicles having their principal base of operations in a foreign country must be arriving in the United States with merchandise destined for points in the United States, or arriving empty or loaded for the purpose of taking merchandise out of the United States.

Section 123.14(c), Customs Regulations, states that with one exception, a foreign-based commercial motor vehicle, admitted as an instrument of international traffic under § 123.14(a), shall not engage in local traffic in the United States. The exception, set out in § 123.14(c)(1), states that such a vehicle, while in use on a regularly scheduled trip, may be used in local traffic that is directly incidental to the international schedule.

Section 123.14(c)(2), Customs Regulations, provides that a foreign-based truck trailer admitted as an instrument of international traffic may carry merchandise between points in the United States on the return trip as provided in § 123.12(a)(2) which allows use for such transportation as is reasonably incidental to its economical and prompt departure for a foreign country.

In regard to these cabotage restrictions, Customs received a petition from the American Trucking Association (ATA) requesting a change in Customs interpretation of its regulations governing the use of foreign-based trucks in local traffic in the United States. This petition was the culmination of joint discussions beginning in July of 1994 between the ATA and the Canadian Trucking Association (CTA) to obtain mutually agreed upon parameters with respect to the liberalization of current truck cabotage restrictions in their respective countries.

After reviewing the petition, Customs published a notice in the Customs Bulletin pursuant to 19 U.S.C. 1625(c)(1) (see 31 Cust. Bull. and Dec. No. 40, 7 (October 1, 1997)), which revised the interpretation of when a foreign-based truck would be considered as used in international traffic under existing § 123.14. However, the proposal advanced by the ATA regarding the use of a foreign-based commercial motor vehicle, including a truck, in permissible local traffic under § 123.14(c) was, of course, not addressed in the Customs Bulletin notice. To effect this change required an amendment of the regulation under the Administrative Procedure Act, 5 U.S.C. 553.

Accordingly, by a document published in the **Federal Register** (63 FR 27533) on May 19, 1998, Customs proposed an amendment of § 123.14(c)(1), which would allow certain foreign-based commercial motor vehicles, admitted as instruments of international traffic, to engage in the transportation of merchandise between

points in the United States where such local traffic is incidental to the immediately prior or subsequent engagement of such vehicles in international traffic. In addition, this revision would eliminate the current requirement that such international traffic be regularly scheduled. Furthermore, any movement of these vehicles in the general direction of an export move or as part of the return movement of the vehicles to their base country would be considered incidental to the international movement.

In conjunction with the amendments to § 123.14, the proposed rule also included conforming amendments to § 123.16 regarding the return of the qualifying vehicles to the United States.

The benefit of this liberalization of current cabotage restrictions would inure in particular to both the United States and foreign trucking industries inasmuch as it would allow more efficient and economical utilization of their respective vehicles both internationally and domestically. Thus, while prompted by the ATA petition, which was developed in concert with the CTA, as described above, the proposed amendments would be universally applicable, and not be limited to just Canadian-based vehicles.

Discussion of Comments

A total of thirty-three comments were received from the public in response to the notice of proposed rulemaking. Thirteen commenters supported the rule as proposed, although one of these commenters urged that the rule be restricted to Canadian-based vehicles. Twenty commenters opposed the rule, with fifteen of these commenters urging Customs to change the rule, if adopted, so that it would be limited to Canada. Also, the Immigration and Naturalization Service (INS) submitted a comment which, while taking no position on the proposed rule, provided clarification as to that agency's position with regard to the use of alien commercial drivers in the U.S.

A discussion, together with Customs analysis, of the critical issues that were raised with respect to the proposed rule is set forth below.

Comment: It was believed that the proposed expanded operation of foreign trucks in the U.S. would further encourage the employment of lower-cost foreign drivers. This would result in a significant increase in unauthorized foreign driver activity in the U.S., and induce U.S. trucking companies ultimately to pressure the INS to relax its current restrictions in this regard, thereby reducing jobs for U.S. truck drivers.

Customs Response: Customs believes that the expanded use of foreign-based vehicles in the U.S., as proposed, will not have any impact on the existing limited scope of alien-driver activities in the U.S., as enforced by the INS. Customs will, of course, continue to defer to the INS in this matter.

To make this clear, § 123.14(c)(1) is revised to indicate that alien drivers will not be permitted to operate foreign vehicles carrying merchandise or passengers between points in the U.S., unless the drivers are in compliance with the applicable regulations of the INS.

Generally, under the existing rules of the INS, as explained in its comment on the proposed rule, a nonimmigrant alien who is driving a truck or operating another commercial motor vehicle in international traffic is admitted to the U.S. only as a visitor for business (a so-called ''B–1'' classification) under the Immigration and Naturalization Act (INA), as amended (8 U.S.C. 1101(a)(15)(B)).

However, while an alien who is admitted as a B–1 visitor may transport goods or passengers from a foreign country to the U.S., and may transport goods or passengers from the U.S. to a foreign country, the alien would not be permitted to engage in point-to-point transportation of goods or passengers within the U.S. This restriction is codified in the INS regulations, specifically at 8 CFR 214.2(b)(4) which also describes the permissible scope of business activities for aliens admitted under the B–1 classification, and defines the criteria for admission of B–1 visitors pursuant to Chapter 16 of the North American Free Trade Agreement (NAFTA) (Appendix 1603.A.1 to Annex 1603 of the NAFTA).

Thus, while the subject rule allows for the use of commercial motor vehicles in the transportation of goods between points within the U.S., provided such use is incidental to the employment of those vehicles in international traffic as prescribed in § 123.14(c)(1), an alien driver or other vehicle operator seeking admission to the U.S. as a B–1 visitor for business under these circumstances would be denied admission.

In order to load and transport goods or passengers within the U.S. from one location to another (which, as noted, is outside the scope of the B–1 classification), an alien must either be a lawful permanent resident of the U.S. or must have authorization from the INS for employment in the U.S.

Comment: One commenter thought that the adoption of the proposed amendments would have a negative competitive impact on the domestic-based commercial motor carrier industry, by affording lower-cost foreign carriers greater access to domestic freight markets.

Customs Response: Customs does not contemplate any significant competitive impact on carriers that operate exclusively within the U.S., given the petition and strong support for the adoption of the subject rule by the American Trucking Association (ATA), which represents over 35,000 motor carriers of every type and class in the U.S. It should further be mentioned in this context that the domestic use of foreign-based commercial vehicles under the rule is strictly circumscribed by, and contingent upon, such use of the vehicles being incidental to their immediately prior or subsequent engagement in international traffic, as described in § 123.14(c)(1).

Comment: It was urged that the proposed amendments be limited to Canadian-based vehicles. To do otherwise, it was argued, would occasion an increase in the number of unsafe and uninsured vehicles on U.S. roads. It was also emphasized here that the reciprocity in relation to truck cabotage restrictions that would result from the adoption of the proposed amendments would exist only between Canada and the U.S.

Customs Response: Our international obligations do not permit a reciprocity requirement with regard to this matter. As such, no reciprocal agreement may be required for vehicles of any country in order to engage in local traffic as prescribed under the subject regulatory amendments. Nevertheless, foreign-based vehicles must, of course, comply with the operating requirements imposed by the Department of Transportation and other U.S. Government agencies before being used as provided in § 123.14(c)(1).

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the modification discussed above should be adopted.

Regulatory Flexibility Act and Executive Order 12866

The final rule document greatly relaxes current cabotage restrictions for both the U.S. and foreign trucking industries, enabling more efficient and economical use of their respective vehicles both internationally and domestically. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the rule will

not have a significant economic impact on a substantial number of small entities. Nor does the rule result in a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 123

Administrative practice and procedure, Canada, Common carriers, Customs duties and inspection, Imports, International traffic, Motor carriers, Trade agreements, Vehicles.

Amendments to the Regulations

Part 123, Customs Regulations (19 CFR part 123), is amended as set forth below.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123, and the relevant specific sectional authority citation, continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

Sections 123.13—123.18 also issued under 19 U.S.C. 1322;

* * * * *

2. Section 123.14 is amended by revising paragraph (c)(1) to read as follows:

§ 123.14 Entry of foreign-based trucks, busses and taxicabs in international traffic.

* * * * *

(c) *Use in local traffic.* * * *

(1) The vehicle may carry merchandise or passengers between points in the United States if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Any such carriage by the vehicle in the general direction of an export move or as part of the return of the vehicle to its base country shall be considered incidental to its engagement in international traffic. An alien driver will not be permitted to operate a vehicle under this paragraph, unless the driver is in compliance with the applicable regulations of the Immigration and Naturalization Service.

* * * * *

3. Section 123.16 is amended by revising paragraph (b) to read as follows:

§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

* * * * *

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported and must be regularly entered on return.

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 15, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–3473 Filed 2–12–99; 8:45 am]

BILLING CODE 4820–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7707]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain

management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Maine: Trescott, township of, Washington County.	230473	March 19, 1975, Emerg; Aug. 5, 1985, Reg; Feb. 8, 1999, Susp.	Feb. 8, 1999	Feb. 8, 1999.
Region II				
Delaware: Milford, city of, Kent and Sussex Counties.	100042	June 5, 1974, Emerg; June 1, 1977, Reg; Feb. 8, 1999, Susp.	.....do	Do.
Sussex County, unincorporated areas	100029	April 16, 1971, Emerg; Oct. 6, 1976, Reg; Feb. 8, 1999; Susp.	.....do	Do.
Region IV				
South Carolina: Sumter County, unincorporated areas.	450182	Sept. 17, 1979; Emerg; Jan. 5, 1989; Reg; Feb. 8, 1999, Susp.	.....do	Do.
Region IX				
Arizona: Pima County, unincorporated areas	040073	Oct. 2, 1974, Emerg; Feb. 15, 1983, Reg; Feb. 8, 1999, Susp.	.....do	Do.
California: Humboldt County, unincorporated areas.	060060	Sept. 11, 1974, Emerg; July 19, 1982, Reg; Feb. 8, 1999, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: February 5, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–3645 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Maine: Hancock (FEMA Docket No. 7265).	Town of Gouldsboro.	June 25, 1998, July 2, 1998, *Ellsworth American.*	Mr. Larry Barnes, Town Manager, P.O. Box 68, Prospect Harbor, Maine 04669.	June 16, 1998	230283 B
Massachusetts: Middlesex (FEMA Docket No. 7265).	City of Lowell	July 20, 1998, July 27, 1998, *The Sun.*	Mr. Brian J. Martin, Manager of the City of Lowell, 375 Merrimack Street, Lowell, Massachusetts 01852.	October 25, 1998	250201 D
New Jersey: Middlesex (FEMA Docket No. 7269).	Township of South Brunswick.	August 6, 1998, August 13, 1998, *Central Post.*	The Honorable Edmund A. Luciano, Jr., Mayor of the Township of South Brunswick, P.O. Box 190, Monmouth Junction, New Jersey 08852.	November 11, 1998.	340278
South Carolina: Spartanburg (FEMA Docket No. 7265).	Unincorporated Areas.	July 2, 1998, July 9, 1998, *Herald-Journal.*	Mr. Roland Windham, Spartanburg County Administrator, P.O. Box 5666, Spartanburg, South Carolina 29304.	June 18, 1998	450176 B
Virginia: Loudoun (FEMA Docket No. 7269).	Unincorporated Areas.	August 19, 1998, August 26, 1998, *Loudoun Times-Mirror.*	Mr. Kirby Bowers, County Administrator, County of Loudoun, P.O. Box 7000, Leesburg, Virginia 20177–7000.	November 24, 1998.	510090

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Virginia: Prince William (FEMA Docket No. 7265).	Unincorporated Areas.	June 24, 1998, July 1, 1998, *Potomac News*.	Mr. H. B. Ewert, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	June 18, 1998	510119 D

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 8, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–3695 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF25

Migratory Bird Hunting; Regulations To Increase Harvest of Mid-Continent Light Geese.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Mid-continent light goose populations (lesser snow and Ross' goose combined) has nearly quadrupled within the last 30 years, and have become seriously injurious to their habitat and habitat important to other migratory birds. The U.S. Fish and Wildlife Service (Service or ''we'') believes that these populations exceed the long-term carrying capacity of their breeding habitats and must be reduced. This rule authorizes the use of additional hunting methods (electronic callers and unplugged shotguns) during a normal open light-goose hunting season when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

DATES: This rule takes effect immediately upon publication on February 16, 1999.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background

Lesser snow and Ross' geese that primarily migrate through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas and other Gulf Coast States are referred to as the Mid-continent population of light geese (MCP). Lesser snow and Ross' geese that primarily migrate through Montana, Wyoming, and Colorado and winter in New Mexico, northwestern Texas, and Chihuahua, Mexico are referred to as the Western Central Flyway population of light geese (WCFP). Ross' geese are often mistaken for lesser snow geese due to their similar appearance. Ross' geese occur in both the MCP and the WCFP and mix extensively with lesser snow geese on both the breeding and wintering grounds. MCP and WCFP lesser snow and Ross' geese are collectively referred to as Mid-continent light geese (MCLG) because they breed, migrate, and winter in the ''Mid-continent'' or central portions of North America primarily in the Central and Mississippi Flyways. They are referred to as ''light'' geese due to the light coloration of the white-phase plumage morph, as opposed to true ''dark'' geese such as the white-fronted or Canada goose. We include both plumage morphs of lesser snow geese (white, or ''snow'' and dark ,or ''blue'') under the designation light geese.

MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. MCLG populations are experiencing high population growth rates and have substantially increased in numbers within the last 30 years. Operational surveys conducted annually on wintering grounds are used to derive a December index to light goose populations. December indices of light goose populations represent a certain proportion of the total wintering population, and thus are smaller than the true population size. By assuming that the same proportion of the population is counted each December, we can monitor trends in the true population size.

The December index of MCP light geese has more than tripled within 30 years from an estimated 800,000 birds in 1969 to approximately three million birds in 1998 and has increased an average of 5% per year for the last ten years (Abraham et al. 1996, USFWS 1998b). The December index of WCFP light geese has quadrupled in 23 years from 52,000 in 1974 to 216,000 in 1997 (USFWS 1997b), and has increased an average of 9% per year for the last ten years (USFWS 1998b). The lesser snow goose portion of the 1998 MCP December index mentioned above is estimated to be 2.8 million birds. In 1991, the Central and Mississippi Flyway Councils jointly agreed to set lower and upper management thresholds for the MCP of snow geese at 1.0 million and 1.5 million, respectively, based on the December index. Therefore, the current December index of MCP lesser snow geese far exceeds the upper management threshold established by the Flyway Councils.

MCLG populations have also exceeded North American Waterfowl Management Plan (NAWMP) population objectives, which are also based on December indices. The MCP lesser snow goose December index of 2.8 million birds far exceeds the NAWMP population objective of 1 million birds (USDOI et al. 1998d). The lesser snow goose portion of the WCFP light goose December index is estimated to be 200,000 birds, which exceeds the NAWMP population objective of 110,000 birds (USDOI et al. 1998d). The estimate of the Ross' goose component of the MCLG population December index (WCFP and MCP combined) currently exceeds 200,000 birds. This far exceeds the NAWMP Ross' goose population objective of 100,000 birds (USDOI et al. 1998d). We compare current population levels to NAWMP population objectives to demonstrate that MCLG populations have increased substantially over what is considered to be a healthy population level. We are not suggesting that MCLG be reduced for the sole purpose of meeting NAWMP population objective levels.

By multiply the current MCLG December index of 3.2 million birds by an adjustment factor of 1.6 (Boyd et. al 1982), we derive an estimate of 5.12 million breeding birds in spring. This is

corroborated by population surveys conducted on light goose breeding colonies during spring and summer, which suggest that the breeding population size of MCLG is in excess of five million birds (D. Caswell pers. comm. 1998). Included in these population estimates are 1998 estimates for breeding and non-breeding adult Ross' and lesser snow geese in the Queen Maud Gulf area northwest of Hudson Bay of 1.29 million and 1.82 million birds, respectively (Alisauskas et al. 1998). These geese are in addition to the millions of geese estimated to be nesting along west Hudson and James Bays where the geese have precipitated severe habitat degradation and on Southampton and Baffin Islands where signs of habitat degradation are becoming evident. The estimate of 5.12 million birds does not include non-breeding geese or geese found in un-surveyed areas. Therefore, the total MCLG population currently far exceeds 5.12 million birds. Assuming a 10% growth rate in the breeding population over the next three years, the population will grow from 5.12 million to approximately 6.8 million in the absence of any new management actions. Again, this represents a minimum estimate because non-breeding geese and geese in un-surveyed areas are not included.

Although our intention is to significantly reduce MCLG populations in order to relieve pressures on the breeding habitats, we feel that these efforts will not threaten the long-term status of these populations. We are confident that reduction efforts will not result in populations falling below either the lower management thresholds established by Flyway Councils, or the NAWMP population objectives discussed previously. Monitoring and evaluation programs are in place to estimate population sizes and will be used to prevent over-harvest of these populations. An overview of these monitoring programs is presented in a subsequent section of this document.

The rapid rise of MCLG populations has been influenced heavily by human activities (Sparrowe, 1998, Batt 1997). The greatest attributable factors are:

(1) The expansion of agricultural areas in the United States and prairie Canada that provide abundant food resources during migration and winter;

(2) The establishment of sanctuaries along the Flyways specifically to increase bird populations;

(3) A decline in harvest rate; and

(4) An increase in adult survival rates.

Although all of these factors contributed to the rapid rise in MCLG populations, the expansion of agriculture in prairie Canada and the United States is considered to be the primary attributable factor (Sparrowe 1998, Abraham and Jefferies 1997). Today, MCLG continue to exploit soybean, rice, and other crops during the winter primarily in the Gulf Coast States and are observed less frequently in the natural coastal marshes they historically utilized. Similarly, MCLG migrating through the mid-latitude and northern United States and prairie Canada during spring migration exploit cereal grain crops consisting of corn, wheat, barley, oats and rye (Alisauskas et al. 1988). For example, we estimated 1 to 2 million MCLG stage in the Rainwater Basin in Nebraska from mid-February to mid-March and primarily feed on corn left over from harvesting (USFWS 1998a). These crops provide MCLG with additional nutrients during spring migration assuring that MCLG arrive on the breeding grounds in prime condition to breed. Increased food subsidies during spring migration over the last 30 years has resulted in higher reproductive potential and breeding success (Ankney and McInnes 1978, Abraham and Jefferies 1997). Consequently, more geese survived the winter and migration and were healthier as they returned to their breeding grounds in Canada.

This is not intended to criticize the conservation efforts accomplished by the implementation of conservation-oriented agricultural practices. Such efforts have benefitted numerous wildlife species. We merely point out that MCLG have exploited these artificial resources, resulting in an increase in survival.

Foraging Behavior of MCLG

The feeding behavior of MCLG is characterized by three foraging methods. Where spring thawing has occurred and above-ground plant growth has not begun, lesser snow geese dig into and break open the turf (grubbing) consuming the highly nutritious below-ground biomass, or roots, of plants. Grubbing continues into late spring. Lesser snow geese also engage in shoot-pulling where the geese pull the shoots of large sedges, consume the highly nutritious basal portion, and discard the rest, leaving behind large unproductive, and potentially unrecoverable areas (Abraham and Jefferies 1997). A third feeding strategy utilized by many species is grazing which in some cases, stimulates plant growth. Both lesser snow geese and Ross' geese graze. Due to their shorter bill size, Ross' geese are able to graze shorter stands of grass.

Grubbing, grazing, and shoot-pulling are natural feeding behaviors and at lower population levels have had positive effects on the ecosystem. For example, at lower numbers, geese fed on the tundra grasses and actually stimulated growth of plant communities resulting in a positive feedback loop between the geese and the vegetation. However, the rapidly expanding numbers of geese, coupled with the short tundra growing season, disrupted the balance and has resulted in severe habitat degradation in sensitive ecosystems. The Hudson Bay Lowlands salt-marsh ecosystem, for example, consists of a 1,200 mile strip of coastline along west Hudson and James Bays, Canada. It contains approximately 135,000 acres of coastal salt-marsh habitat. Vast hypersaline areas devoid of vegetation degraded by rapidly increasing populations of MCLG have been observed and documented extensively throughout the Hudson Bay Lowlands (Abraham and Jefferies 1997). Rockwell et al. (1997a) observed the decline of more than 30 avian populations in the La Pérouse Bay area due to severe habitat degradation. These declines and other ecological changes represent a decline in biological diversity and indicate the beginning of collapse of the current Hudson Bay Lowlands salt-marsh ecosystem. Experts fear that some badly degraded habitat will not recover (Abraham and Jefferies 1997). For example, in a badly degraded area, less than 20% of the vegetation within an exclosure (fenced in area where geese cannot feed) has recovered after 15 years of protection from MCLG (Abraham and Jefferies 1997). Recovery rates of degraded areas are further slowed by the short tundra growing season and the high salinity levels in the exposed and unprotected soil.

Long-term research efforts have indicated signs of ''trophic cascade'' in La Pérouse Bay, Cape Henrietta Maria, and Akimiski Island (R. Rockwell pers. comm. 1998). Trophic cascade is essentially the collapse of an existing food chain indicating that the ecosystem is unable to support its inhabitants. Impacts associated with trophic cascade are indicative that MCLG populations have exceeded the carrying capacity of much of their breeding habitat. Impacts such as a decline in biological diversity and physiological stress, malnutrition, and disease in goslings have been documented and observations of such impacts are increasing. Additional observations in areas north of Hudson Bay on Southampton and Baffin Islands, northwest in the Queen Maud Gulf region, and south off the west coast of James Bay on Akimiski Island also suggest similar habitat degradation

patterns from expanding colonies of MCLG. Batt (1997) reported the rapid expansion of existing colonies and the establishment of new colonies in the central and eastern arctic. In 1973, for example, Canadian Wildlife Service data indicated that approximately 400,000 light geese nested on West Baffin Island. In 1997, approximately 1.8 million breeding adults were counted. Similar colony expansions have been reported for the Queen Maud Gulf region and Southampton Island. Rapid colony expansion must be halted and the populations must be reduced to prevent further habitat degradation and to protect the remaining habitat upon which numerous wildlife species depend.

Breeding Habitat Status

MCLG breeding colonies occur over a large area encompassing eastern and central portions of northern Canada. Habitat degradation by MCLG has been most extensively studied in specific areas where colonies have expanded exponentially and exhibit severe habitat degradation. For example, the Hudson Bay Lowlands salt-marsh ecosystem lies within a 135,000 acre narrow strip of coastline along west Hudson and James Bays and provides important stopover sites for numerous migratory bird species. Of the 135,000 acres of habitat in the Hudson Bay Lowlands, 35% is considered to be destroyed, 30% is damaged, and 35% is overgrazed (Batt 1997). Habitats currently categorized as ''damaged'' or ''overgrazed'' are being further impacted and will be classified as ''destroyed'' if goose populations continue to expand. Accelerated habitat degradation has been observed by Canadian biologists on Southampton and Baffin Islands and appear to be following the same pattern as documented in the Hudson Bay Lowlands. Current research efforts are underway to confirm observations of habitat degradation by MCLG in other areas.

Migration and Wintering Habitat Conditions and Degradation

There is no evidence to support that wintering habitat for MCLG is threatened or that it may limit population growth. Presently, there are approximately 2.25 million acres of rice fields in Texas, Louisiana, and Arkansas, in addition to the millions of acres of cereal grain crops in the Midwest. Consequently, food availability and suitable wintering habitat are not limiting MCLG during the migration and wintering portions of the annual cycle.

Summary of Environmental Consequences of Taking No Action

At each site they occupy, MCLG will continue to degrade the plant communities until food and other resources are exhausted, forcing yet more expansion of colonies. The pattern has been, and will continue to be, that as existing nesting colonies expand, they exploit successively poorer quality habitats, which are less able to accommodate them and which become degraded more quickly. Eventually, the coastal salt-marsh communities surrounding Hudson Bay and James Bay will become remnant. There will be little chance of recovery of such habitat as long as MCLG populations remain high. Even if goose populations decline at some point due to natural causes, which may not occur to the degree necessary, it will take the habitat a prolonged time period to recover. The functioning of the whole coastal ecosystem, from consolidation of sediments by colonizing plants to provision of suitable habitats for invertebrate and vertebrate fauna, will be detrimentally and possibly irrevocably altered. Similar conditions will prevail at selected non-coastal areas where MCLG have occupied most of the suitable nesting habitats. As many as 30 other avian species, including American wigeon, Northern shoveler, stilt sandpiper, Hudsonian godwit, and others, that utilize those habitats have declined locally, presumably due to habitat degradation by MCLG. Other species, such as Southern James Bay Canada geese, a species of management concern, that breed on nearby Akimiski Island and numerous other waterfowl species that migrate and stage with MCLG, have been and will continue to be negatively impacted. Arctic mammalian herbivores will also be impacted as the vegetative communities upon which they depend become depleted. Due to the rapidly expanding populations and the associated ecological impacts identified, we have concluded that MCLG populations have become seriously injurious to themselves and other migratory birds, their habitat and habitat of other migratory birds.

We expect that MCLG populations will continue to grow at least 5% annually, resulting in more severe and widespread ecological impacts. Although several factors influence population dynamics, the greatest single factor in the populations' increase is high and increasing adult survival rates (Rockwell et al. 1997b). Therefore, removing adults from the populations is the most effective and efficient approach in reducing the populations. Experts feel that breaking eggs and other non-lethal techniques have been determined to be ineffective in significantly reducing the populations within a reasonable time to preserve and protect habitat (Batt 1997).

We have attempted to curb the growth of MCLG populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Treaty. However, due to the rapid rise in MCLG numbers, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested), has declined despite evidence that the number of geese harvested has increased (USFWS 1997b). The decline in harvest rate indicates that the current management strategies are not sufficient to stabilize or reduce population growth rates.

New Management Actions

We realize that current MCLG management policies need to be re-examined and believe that alternative regulatory strategies designed to increase MCLG harvest, implemented concurrently with habitat management and other non-lethal control measures, have the potential to be effective in reducing MCLG populations to levels that the remaining breeding habitat can sustain. Batt (1997) estimated that the MCLG population should be reduced by 50% by the year 2005. Based on the current MCLG December index of approximately 3.2 million birds, this would entail a reduction of the December index to 1.6 million birds. Using the adjustment factor of 1.6, this would translate to a minimum breeding population size of 2.56 million birds. The estimate of 2.56 million birds does not include non-breeding geese or geese found in un-surveyed areas. Therefore, the total MCLG spring population would be much higher.

We prefer to implement alternative regulatory strategies designed to increase MCLG harvest afforded by the Migratory Bird Treaty and avoid the use of more drastic population control measures. More direct population control measures such as trapping and culling programs may be necessary if the current regulatory action, in concert with habitat management, is not successful. Should the conservation order be deemed unsuccessful we will consider more direct population control measures to reduce MCLG.

We restrict the scope of this rule to mid-continent populations of light geese (MCLG): Mid-continent and Western Central Flyway lesser snow geese (Chen

caerulescens caerulescens) and Ross' geese (C. rossi) and the United States portions of the Central and Mississippi Flyways (Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming) where they migrate, stage, or winter. Evidence exists to support the conclusion that MCLG which migrate, stage, and winter in these areas subsequently return to breed in the arctic and subarctic areas that are experiencing severe habitat degradation.

We are concurrently implementing an additional but separate population reduction strategy. In addition to this rule that amends 50 CFR Part 20, we are also amending 50 CFR Part 21 to authorize the use of a conservation order to increase take of MCLG. The conservation order will be in the nature of an order authorizing States to implement actions to harvest MCLG, by shooting in a hunting manner, inside or outside of the regular open migratory bird hunting season frameworks when all waterfowl and crane hunting seasons, excluding falconry, are closed. The second rule is published in this issue of the **Federal Register**.

We do not expect the second rule (amendment to 50 CFR part 20) implemented alone to achieve our overall management objective of reducing the MCLG December index to approximately 1.6 million birds. The success of this strategy will hinge upon State participation, hunter participation, and hunter effectiveness. If a State does not participate, then its hunters will not be able to participate in that State, decreasing the program's potential. We anticipate that some northern and mid-latitude States will elect not to implement this rule (authorization of electronic calls and un-plugged shotguns) due to the infeasibility of closing all other waterfowl and crane seasons during the fall. It is more likely that those states will participate in a conservation order during the spring, when it is more feasible to close all other waterfowl and crane hunting seasons, excluding falconry. Conversely, many waterfowl and crane hunting seasons in southern States close prior to 10 March. Therefore, it is much more feasible for southern States to implement this rule by establishing a light-goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

We are implementing the second action (conservation order) in order to maximize the overall program's potential and to try to achieve our management objective within a reasonable time-frame. These actions will be complemented by attempts to alter habitat management practices that tend to increase MCLG, and hopefully will reduce the need for more direct population control programs. The conservation order will allow northern States to participate in this effort and enable them to harvest MCLG during spring migration, particularly after 10 March. Harvest projections for this rule (amendment 50 CFR Part 20) are rolled into the harvest projections for the conservation order. Harvest projections for this rule are not in addition to the harvest projections for the conservation order.

Revision to 50 CFR Part 20

We are amending 50 CFR 20.21 with the intent to increase harvest of mid-continent light geese during the open hunting season (MCLG) by authorizing the use of electronic callers and unplugged shotguns during a light goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed. This is in an effort to reduce overabundant MCLG populations that have become seriously injurious to other migratory bird populations and to habitat essential to migratory bird populations. Conditions under this regulation require that participating States inform hunters acting under the authority of the amendment of the conditions that apply to the utilization of this amendment.

Under the authority of this rule, States could develop and initiate aggressive harvest management strategies by offering hunters additional hunting methods to harvest MCLG with the intent to increase harvest of MCLG. By operating under an existing program, a regular light-goose only season, affected States would not have to create a new program to implement the action, which would significantly reduce administrative burden to the State and Federal governments. In order to minimize or avoid negative impacts to non-target species and to eliminate confusion regarding enforcement of the restrictions associated with this action, States may only implement this action when all other waterfowl and crane hunting seasons, excluding falconry, are closed. Although we expect this action to facilitate other protection and recovery efforts, we do not expect this action (amendment to 50 CFR Part 20) implemented alone to achieve our management objective. Therefore, we are concurrently implementing an additional but separate population reduction strategy (discussed above) to work in concert with this action in order to achieve our management objective. We feel the overall strategy will result in biologically sound and more cost-effective and efficient overabundant MCLG population management. This could preclude the use of more drastic, direct population control measures such as trapping and culling programs. Although the desired goal is to reduce overabundant MCLG populations, we believe that this rule will not threaten the long-term health and status of MCLG populations or threaten the status of other species that could be impacted through the implementation of this action. We have evaluation and monitoring strategies to assess the overall impacts of this proposed action on MCLG harvest and impacts to non-target species that may be affected by the implementation of this action.

Summary of Environmental Consequences of Action

MCLG Populations and Associated Habitats

We project that we will harvest a cumulative total of two million MCLG over the next three years without the use of this action, based on current MCLG harvest trends. Under certain assumptions, our most liberal estimate is that we can expect to cumulatively harvest an additional 1.5 million MCLG after three years by implementing this proposed action. Therefore, we expect the total cumulative harvest to be 3.5 million MCLG after three years of implementation of this proposed action. We will revoke the amendment to 50 CFR Part 20 if the December index is reduced to the goal of 1.6 million birds.

The impact is expected to be regional within the Central and western Mississippi Flyway States that choose to participate. MCLG winter in the southern States of the Flyways substantially longer than northern or mid-latitude States. Therefore, the opportunity to harvest more MCLG is greatest in the south. Additional hunting methods authorized by a State under the authority of this rule will facilitate a hunter's ability to harvest more MCLG and will facilitate other efforts to increase adult mortality and therefore decrease numbers of MCLG.

Although we can expect the additional hunting methods to be effective, there is no precedent to guide us in determining to what degree they will be effective. It is equally difficult to ascertain to what degree the public will utilize the new methods, which will influence its effectiveness. However, with certain assumptions, we may

project an increase in harvest using existing harvest data.

Before projecting the effect of this action on harvest we must establish several assumptions. We are assuming that all affected States will act under the authority of the rule and allow the additional methods authorized in this action, that current MCLG hunter numbers will not decrease, and that the new hunting methods authorized in this will increase hunter effectiveness and overall harvest. We do not assume that all MCLG hunters will use the new hunting methods and of those that do, we do not assume that all will increase their effectiveness. We are assuming that 25% of the current MCLG hunters will use the new hunting methods and increase his/her effectiveness in harvesting MCLG.

We determined, based on a linear regression analysis of historical harvest data, that regular-season harvest has increased approximately 31,600 MCLG per year for the last ten years. A simple linear regression of the harvest data represents our most conservative estimate because the analysis does not take into account other factors that influence harvest such as the recent regulation changes for light geese. A more complex analysis demonstrates that harvest has actually increased at a faster rate since the bag and possession limits for light geese have been increased (USFWS 1998c). Today, more MCLG are harvested with fewer hunters, but hunter participation in light goose hunting is increasing. Therefore, we conservatively project that regular-season harvest will increase 31,600 per year for the next several years.

During 1997–98, hunters harvested 604,900 MCLG in the affected States (AR, CO, IL, IN, IA, KY, KS, LA, MI, MS, MO, MT, NE, NM, ND, OH, OK, SD, TN, TX, WI and WY). Combined with our projection that regular-season harvest will increase by 31,600 per year without any changes to hunting regulations, we can expect to harvest 636,500 MCLG in the 1998–1999 regular light goose season in those affected States. Under the assumptions stated above, we can expect to harvest an additional 339,000 MCLG in the first year of implementation of this action during a light-goose only season. Therefore, we expect a total harvest of 975,500 MCLG in the first year of implementation of this proposed action. Because we expect regular-season harvest to increase annually, the total projected harvest will also increase annually. We expect to harvest a total of 1.2 million MCLG in the second year of implementation, and 1.3 million in the third year of implementation. These estimates include regular-season harvest of MCLG.

Batt (1997) estimated that the MCLG population should be reduced by 50% by 2005. That would suggest a reduction in the MCLG December index from approximately 3.2 million birds to approximately 1.6 million birds. Central and Mississippi Flyway Council management thresholds for MCP lesser snow geese (not including WCFP lesser snow or Ross' geese) rests between 1.0 and 1.5 million birds, based on the December index. Therefore, our MCLG population reduction goal closely parallels those established by Flyway Councils and the scientific community. As mentioned previously, a December index of 1.6 million would translate to a minimum estimate of 2.56 million breeding MCLG in spring. We will carefully analyze and assess the MCLG reduction on an annual basis, using the December index and other surveys, to ensure that the populations are not over-harvested.

We expect an increase in harvest to facilitate other efforts, such as habitat management on the wintering grounds and increased harvest of MCLG by Canadian aboriginals. Decreased MCLG numbers will also relieve pressures on the breeding grounds. There is no evidence to suggest that the use of additional hunting methods during a light-goose only season will result in an over-harvest of MCLG. Once the December index is reduced to approximately 1.6 million birds, we will revoke this action and the methods we authorized. It is improbable that the use of the additional methods will threaten the long-term status of MCLG populations, because we will monitor the MCLG populations and act accordingly if it is threatened by modifying or revoking the action.

Other Species

We expect an increase in harvest, and subsequently a decrease in MCLG numbers, to relieve pressures on other migratory bird populations that utilize MCLG breeding and wintering grounds and other areas along the migration routes. It is expected to reduce the possibility that other species will be forced to seek habitat elsewhere or abandon unsuitable degraded habitat altogether, which could potentially result in decreased reproductive success of affected populations. We expect a decrease in MCLG populations to contribute to increased reproductive success of adversely impacted populations. Further, we expect that by decreasing the numbers of MCLG on wintering and migration stopover areas, the risk of transmitting avian cholera to other species will be reduced which will reduce the threat of a widespread avian cholera outbreak. We do not expect the action to result in an increase in take of non-target species. The action will only be allowed when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

Socio-Economic

Any migratory bird hunting action taken has economic consequences. Continued inaction is likely to result in ecosystem failure of the Hudson Bay Lowlands salt-marsh ecosystem and potentially other ecosystems as MCLG populations expand and exploit new habitats. Without more effective population control measures to curb the populations, the populations of MCLG are expected to continue increasing and become more and more unstable as suitable breeding habitat diminishes. As population densities increase, the incidence of avian cholera among MCLG and other species is likely to increase throughout the Flyways, particularly at migration stopover sites. Losses of other species such as pintails, white-fronted geese, sandhill cranes, and whooping cranes, from avian cholera may be great. This may result in reduced hunting, birdwatching, and other opportunities. It may also result in the season closures of adversely impacted migratory game birds such as white-fronted geese, sandhill cranes, and pintails. Goose damage to winter wheat and other agricultural crops will continue and worsen. Habitat damage in the Arctic will eventually trigger density-dependent regulation of the population which likely will result in increased gosling mortality and may cause the population to decline precipitously. However, it is not clear when such population regulation will occur and what habitat, if any, will remain to support the survivors. Such a decline may result in a population too low to permit any hunting, effectively closing MCLG hunting seasons. The length of the closures will largely depend on the recovery rate of the breeding habitat, which likely will take decades. Although the overall impact of closures of light-goose seasons in the Central and Mississippi Flyways that could result from continued degradation of the breeding habitat is small on a national scale, it would be concentrated where large flocks of geese stage and winter. Because people that provide services to hunters tend to be those with low incomes, the impact of a closure would fall disproportionately on low income groups near goose concentrations. We expect this action to reduce the risk of light-goose season closures in the

Central and Mississippi Flyways and avoid a $70 million loss in output and reduce the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies.

Public Comment Received

The November 9, 1998, proposed rule published in the **Federal Register** (63 FR 60271) invited public comments from interested parties. The closing date for receipt of all comments was January 8, 1999, which was subsequently extended to January 15, 1999 (64 FR 821). During the comment period, we received 573 comments consisting of 448 from private citizens, 21 from State wildlife agencies, 2 from Flyway Councils, 27 from private organizations, 10 from Native organizations, 43 from individuals that signed a petition, and 22 from private organizations that signed a petition. Comments generally were dichotomized by two points of view.

Comments in support of such action were received from 248 private citizens, 21 State wildlife agencies, 2 Flyway Councils, 12 private organizations, 1 Native group, and 35 from individuals that signed a petition. Three private individuals and 1 State wildlife agency that supported the use of electronic calls did not support the use of unplugged shotguns, whereas 1 private individual did not support electronic calls but did support the use of unplugged shotguns. All commenters agreed that there was a problem and that the resolution should entail reduction by lethal means and supported the use of additional methods to increase take of MCLG. Several State wildlife agencies and both Flyway Councils suggested that the requirement to have all other migratory bird hunting seasons closed in order to implement changes in regulations to address light goose population control is overly restrictive. They suggested that the requirement should be that only other waterfowl seasons be closed in order to implement changes in light goose regulations. A State wildlife agency and 1 private citizen voiced opposition to the closure of falconry seasons during implementation of new light goose regulation changes.

A State wildlife agency requested clarification on whether the requirement to close all other migratory bird seasons pertained to zones within a State, or the entire State. Several State wildlife agencies and 2 Flyway Councils questioned why other Mississippi Flyway states (i.e. MI, OH, WI, IN, KY, and TN) were not included in the list of those eligible to implement alternative regulatory strategies aimed at MCLG. Several State wildlife agencies urged that the Service not wait a full five years before the proposed population reduction strategies are evaluated and other management options are considered. A state wildlife agency commented that the requirement to close Bosque del Apache NWR during the period of implementation of alternative light goose regulations was inappropriate and that existing hunt management plans will avert potential impacts to whooping cranes.

Several private organizations and a Native organization expressed support of the findings of the international panel of scientists and waterfowl managers that documented (Batt 1997) habitat degradations caused by overabundant light goose and recommended actions to reduce populations. However, the organizations urged monitoring and evaluation of management actions and that such actions should be used only until populations are sufficiently reduced.

Comments in opposition to such action were received from 200 private citizens, 15 private organizations, 9 Native organizations, 8 individuals that signed a petition, and 22 private organizations that signed a petition. Many commenters stated that grazing by geese may be changing the vegetation communities on their breeding grounds but they ''cannot devastate an ecosystem of which they are a part.'' Furthermore, they felt that if there are too many geese for their habitats to support, the geese will either nest in other areas or fail to successfully raise young.

Several private organizations commented that the draft Environmental Assessment and the proposed rule fail to provide detailed estimates of the extent of grazing damage caused by MCLG. They further stated that we have not adequately addressed the relationship between isostatic uplift (raising of land due to the removal of pressure once exerted by glaciers) and vegetative succession, or the agricultural practices that have contributed to expansion of MCLG populations. In addition they criticized the lack of reliable current breeding population estimates of MCLG and our inability to demonstrate that current populations are higher than those ever experienced in the past. Furthermore, they questioned how killing millions of snow geese in the mid-western U.S. could remedy alleged damage to habitats at specific sites in the Canadian arctic. Finally, they protested that Native groups in Canada that would be directly impacted by the proposals were not consulted in the development of management actions. Comments provided by several Native organizations indicated that they were not consulted and they oppose the management action.

A private organization recommended nest destruction, egging, and hazing of geese from areas that have sustained habitat changes as alternatives to the proposed actions. Furthermore, they stated that the use of lethal control, if it is justified at all, must be conducted at specific sites where damage is occurring to be effective. Finally, they advocated that the Service implement ecosystem management to address the MCLG issue. Their view of ecosystem management assumes that the component species of an ecosystem determine their own distribution and abundance, consistent with the age and condition of their habits, thus requiring a more ''hands-off rather than a direct, interventionist, approach by managers.''

Many private individuals and several private organizations commented that an Environmental Assessment was insufficient to comply with NEPA requirements, and that a full Environmental Impact Statement should be prepared before action is taken to address this problem.

Service response: We have conducted an Environmental Assessment of alternative regulatory strategies to reduce MCLG populations. Based on review and evaluation of the information contained in the assessment, we have determined that the proposed action to amend 50 CFR Part 20 to authorize additional regulatory strategies for the reduction of MCLG populations is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, we made a Finding of No Significant Impact on this action. Therefore, preparation of an Environmental Impact Statement is not required. The EA and Finding of No Significant Impact are available to the public at the location indicated under the **ADDRESSES** caption.

We are unaware of any evidence indicating that the severe habitat damage occurring in MCLG breeding areas is the result of oil drilling activities. The feeding behavior of MCLG causes the removal of vegetation from sites and sets in motion a series of events that causes soil salinity to increase. With regard to the ability of MCLG to devastate an ecosystem of which they are a part, we point to studies summarized by Abraham and

Jefferies (1997) indicating that goose feeding activities reduce the thickness of the vegetation mat that insulates the underlying marine sediments from the air. Evaporation rates from the surface sediments increase and inorganic salts from the marine clay produce high salt concentrations that reduce growth of preferred forage plants. This together with continued intensive grazing by geese maintains open areas and high salt concentration and results in a positive feedback producing increased destruction of salt-marsh areas and decertification of the landscape. This is illustrated by fenced exclosure plots on impacted areas that prevent geese from grazing in plots. Both the exclosures and the areas in their immediate vicinity are experiencing isostatic uplift (raising of land as a result of glacial retreat) and yet the rate of plant species turnover in the two areas is markedly different, driven by excessive goose foraging. Several commenters stated that recolonization of mud flats by plants will occur naturally. However, they do not elaborate on the amount of time this process will require. Exclosure experiments indicate that it may take at least 15 years for vegetation stands to begin to develop, which would require total absence of goose foraging. This length of time is beyond the life expectancy of a single age cohort of lesser snow geese. Hence, the effects on the habitat outlive the geese.

With regard to the assertion that if there are too many geese for their habitats to support, the geese will nest in other areas or fail to raise young, we generally concur. We note that geese have the ability to escape the effects of high population densities by their ability to disperse from breeding colonies. However, there are signs that habitat in the areas geese are dispersing to are also being degraded, forcing the birds to disperse even further. Thus, birds invade previously undisturbed habitats and consume plant biomass to the point where it is no longer advantageous to remain in those areas, and then they disperse. The ability to disperse to and subsequently degrade new habitats is of much concern to managers and is the reason we feel that MCLG populations need to be controlled.

With regard to documentation of the acreage of damage caused by MCLG, we note that quantification of habitat degradation by geese in the entire arctic and sub-arctic region is made difficult by logistical constraints. However, we point to the numerous habitat studies that document habitat damage, which are summarized in the report by Batt (1997). This information has been collected during the past 25+ years by numerous scientists of varying disciplines. Most claims of little or no damage to habitats have been based solely on a report by Thomas and MacKay (1998), which was the result of a field trip to a limited number of sites on the west coast of Hudson Bay that lasted less than 72 hours. We do not believe this cursory examination of habitats in this region is a valid method of documenting habitat degradation due to MCLG activity.

Concerning the relationship between isostatic uplift and plant succession, we acknowledge the impact that this geologic process has on plant communities. However, the time frame in which the process occurs is much slower than the time frame in which geese can impact habitats. Therefore, we do not believe that isostatic uplift will create new habitat quickly enough to counteract damage created by geese.

With regard to the relationship between agricultural practices and MCLG populations, we have previously stated that habitat management approaches to population control should be pursued in conjunction with alternative regulatory strategies (63 FR 60281). Inclusion of habitat management strategies is beyond the scope of our rulemaking authority. This may create the false impression to some observers that we are considering only lethal means to control MCLG populations. In fact, we are working with our partners to develop various action plans that will include land use recommendations for the Northern Prairie, Midwest, and Gulf Coast regions of the U.S. to address habitat management approaches to controlling overabundant MCLG populations (Bisbee 1998). We believe that a comprehensive, long-term strategy that involves both lethal methods and habitat management is a sound approach to addressing the MCLG issue.

Concerning the question of how killing MCLG in the U.S. will remedy damage to habitats in specific breeding colonies in the Canadian arctic, we point out that MCLG migrate and winter in large concentrations almost exclusively in the Central and Mississippi Flyways. Therefore, these strategies aimed at taking MCLG in this portion of the U.S. will reduce the number of birds returning to breeding areas that are experiencing habitat degradation. It will also reduce the number of birds that are able to disperse to and degrade other breeding habitats. We believe this is a cost-effective and efficient alternative to selective culling of birds at breeding colonies, which would entail massive disposal efforts and waste of birds at enormous cost. Similarly, we believe that these strategies will be more cost-effective and efficient control methods than proposals to destroy nest, harvest eggs, and haze geese from breeding colonies.

With regard to our ability to estimate the current size of the breeding population of MCLG, we point out that the lack of definitive continental breeding population estimates is due to the enormous logistical barriers to designing a comprehensive survey of the entire arctic and sub-arctic region. Consequently, we have relied on surveys conducted on wintering areas in December to provide an index to the breeding population. It is clear that many people are confused about the relationship between the December index and the breeding population size. The December survey results in a count of MCLG on portions of its wintering range and does not represent a total population count, nor is it intended to be such. However, we believe that the December index tracks the true population size and allows managers to determine when the MCLG population is increasing, decreasing, or is stable. In fact, we have used the December index in the development of annual snow goose hunting regulations since its inception in 1969. Therefore, we have chosen to use the December index to determine the status of the MCLG population. In the proposed rule (63 FR 60278) we made an incorrect contextual reference to the Central and Mississippi Flyway Council (1982) management guideline of 800,000 to 1.2 million birds because this guideline was based on snow goose population estimates for the breeding grounds and not on wintering ground indices. We will continue to base our objectives on winter indices. In order to achieve a 50% reduction in the MCLG population, this would entail achieving a reduction in the December index from approximately 3.2 million to 1.6 million birds. In 1991, the Mississippi and Central Flyway Councils passed resolutions to adopt management goals for MCLG of 1 to 1.5 million birds, based on the December index. Therefore, our objective is in close agreement with management goals previously stated by the Flyway Councils. Beginning in January 1999, the Central and Mississippi Flyway Councils designated a January survey of wintering MCLG to be the official index to the population, which we will use to monitor the population. This change should have negligible effect on the winter index and subsequent management objectives.

With regard to debate about the magnitude of harvest that is necessary to

bring about the desired population reduction, we point out that the debate is centered around the annual harvest that is required to achieve the reduction by the year 2005. Rockwell et al. (1997) recommend a 2–3 fold increase in annual harvest to achieve the desired population reduction. The authors stated that, ''different assumptions will lead to somewhat different values under this type of strategy. * * *'' (Rockwell et al. 1997:99). Subsequently, Cooke et al. (unpublished report) estimated that annual harvest would need to be increased by a factor of anywhere from 3.5 to 6.7 to reduce the MCLG population. We note the near overlap in the ranges of recommended increases in annual harvest in the 2 reports. At the present, we believe that pursuing a 3 fold increase in annual harvest represents a responsible approach to MCLG population reduction. Implementation of new regulatory strategies will allow managers to measure the actual effects of such strategies on the MCLG population. If this harvest level is subsequently deemed inadequate to achieve the population-reduction goal, this strategy will be re-evaluated.

With regard to the relationship between current MCLG population levels and those experienced in the past, we point out the problems with comparisons of anecdotal accounts of MCLG population levels with population indices derived from modern aerial surveys. We suggest that debates about anecdotal accounts of former MCLG abundance will not be fruitful. What is known, is that current MCLG population indices derived from standardized, long-term aerial surveys are higher than ever previously recorded. Therefore, we believe that alternative regulatory strategies to address overabundant MCLG and their impacts on habitat are appropriate and urgently needed.

Concerning consultation with Native groups that may be affected by alternative regulatory strategies implemented in the U.S., we point out that the U.S. has met the legal obligation to consult with the government of Canada. In turn, various territorial, provincial, and federal governments in Canada have consulted with aboriginal groups through various forums, and through the distribution of reports and proposals for Canadian hunting seasons. These consultations are and will continue to be ongoing. Because the locations of many of the largest light goose breeding colonies are north of 60 degrees north latitude, much of the direct consultation to date has been with people in those areas. We have also been informed that a number of Inuit groups such as the Arviat Hunters and Trappers Organization, and the Aiviq Hunters and Trappers Association in Cape Dorset have already participated in pilot programs to increase their harvest of light geese. The Nunavut Wildlife Management Board has had the light goose overabundance issue as a standing item for some time. Other northern wildlife management boards, including the Inuvialuit which participated in a stakeholder's committee, have been informed of the light goose issue. In light of this information, we feel claims that Native groups have not been consulted are unfounded.

We disagree with the view that an ecosystem approach to managing overabundant MCLG requires a ''hands off'' rather than a direct interventionist approach by managers. In fact, we believe that implementation of alternative regulatory strategies to address this problem is the epitome of ecosystem management. The Service's goal of its ecosystem approach is the effective conservation of natural biological diversity through perpetuation of dynamic, healthy ecosystems (USFWS 1995). Others have defined ecosystem management as ''the integration of ecologic, economic, and social principles to manage biological and physical systems in a manner that safeguards the ecological sustainability, natural diversity, and productivity of the landscape'' (Wood 1994). We believe that if MCLG populations are not immediately controlled by direct methods, that biological diversity on breeding areas will decline, productivity of the landscape will be severely reduced, and the health of the ecosystem will be compromised to the extent that it will take many decades to recover, if ever.

With regard to the comment that requiring closure of all other migratory bird seasons is overly restrictive, we agree. Our intent is to minimize the impacts of regulatory strategies on non-target species, and we believe that limiting the required closure to all waterfowl and crane hunting seasons, excluding falconry, will not increase the potential impacts on non-target species. These closures can be undertaken on a zone basis within a state. Such strategies could be implemented prior to March 11 in a given year, as long as the above requirement is met. With regards to the eligibility of the States of MI, OH, WI, IN, KY, and TN to implement alternative regulatory strategies, we agree that these States harvest light geese during normal hunting seasons, and thus would have the potential to harvest MCLG using alternative regulatory strategies. For example, 20,000 to 60,000 snow geese annually winter in western Kentucky. Therefore, we are including all Mississippi Flyway and Central Flyway States as being eligible for implementation of such strategies.

Concerning the requirement to close several crane wintering and migration areas to implementation of MCLG regulatory strategies, we feel that this requirement is necessary to ensure protection of whooping cranes. We believe a conservative approach to implementing new MCLG strategies is warranted, at least initially. Once we gain experience in dealing with these new strategies, and if a determination is made that such closures are unnecessary, they can be discontinued at that time.

With regard to monitoring programs that are needed to evaluate MCLG control measures and the status of their population, we note that the Arctic Goose Joint Venture has developed a draft science needs document that outlines various population and habitat monitoring programs. Included in this document are banded sample sizes that are needed to detect average annual changes in survival rates of MCLG. The document outlines banding goals for various breeding colonies. Breeding population surveys that will be utilized include photo inventories and helicopter surveys of selected breeding colonies. Annual indices to MCLG population size will continue to be derived from winter surveys conducted in the U.S. Harvest estimates for normal light goose hunting seasons will continue to be derived through existing federal harvest surveys. Estimates of harvest during the conservation order will be obtained from individual State wildlife agencies. We will accomplish habitat monitoring through satellite imagery and continuation of on the ground sampling associated with current research projects.

We agree not to wait until five years have elapsed before an evaluation of the MCLG conservation order is completed and other alternatives are considered. Annual monitoring will indicate if the conservation order is effective in reducing the MCLG population. We will consider additional population-reduction strategies if the conservation order is deemed ineffective. We note that non-lethal management strategies to control MCLG populations recently have been completed or are under development (e.g. Bisbee 1998). We look forward to working with all stakeholders in the development of long-term strategies to deal effectively with overabundant MCLG.

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Effective Date

Under the APA (5 U.S.C. 553(d)) we waive the 30-day period before the rule becomes effective and find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and this rule will, therefore, take effect immediately upon publication. This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. During the comment period, we received 573 comments consisting of 448 from private citizens, 21 from State wildlife agencies, 2 from Flyway Councils, 27 from private organizations, 10 from Native organizations, 43 from individuals that signed a petition, and 22 from private organizations that signed a petition. It is in the best interest of migratory birds and their habitats to implement a conservation order to reduce the number of MCLG. It is in the best interest of the hunting public to provide alternative regulatory options to address the problem of overabundant MCLG that may affect other migratory bird populations and hunting seasons.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment in January 1999. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the information in the EA, we have determined that amending 50 CFR Part 20 to authorize additional regulatory strategies for the reduction of MCLG populations would not be a major Federal action that would significantly affect the quality of the human environment. This Environmental Assessment considers short-term options for addressing the ever-increasing MCLG population. In 2000, we will initiate the preparation of an Environmental Impact Statement to consider the effects on the human environment of a range of long-term resolutions for the MCLG population. Completion of the EIS by summer 2002 will afford the Service the opportunity to assess the effectiveness of the current preferred alternative. It will also allow for a more detailed evaluation of options to correspond with the results of the assessment and ongoing MCLG issues.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that '' Each Federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of (critical) habitat . . .'' We have completed a Section 7 consultation under the ESA for this rule and determined that establishment of a conservation order for the reduction of MCLG populations is not likely to affect any threatened, endangered, proposed or candidate species. The result of the Service's consultation under Section 7 of the ESA is available to the public at

the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The economic impacts of this rulemaking will fall disproportionately on small businesses because of the structure of the waterfowl hunting related industries. The proposed regulation benefits small businesses by avoiding ecosystem failure to an ecosystem that produces migratory bird resources important to American citizens. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. We expect the proposed action to reduce the risk of light-goose season closures in the Central and Mississippi Flyways, subsequently avoiding a $70 million loss in output and reducing the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies. We have determined that a Regulatory Flexibility Act Analysis is not required.

Executive Order 12866

This rule was not subject to review by the Office of Management and Budget under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Congressional Review

This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), this rule has been submitted to Congress. Because this rule deals with the Service's migratory bird hunting program, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act and Information Collection

This regulation does not require any information collection for which OMB approval is required under the Paperwork Reduction Act. The information collection is covered by an existing Office of Management and Budget approval number. The information collections contained in § 20.20 have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0015 for the administration of the Migratory Bird Harvest Information Survey (50 CFR 20.20). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*), that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule will not ''significantly or uniquely'' affect small governments. No governments below the State level will be affected by this rule. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under Unfunded Mandates.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. This rule has been reviewed by the Office of the Solicitor. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. The rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, the rule allows hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects.

Authorship

The primary author of this final rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons given in the preamble, we hereby amend part 20, of the subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C 703–712; and 16 U.S.C. 742a–j.

2. Revise paragraphs (b) and (g) of § 20.21 Hunting methods to read as follows:

§ 20.21 Hunting methods.

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-goose (lesser snow and Ross' geese) only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-goose (lesser snow and Ross' geese) only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

Dated: February 10, 1999.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–3650 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF05

Migratory Bird Permits; Establishment of a Conservation Order for the Reduction of Mid-Continent Light Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Mid-continent light goose populations (lesser snow and Ross' goose combined) has nearly quadrupled within the last 30 years, and have become seriously injurious to their habitat and habitat important to other migratory birds. The U.S. Fish and Wildlife Service (Service or ''we'') believes that these populations exceed the long-term carrying capacity of their breeding habitats and must be reduced. This rule adds a new subpart to 50 CFR part 21 for the management of overabundant Mid-continent light goose populations, and establishes a conservation order to increase take of such populations under the authority of this subpart.

DATES: This rule takes effect immediately upon publication on February 16, 1999.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW, Washington, DC 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

SUPPLEMENTARY INFORMATION:

Background

Lesser snow and Ross' geese that primarily migrate through North Dakota, South Dakota, Nebraska, Kansas, Iowa, and Missouri, and winter in Arkansas, Louisiana, Mississippi, and eastern, central, and southern Texas and other Gulf Coast States are referred to as the Mid-continent population of light geese (MCP). Lesser snow and Ross' geese that primarily migrate through Montana, Wyoming, and Colorado and winter in New Mexico, northwestern Texas, and Chihuahua, Mexico are referred to as the Western Central Flyway population of light geese (WCFP). Ross' geese are often mistaken for lesser snow geese due to their similar appearance. Ross' geese occur in both the MCP and the WCFP and mix extensively with lesser snow geese on both the breeding and wintering grounds. MCP and WCFP lesser snow and Ross' geese are collectively referred to as Mid-continent light geese (MCLG) because they breed, migrate, and winter in the ''Mid-continent'' or central portions of North America primarily in the Central and Mississippi Flyways. They are referred to as ''light'' geese due to the light coloration of the white-phase plumage morph, as opposed to true ''dark'' geese such as the white-fronted or Canada goose. We include both plumage morphs of lesser snow geese (white, or ''snow'' and dark, or ''blue'') under the designation light geese.

MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. MCLG populations are experiencing high population growth rates and have substantially increased in numbers within the last 30 years. We use operational surveys conducted annually on wintering grounds to derive a December index to light goose populations. December indices of light goose populations represent a certain proportion of the total wintering population, and thus are smaller than the true population size. By assuming that the same proportion of the population is counted each December, we can monitor trends in the true population size.

The December index of MCP light geese has more than tripled within 30 years from an estimated 800,000 birds in 1969 to approximately three million birds in 1998 and has increased an average of 5% per year for the last ten years (Abraham et al. 1996, USFWS 1998b). The December index of WCFP light geese has quadrupled in 23 years from 52,000 in 1974 to 216,000 in 1997 (USFWS 1997b), and has increased an average of 9% per year for the last ten years (USFWS 1998b). The lesser snow goose portion of the 1998 MCP December index mentioned above is estimated to be 2.8 million birds. In 1991, the Central and Mississippi Flyway Councils jointly agreed to set lower and upper management thresholds for the MCP of snow geese at 1.0 million and 1.5 million, respectively, based on the December index. Therefore, the current December index of MCP lesser snow geese far exceeds the upper management threshold established by the Flyway Councils.

MCLG populations have also exceeded North American Waterfowl Management Plan (NAWMP) population objectives, which are also based on December indices. The MCP lesser snow goose December index of 2.8 million birds far exceeds the NAWMP population objective of 1 million birds (USDOI et al. 1998d). The lesser snow goose portion of the WCFP light goose December index is estimated to be 200,000 birds, which exceeds the NAWMP population objective of 110,000 birds (USDOI et al. 1998d). The estimate of the Ross' goose component of the MCLG population December index (WCFP and MCP combined) currently exceeds 200,000 birds. This far exceeds the NAWMP Ross' goose population objective of 100,000 birds

(USDOI et al. 1998d). We compare current population levels to NAWMP population objectives to demonstrate that MCLG populations have increased substantially over what is considered to be a healthy population level. We are not suggesting that MCLG be reduced for the sole purpose of meeting NAWMP population objective levels.

By multiply the current MCLG December index of 3.2 million birds by an adjustment factor of 1.6 (Boyd et. al 1982), we derive an estimate of 5.12 million breeding birds in spring. This is corroborated by population surveys conducted on light goose breeding colonies during spring and summer, which suggest that the breeding population size of MCLG is in excess of five million birds (D. Caswell pers. comm. 1998). Included in these population estimates are 1998 estimates for breeding and non-breeding adult Ross' and lesser snow geese in the Queen Maud Gulf area northwest of Hudson Bay of 1.29 million and 1.82 million birds, respectively (Alisauskas et al. 1998). These geese are in addition to the millions of geese estimated to be nesting along west Hudson and James Bays where the geese have precipitated severe habitat degradation and on Southampton and Baffin Islands where signs of habitat degradation are becoming evident. The estimate of 5.12 million birds does not include non-breeding geese or geese found in un-surveyed areas. Therefore, the total MCLG population currently far exceeds 5.12 million birds. Assuming a 10% growth rate in the breeding population over the next three years, the population will grow from 5.12 million to approximately 6.8 million in the absence of any new management actions. Again, this represents a minimum estimate because non-breeding geese and geese in un-surveyed areas are not included.

Although our intention is to significantly reduce MCLG populations in order to relieve pressures on the breeding habitats, we feel that these efforts will not threaten the long-term status of these populations. We are confident that reduction efforts will not result in populations falling below either the lower management thresholds established by Flyway Councils, or the NAWMP population objectives discussed previously. Monitoring and evaluation programs are in place to estimate population sizes and will be used to prevent over-harvest of these populations. An overview of these monitoring programs is presented in a subsequent section of this document.

The rapid rise of MCLG populations has been influenced heavily by human activities (Sparrowe, 1998, Batt 1997). The greatest attributable factors are:

(1) The expansion of agricultural areas in the United States and prairie Canada that provide abundant food resources during migration and winter;

(2) The establishment of sanctuaries along the Flyways specifically to increase bird populations;

(3) A decline in harvest rate; and

(4) An increase in adult survival rates.

Although all of these factors contributed to the rapid rise in MCLG populations, the expansion of agriculture in prairie Canada and the United States is considered to be the primary attributable factor (Sparrowe 1998, Abraham and Jefferies 1997). Today, MCLG continue to exploit soybean, rice, and other crops during the winter, primarily in the Gulf Coast States and are observed less frequently in the natural coastal marshes they historically utilized. Similarly, MCLG migrating through the mid-latitude and northern United States and prairie Canada during spring migration exploit cereal grain crops consisting of corn, wheat, barley, oats and rye (Alisauskas et al. 1988). For example, an estimated 1 to 2 million MCLG stage in the Rainwater Basin in Nebraska from mid-February to mid-March and primarily feed on corn left over from harvesting (USFWS 1998a). These crops provide MCLG with additional nutrients during spring migration, thus assuring that MCLG arrive on the breeding grounds in prime condition to breed. Increased food subsidies during spring migration over the last 30 years has resulted in higher reproductive potential and breeding success (Ankney and McInnes 1978, Abraham and Jefferies 1997). Consequently, more geese survived the winter and migration and were healthier as they returned to their breeding grounds in Canada.

This is not intended to criticize the conservation efforts accomplished by the implementation of conservation-oriented agricultural practices. Such efforts have benefitted numerous wildlife species. We merely point out that MCLG have exploited these artificial resources, resulting in an increase in survival.

Foraging Behavior of MCLG

The feeding behavior of MCLG is characterized by three foraging methods. Where spring thawing has occurred and above-ground plant growth has not begun, lesser snow geese dig into and break open the turf (grubbing) consuming the highly nutritious below-ground biomass, or roots, of plants. Grubbing continues into late spring. Lesser snow geese also engage in shoot-pulling where the geese pull the shoots of large sedges, consume the highly nutritious basal portion, and discard the rest, leaving behind large unproductive, and potentially unrecoverable areas (Abraham and Jefferies 1997). A third feeding strategy utilized by many species is grazing which in some cases, stimulates plant growth. Both lesser snow geese and Ross' geese graze. Due to their shorter bill size, Ross' geese are able to graze shorter stands of grass.

Grubbing, grazing, and shoot-pulling are natural feeding behaviors and at lower population levels have had positive effects on the ecosystem. For example, at lower numbers, geese fed on the tundra grasses and actually stimulated growth of plant communities resulting in a positive feedback loop between the geese and the vegetation. However, the rapidly expanding numbers of geese, coupled with the short tundra growing season, disrupted the balance and has resulted in severe habitat degradation in sensitive ecosystems. The Hudson Bay Lowlands salt-marsh ecosystem, for example, consists of a 1,200 mile strip of coastline along west Hudson and James Bays, Canada. It contains approximately 135,000 acres of coastal salt-marsh habitat. Vast hypersaline areas devoid of vegetation degraded by rapidly increasing populations of MCLG have been observed and documented extensively throughout the Hudson Bay Lowlands (Abraham and Jefferies 1997). Rockwell et al. (1997a) observed the decline of more than 30 avian populations in the La Pérouse Bay area due to severe habitat degradation. These declines and other ecological changes represent a decline in biological diversity and indicate the beginning of collapse of the current Hudson Bay Lowlands salt-marsh ecosystem. Experts fear that some badly degraded habitat will not recover (Abraham and Jefferies 1997). For example, in a badly degraded area, less than 20% of the vegetation within an exclosure (fenced in area where geese cannot feed) has recovered after 15 years of protection from MCLG (Abraham and Jefferies 1997). Recovery rates of degraded areas are further slowed by the short tundra growing season and the high salinity levels in the exposed and unprotected soil.

Long-term research efforts have indicated signs of ''trophic cascade'' in La Pérouse Bay, Cape Henrietta Maria, and Akimiski Island (R. Rockwell pers. comm. 1998). Trophic cascade is essentially the collapse of an existing food chain indicating that the ecosystem is unable to support its inhabitants. Impacts associated with trophic cascade are indicative that MCLG populations

have exceeded the carrying capacity of much of their breeding habitat. Impacts such as a decline in biological diversity and physiological stress, malnutrition, and disease in goslings have been documented and observations of such impacts are increasing. Additional observations in areas north of Hudson Bay on Southampton and Baffin Islands, northwest in the Queen Maud Gulf region, and south off the west coast of James Bay on Akimiski Island also suggest similar habitat degradation patterns from expanding colonies of MCLG. Batt (1997) reported the rapid expansion of existing colonies and the establishment of new colonies in the central and eastern arctic. In 1973, for example, Canadian Wildlife Service data indicated that approximately 400,000 light geese nested on West Baffin Island. In 1997, approximately 1.8 million breeding adults were counted. Similar colony expansions have been reported for the Queen Maud Gulf region and Southampton Island. Rapid colony expansion must be halted and the populations must be reduced to prevent further habitat degradation and to protect the remaining habitat upon which numerous wildlife species depend.

Breeding Habitat Status

MCLG breeding colonies occur over a large area encompassing eastern and central portions of northern Canada. Habitat degradation by MCLG has been most extensively studied in specific areas where colonies have expanded exponentially and exhibit severe habitat degradation. For example, the Hudson Bay Lowlands salt-marsh ecosystem lies within a 135,000 acre narrow strip of coastline along west Hudson and James Bays and provides important stopover sites for numerous migratory bird species. Of the 135,000 acres of habitat in the Hudson Bay Lowlands, 35% is considered to be destroyed, 30% is damaged, and 35% is overgrazed (Batt 1997). Habitats currently categorized as ''damaged'' or ''overgrazed'' are being further impacted and will be classified as ''destroyed'' if goose populations continue to expand. Accelerated habitat degradation has been observed by Canadian biologists on Southampton and Baffin Islands and appear to be following the same pattern as documented in the Hudson Bay Lowlands. Current research efforts are underway to confirm observations of habitat degradation by MCLG in other areas.

Migration and Wintering Habitat Conditions and Degradation

There is no evidence to support that wintering habitat for MCLG is threatened or that it may limit population growth. Presently, there are approximately 2.25 million acres of rice fields in Texas, Louisiana, and Arkansas, in addition to the millions of acres of cereal grain crops in the Midwest. Consequently, food availability and suitable wintering habitat are not limiting MCLG during the migration and wintering portions of the annual cycle.

Summary of Environmental Consequences of Taking No Action

At each site they occupy, MCLG will continue to degrade the plant communities until food and other resources are exhausted, forcing yet more expansion of colonies. The pattern has been, and will continue to be, that as existing nesting colonies expand, they exploit successively poorer quality habitats, which are less able to accommodate them and which become degraded more quickly. Eventually, the coastal salt-marsh communities surrounding Hudson Bay and James Bay will become remnant. There will be little chance of recovery of such habitat as long as MCLG populations remain high. Even if goose populations decline at some point due to natural causes, which may not occur to the degree necessary, it will take the habitat a prolonged time period to recover. The functioning of the whole coastal ecosystem, from consolidation of sediments by colonizing plants to provision of suitable habitats for invertebrate and vertebrate fauna, will be detrimentally and possibly irrevocably altered. Similar conditions will prevail at selected non-coastal areas where MCLG have occupied most of the suitable nesting habitats. As many as 30 other avian species, including American wigeon, Northern shoveler, stilt sandpiper, Hudsonian godwit, and others, that utilize those habitats have declined locally, presumably due to habitat degradation by MCLG. Other species, such as Southern James Bay Canada geese, a species of management concern, that breed on nearby Akimiski Island and numerous other waterfowl species that migrate and stage with MCLG, have been and will continue to be negatively impacted. Arctic mammalian herbivores will also be impacted as the vegetative communities upon which they depend become depleted. Due to the rapidly expanding populations and the associated ecological impacts identified, we have concluded that MCLG populations have become seriously injurious to themselves and other migratory birds, their habitat and habitat of other migratory birds.

We expect that MCLG populations will continue to grow at least 5–10% annually, resulting in more severe and widespread ecological impacts. Although several factors influence population dynamics, the greatest single factor in the populations' increase is high and increasing adult survival rates (Rockwell et al. 1997b). Therefore, removing adults from the populations is the most effective and efficient approach in reducing the populations. Experts feel that breaking eggs and other non-lethal techniques have been determined to be ineffective in significantly reducing the populations within a reasonable time to preserve and protect habitat (Batt 1997).

We have attempted to curb the growth of MCLG populations by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Treaty. However, due to the rapid rise in MCLG numbers, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested), has declined despite evidence that the actual number of geese harvested has increased (USFWS 1997b). The decline in harvest rate indicates that the current management strategies are not sufficient to stabilize or reduce population growth rates.

New Management Actions

We realize that current MCLG management policies need to be re-examined and believe that alternative regulatory strategies designed to increase MCLG harvest, implemented concurrently with habitat management and other non-lethal control measures, have the potential to be effective in reducing MCLG populations to levels that the remaining breeding habitat can sustain. Batt (1997) estimated that the MCLG population should be reduced by 50% by the year 2005. Based on the current MCLG December index of approximately 3.2 million birds, this would entail a reduction of the December index to 1.6 million birds. Using the adjustment factor of 1.6, this would translate to a minimum breeding population size of 2.56 million birds. The estimate of 2.56 million birds does not include non-breeding geese or geese found in un-surveyed areas. Therefore, the total MCLG spring population would be much higher.

We prefer to implement alternative regulatory strategies designed to

increase MCLG harvest afforded by the Migratory Bird Treaty and avoid the use of more drastic population control measures. More direct population control measures such as trapping and culling programs may be necessary if the current regulatory action, in concert with habitat management, is not successful. Should the conservation order be deemed unsuccessful we will consider more direct population control measures to reduce MCLG.

We restrict the scope of this proposed rule to mid-continent populations of light geese (MCLG): Mid-continent and Western Central Flyway lesser snow geese (*Chen caerulescens caerulescens*) and Ross' geese (*C. rossi*) and the United States portions of the Central and Mississippi Flyways (Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming) where they migrate, stage, or winter. Evidence exists to support the conclusion that MCLG which migrate, stage, and winter in these areas subsequently return to breed in the arctic and subarctic areas that are experiencing severe habitat degradation.

We are concurrently implementing a separate population reduction strategy. In addition to this proposed rule to amend 50 CFR part 21, we are also amending 50 CFR part 20 to authorize the use of new hunting methods to harvest MCLG. The second rule would authorize States to allow the use of new hunting methods to harvest MCLG during a light-goose only season when all other waterfowl and crane hunting seasons, except falconry, are closed. The second rule is published in this issue of the **Federal Register**.

We do not expect the second rule (amendment to 50 CFR part 20) implemented alone to achieve our overall management objective of reducing the MCLG December index to approximately 1.6 million birds. The success of that strategy will hinge upon State participation, hunter participation, and hunter effectiveness. If a State does not participate, then its hunters will not be able to participate in that state, decreasing the program's potential. We anticipate that some northern and mid-latitude States will elect not to implement the second rule (authorization of electronic calls and un-plugged shotguns) due to the infeasibility of closing all other waterfowl and crane seasons during the fall. It is more likely that those states will participate in a conservation order during the spring, when it is more feasible to close all other waterfowl and crane hunting seasons, excluding falconry. Conversely, many waterfowl and crane hunting seasons in southern States close prior to 10 March. Therefore, it is much more feasible for southern States to implement the second rule by establishing a light-goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

We are implementing the conservation order in order to maximize the overall program's potential and to try to achieve our management objective within a reasonable time-frame. This action will be complemented by attempts to alter habitat management practices that tend to increase MCLG. These actions will reduce the likelihood of the need to use more direct population control programs. The conservation order will allow northern States to participate in this effort and enable them to harvest MCLG during spring migration, particularly after 10 March. Harvest projections for the second rule (amendment 50 CFR part 20) are rolled into the harvest projections for the conservation order. Harvest projections for the second rule are not in addition to the harvest projections for the conservation order.

Conservation Order for MCLG

We are establishing a new subpart in 50 CFR part 21 for the management of overabundant MCLG populations. Under this new subpart, we are establishing a conservation order specifically for the control and management of MCLG. Conditions under the conservation order require that participating States inform participants acting under the authority of the conservation order of the conditions that apply to the amendment.

Under the authority of this rule, States could initiate aggressive harvest management strategies with the intent to increase MCLG harvest without having to obtain an individual permit, which will significantly reduce administrative burden on State and Federal governments. A permit process would slow efforts to reduce the populations and prolong habitat degradation on the breeding grounds. This rule will enable States, as a management tool, to use hunters to harvest MCLG, by shooting in a hunting manner, inside or outside of the regular open migratory bird hunting season frameworks. States could maximize the opportunity to increase harvest of MCLG by implementing this action beyond 10 March, where historically States have been limited by hunting season framework closing dates to take migratory birds. In order to minimize or avoid take of non-target species, States may implement this action only when all waterfowl and crane hunting seasons, excluding falconry, are closed. We expect that this action will facilitate other protection and recovery efforts. This rule would further result in biologically sound and more cost-effective and efficient overabundant MCLG management and could preclude the use of more drastic direct population control measures such as trapping and culling programs. Although the desired goal is to reduce overabundant MCLG populations, we believe that this rule will not threaten the long-term status of MCLG populations or threaten the status of other species that could be impacted through the implementation of this rule. We have evaluation and monitoring strategies to assess the overall impact of this action on MCLG harvest and impacts to non-target species that may be affected by the implementation of this action.

Summary of Environmental Consequences of Action

MCLG Populations and Associated Habitats

We project that we will harvest a cumulative total of two million MCLG over the next three years without the use of this action, based on current MCLG harvest trends. Under certain assumptions, our most liberal estimate is that we can expect to cumulatively harvest an additional 3.8 million MCLG over the next three years of implementation of this action. This would bring the total cumulative harvest to 5.8 million MCLG after three years of implementation of this action. The amendment to 50 CFR Part 21 will be revoked if the December index of MCLG is reduced to the recommended level of approximately 1.6 million birds. Using the adjustment factor of 1.6, developed by Boyd et. al (1982) to convert winter indices to spring breeding population indices, this would result in a minimum estimate of 2.56 million breeding MCLG in spring. The total spring population would be higher because non-breeding geese and geese in un-surveyed areas are not included in this estimate.

The impact is expected to be regional within the Central and Mississippi Flyway States that choose to participate in the conservation order. Since the action may take place between 11 March and 31 August, we expect MCLG take to increase among mid-latitude and northern States according to migration

chronology. Increased harvest will be further facilitated by the use of additional hunting methods (electronic callers and unplugged shotguns) authorized by a State under the authority of this rule. Although we can expect the additional hunting methods to be effective in increasing harvest per hunter, there is no precedent to guide us in determining to what degree they will be effective. It is equally difficult to ascertain to what degree the public will participate in the implementation of this action, which will influence its effectiveness. However, with certain assumptions, we may project an increase in harvest using existing harvest data.

Before projecting the effect of the action on harvest we must establish several assumptions. We are assuming that all eligible States will act under the authority of this rule and will allow all new hunting methods authorized in the rule (electronic callers and unplugged shotguns), including the utilization of the maximum number of days available after the regular light-goose season. We are also assuming that current MCLG hunter numbers will not decrease and that the new methods authorized in this rule, if used, will increase hunter effectiveness and overall harvest. We do not assume that all MCLG hunters will participate in the implementation of this action and of those that do, we do not assume that all will increase their effectiveness by using new hunting methods. We are assuming that 25% of the MCLG hunters will use the new methods and will increase his/her effectiveness in harvesting MCLG.

States that have MCLG after 10 March may choose not to harvest MCLG after 10 March. Of those that do, the number of days each State may harvest outside of their regular open light-goose season likely will vary. For purposes of this exercise, we are assuming MCLG harvest is consistent throughout the entire light-goose season and that all affected States will use the action. It is important to note that the relationship between the number of hunting days and harvest of migratory birds continues to be extensively analyzed. In that respect, our projections regarding MCLG harvest represent our best estimates based on existing data, and are considered to be a liberal estimate.

We determined, based on a linear regression analysis of historical harvest data, that regular-season harvest of MCLG has increased approximately 31,600 MCLG per year for the last ten years. A simple linear regression of the harvest data represents our most conservative estimate because the analysis does not take into account other factors that may have influenced harvest, such as the recent regulation changes for light geese. A more complex analysis will demonstrate that harvest number has actually increased at a faster rate since the bag and possession limits for light geese have been increased (USFWS 1998c). Today, more MCLG are harvested with fewer hunters, but hunter participation in light goose hunting is now increasing. Therefore, we conservatively project that regular-season harvest will increase 31,600 per year for the next several years.

During 1997–98, hunters harvested 604,900 MCLG in the affected States (AR, CO, IL, IN, IA, KY, KS, LA, MI, MS, MO, MT, NE, NM, ND, OH, OK, SD, TN, TX, WI, and WY). Combined with our projection that regular-season harvest will increase by 31,600 per year without any changes to hunting regulations, we can expect to harvest 636,500 MCLG in the 1998–1999 regular light goose season in those affected States. Under the assumptions stated above, we expect to harvest an additional 618,400 MCLG through the implementation of this proposed action (authorize electronic callers, unplugged shotguns, and additional days to harvest). Therefore, we project a total harvest of 1.25 million MCLG in the first year of implementation of this action. Because we expect regular-season harvest to increase annually, the total projected harvest will also increase annually. We expect to harvest a total of 1.9 million MCLG in the second year of implementation and 2.6 million in the third year of implementation. These estimates include regular-season harvest of MCLG.

Batt (1997) estimated that the MCLG population should be reduced by 50% by 2005. That would suggest a reduction in the MCLG December index from approximately 3.2 million birds to approximately 1.6 million birds. Central and Mississippi Flyway Council management thresholds for MCP lesser snow geese (not including WCFP lesser snow or Ross' geese) rests between 1.0 and 1.5 million birds, based on the December index. Therefore, our MCLG population reduction goal closely parallels those established by Flyway Councils and the scientific community. As mentioned previously, a December index of 1.6 million would translate to a minimum estimate of 2.56 million breeding MCLG in spring. We will carefully analyze and assess the MCLG reduction on an annual basis, using the December index and other surveys, to ensure that the populations are not over-harvested.

We expect an increase in MCLG harvest to facilitate other efforts, such as habitat management on the wintering grounds and increased harvest by Canadian aboriginals. Decreased MCLG numbers will also relieve pressures on the breeding grounds. There is no evidence to suggest that the implementation of this action will result in an over-harvest of MCLG. Once the December index is reduced to approximately 1.6 million birds we will revoke this action and the methods we authorized. It is improbable that the implementation of this action will threaten the long-term status of MCLG populations, because we will monitor the MCLG populations and act accordingly if it is threatened by modifying or revoking the action.

Other Species

We expect an increase in harvest, and subsequently a decrease in MCLG numbers, to relieve pressures on other migratory bird populations that utilize MCLG breeding and wintering grounds and other areas along the migration routes. This decrease should reduce the possibility that other species will be forced to seek habitat elsewhere or abandon unsuitable degraded habitat altogether, which could potentially result in decreased reproductive success of affected populations. We expect a significant decrease in MCLG populations to contribute to increased reproductive success of adversely impacted populations. Further, we expect that by decreasing the numbers of MCLG on wintering and migration stopover areas, the risk of transmitting avian cholera to other species will be reduced which will reduce the threat of a widespread avian cholera outbreak.

Socio-economic

Any migratory bird hunting or conservation order action has economic consequences. Continued inaction is likely to result in ecosystem failure of the Hudson Bay Lowlands salt-marsh ecosystem and potentially other ecosystems as MCLG populations expand and exploit new habitats. Without more effective population control measures to curb the populations, the populations of MCLG are expected to continue increasing and become more and more unstable as suitable breeding habitat diminishes. As population densities increase, the incidence of avian cholera among MCLG and other species is likely to increase throughout the Flyways, particularly at migration stopover sites. Losses of other species such as pintails, white-fronted geese, sandhill cranes, and whooping cranes, from avian cholera may be great. This may result in reduced hunting, birdwatching, and other opportunities.

It may also result in the season closures of adversely impacted migratory game birds such as white-fronted geese, sandhill cranes, and pintails. Goose damage to winter wheat and other agricultural crops will continue and worsen. Habitat damage in the Arctic will eventually trigger density-dependent regulation of the population which likely will result in increased gosling mortality and may cause the population to decline precipitously. However, it is not clear when such population regulation will occur and what habitat, if any, will remain to support the survivors. Such a decline may result in a population too low to permit any hunting, effectively closing MCLG hunting seasons. The length of the closures will largely depend on the recovery rate of the breeding habitat, which likely will take decades. Although the overall impact of closures of light-goose seasons in the Central and Mississippi Flyways that could result from continued degradation of the breeding habitat is small on a national scale, it would be concentrated where large flocks of geese stage and winter. Because people that provide services to hunters tend to be those with low incomes, the impact of a closure would fall disproportionately on low income groups near goose concentrations. We expect this action to reduce the risk of light-goose season closures in the Central and Mississippi Flyways and avoid a $70 million loss in output and reduce the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies.

Public Comments Received

The November 9, 1998, proposed rule published in the **Federal Register** (63 FR 60278) invited public comments from interested parties. The closing date for receipt of all comments was January 8, 1999, which was subsequently extended to January 15, 1999 (64 FR 822). During the comment period, we received 615 comments consisting of 468 from private citizens, 21 from State wildlife agencies, 2 from Flyway Councils, 27 from private organizations, 10 from Native organizations, 65 from individuals that signed a petition, and 22 from private organizations that signed a petition. Comments generally were dichotomized by two points of view.

To summarize, 361 comments were supportive of our intent to implement a conservation order to reduce the MCLG population. Comments in support of such action were received from 268 private citizens, 21 State wildlife agencies, 2 Flyway Councils, 12 private organizations, 1 Native organization, and 57 from people who signed a petition. These commenters agreed that there was a problem and that the resolution should entail reduction by lethal means and supported the use of additional methods to increase take of MCLG. Several State wildlife agencies and both Flyway Councils suggested that the requirement to have all other migratory bird hunting seasons closed in order to implement changes in regulations to address light goose population control is overly restrictive. They suggested that only other waterfowl seasons be closed in order to implement changes in light goose regulations. Furthermore, several of these commenters suggested that the Service should implement existing dove baiting regulations for the proposed conservation order rather than the more restrictive waterfowl baiting regulations. A private citizen voiced opposition to the closure of falconry seasons during implementation of new light goose regulation changes.

A State wildlife agency requested clarification on whether the requirement to close all other migratory bird seasons pertained to zones within a State, or the entire State, and also whether the regulation changes could be implemented prior to March 11. Several State wildlife agencies questioned why other Mississippi Flyway States (i.e. MI, OH, WI, IN, KY, and TN) were not included in the list of those eligible to implement alternative regulatory strategies aimed at MCLG. Some State wildlife agencies urged that the Service not wait a full five years before the proposed population reduction strategies are evaluated and other management options are considered. A State wildlife agency commented that the requirement to close Bosque del Apache NWR during the period of implementation of light goose regulations was inappropriate and that existing hunt management plans will avert potential impacts to whooping cranes.

Several private organizations and a Native organization expressed support of the findings of the international panel of scientists and waterfowl managers that documented (Batt 1997) habitat degradations caused by overabundant light goose and recommended actions to reduce populations. However, the organizations urged monitoring and evaluation of management actions and that such actions should be used only until populations are sufficiently reduced. A private organization that fully supported the proposed actions expressed concern about differing views in the academic and management community about the magnitude of harvest that is necessary to effect the desired population reduction.

Conversely, 254 comments received were in opposition to the Service's intent to reduce MCLG populations by use of lethal means either because they believe it is not legally or scientifically justified to reduce the populations, or attempts to do so would be inhumane. Comments in opposition to such action were received from 200 private citizens, 15 private organizations, 9 Native organizations, 8 individuals that signed a petition, and 22 private organizations that signed a petition.

Many commenters stated that grazing by geese may be changing the vegetation communities on their breeding grounds but they ''cannot devastate an ecosystem of which they are a part''. Furthermore, they felt that if there are too many geese for their habitats to support, the geese will either nest in other areas or fail to successfully raise young. A private individual commented that the habitat destruction occurring in the arctic may be due to pollution and increased salinity resulting from oil drilling.

Several private organizations commented that the draft Environmental Assessment and the Proposed Rule fail to provide detailed estimates of the extent of grazing damage caused by MCLG. They further stated that we have not adequately addressed the relationship between isostatic uplift (raising of land due to the removal of pressure once exerted by glaciers) and vegetative succession, or the agricultural practices that have contributed to expansion of MCLG populations. In addition they criticized the lack of reliable current breeding population estimates of MCLG and our inability to demonstrate that current populations are higher than those ever experienced in the past. Furthermore, they questioned how killing millions of snow geese in the mid-western U.S. could remedy alleged damage to habitats at specific sites in the Canadian arctic. Finally, they protested that Native groups in Canada that would be directly impacted by the proposals were not consulted in the development of management actions. Comments provided by several Native organizations indicated that they were not consulted and they oppose the management action.

A private organization recommended nest destruction, egging, and hazing of geese from areas that have sustained habitat changes as alternatives to the proposed actions. Furthermore, they stated that the use of lethal control, if it

is justified at all, must be conducted at specific sites where damage is occurring to be effective. Finally, they advocated that the Service implement ecosystem management to address the MCLG issue. Their view of ecosystem management assumes that the component species of an ecosystem determine their own distribution and abundance, consistent with the age and condition of their habits, thus requiring a more ''hands-off rather than a direct, interventionist, approach by managers.''

Many private individuals and several private organizations commented that an Environmental Assessment was insufficient to comply with NEPA requirements, and that a full Environmental Impact Statement should be prepared before action is taken to address this problem. A private organization commented that the Service will be violating the 1916 Convention Between the United States and Great Britain for the Protection of Migratory Birds if take of MCLG beyond March 10 is allowed. They believed that a conservation order to be implemented beyond March 10 will constitute an illegal hunting season on a protected species.

Service response: We have conducted an Environmental Assessment of alternative regulatory strategies to reduce MCLG populations. Based on review and evaluation of the information contained in the assessment, we have determined that the proposed action to amend 50 CFR Part 21 to establish a conservation order for the reduction of MCLG populations is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, we made a Finding of No Significant Impact on this action. Therefore, preparation of an Environmental Impact Statement is not required. The EA and Finding of No Significant Impact are available to the public at the location indicated under the **ADDRESSES** caption.

With regard to violation of the 1916 Convention, regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (Act) (16 U.S.C. Secs. 703–712), which implements the four bilateral migratory bird treaties the United States entered into with Canada, Mexico, Japan, and Russia. Section 3 of the Act authorizes and directs the Secretary of the Interior to allow hunting, taking, etc. of migratory birds subject to the provisions of, and in order to carry out the purposes of, the four migratory bird treaties. The Convention with Great Britain establishes a ''closed'' season on hunting migratory game birds between March 10 and September 1. However, Section VII of the U.S.-Canada Migratory Bird Treaty authorizes permitting the take, kill, etc. of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. We are exercising this authority to carry out a necessary management action. Although ''hunters'' will be utilized in this effort, this is not intended as an open season or extension of a season. This is a management effort that is being carried out in partnership with State/Tribal wildlife agencies under strict monitoring and control requirements contained in the order. The information available to us as discussed in **SUPPLEMENTARY INFORMATION**, and in the Environmental Assessment accompanying this action, demonstrates that the extraordinary population levels are causing serious injury to the breeding habitat of light geese and other migratory birds, and the habitat of other wildlife species. Therefore, we believe that implementation of this conservation order is in accordance with and compatible with the terms of the Convention.

We are unaware of any evidence indicating that the severe habitat damage occurring in MCLG breeding areas is the result of oil drilling activities. The feeding behavior of MCLG causes the removal of vegetation from sites and sets in motion a series of events that causes soil salinity to increase. With regard to the ability of MCLG to devastate an ecosystem of which they are a part, we point to studies summarized by Abraham and Jefferies (1997) indicating that goose feeding activities reduce the thickness of the vegetation mat that insulates the underlying marine sediments from the air. Evaporation rates from the surface sediments increase and inorganic salts from the marine clay produce high salt concentrations that reduce growth of preferred forage plants. This together with continued intensive grazing by geese maintains open areas and high salt concentration and results in a positive feedback producing increased destruction of salt-marsh areas and desertification of the landscape. This is illustrated by fenced exclosure plots on impacted areas that prevent geese from grazing in plots. Both the exclosures and the areas in their immediate vicinity are experiencing isostatic uplift (raising of land as a result of glacial retreat) and yet the rate of plant species turnover in the two areas is markedly different, driven by excessive goose foraging. Several commenters stated that recolonization of mud flats by plants will occur naturally. However, they do not elaborate on the amount of time this process will require. Exclosure experiments indicate that it may take at least 15 years for vegetation stands to begin to develop, which would require total absence of goose foraging. This length of time is beyond the life expectancy of a single age cohort of lesser snow geese. Hence, the effects on the habitat outlive the geese.

With regard to the assertion that if there are too many geese for their habitats to support, the geese will nest in other areas or fail to raise young, we generally concur. We note that geese have the ability to escape the effects of high population densities by their ability to disperse from breeding colonies. However, there are signs that habitat in the areas geese are dispersing to are also being degraded, forcing the birds to disperse even further. Thus, birds invade previously undisturbed habitats and consume plant biomass to the point where it is no longer advantageous to remain in those areas, and then they disperse. The ability to disperse to and subsequently degrade new habitats is of much concern to wildlife managers and is the reason we feel that MCLG populations need to be controlled. With regard to documentation of the total acreage of damage caused by MCLG, we note that quantification of habitat degradation by geese in the entire arctic and sub-arctic region is made difficult by logistical constraints. However, we point to the numerous habitat studies that document habitat damage, which are summarized in the report by Batt (1997). This information has been collected during the past 25+ years by numerous scientists of varying disciplines. Most claims of little or no damage to habitats have been based solely on a report by Thomas and MacKay (1998), which was the result of a field trip to a limited number of sites on the west coast of Hudson Bay that lasted less than 72 hours. We do not believe this cursory examination of habitats in this region is a valid method of documenting habitat degradation due to MCLG activity.

Concerning the relationship between isostatic uplift and plant succession, we acknowledge the impact that this geologic process has on plant communities. However, the time frame in which the process occurs is much slower than the time frame in which geese can impact habitats. Therefore, we do not believe that isostatic uplift will create new habitat quickly enough to counteract damage created by geese.

With regard to the relationship between agricultural practices and MCLG populations, we have previously stated that habitat management approaches to population control should be pursued in conjunction with alternative regulatory strategies (63 FR 60281). Inclusion of habitat management strategies is beyond the scope of our rulemaking authority. This may create the false impression to some observers that we are considering only lethal means to control MCLG populations. In fact, we are working with our partners to develop various non-regulatory action plans that will include land use recommendations for the Northern Prairie, Midwest, and Gulf Coast regions of the U.S. to address habitat management approaches to controlling overabundant MCLG populations (Bisbee 1998). We are also pursuing changing habitat management practices on our own lands. We believe that a comprehensive, long-term strategy that involves both lethal methods and habitat management is a sound approach to addressing the MCLG issue.

Concerning the question of how killing MCLG in the U.S. will remedy damage to habitats in specific breeding colonies in the Canadian arctic, we point out that MCLG migrate and winter in large concentrations almost exclusively in the Central and Mississippi Flyways. Therefore, these regulatory strategies aimed at taking MCLG in this portion of the U.S. will reduce the number of birds returning to breeding areas that are experiencing habitat degradation. It will also reduce the number of birds that are able to disperse to and degrade other breeding habitats. We believe this is a cost-effective and efficient alternative to selective culling of birds at breeding colonies, which would entail massive disposal efforts and waste of birds at enormous cost. Similarly, we believe that alternative regulatory strategies will be more cost-effective and efficient control methods than proposals to destroy nest, harvest eggs, and haze geese from breeding colonies.

With regard to our ability to estimate the current size of the breeding population of MCLG, we point out that the lack of definitive continental breeding population estimates is due to the enormous logistical barriers to designing a comprehensive survey of the entire arctic and sub-arctic region. Consequently, we have relied on surveys conducted on wintering areas in December to provide an index to the breeding population. It is clear that many people are confused about the relationship between the December index and the breeding population size. The December survey results in a count of MCLG on portions of its wintering range and does not represent a total population count, nor is it intended to be such. However, we believe that the December index tracks the true population size and allows managers to determine when the MCLG population is increasing, decreasing, or is stable. In fact, we have used the December index in the development of annual snow goose hunting regulations since its inception in 1969. Therefore, we have chosen to use the December index to determine the status of the MCLG population. In the proposed rule (63 FR 60278) we made an incorrect contextual reference to the Central and Mississippi Flyway Council (1982) management guideline of 800,000 to 1.2 million birds because this guideline was based on snow goose population estimates for the breeding grounds, rather than on wintering ground indices. We will continue to base our objectives on winter indices. In order to achieve a 50% reduction in the MCLG population, this would entail achieving a reduction in the December index from approximately 3.2 million to 1.6 million birds. In 1991, the Mississippi and Central Flyway Councils passed resolutions to adopt management goals for MCLG of 1 to 1.5 million birds, based on the December index. Therefore, our objective is in close agreement with management goals previously stated by the Flyway Councils. Beginning in January 1999, the Central and Mississippi Flyway Councils designated a January survey of wintering MCLG to be the official index to the population, which we will use to monitor the population. This change should have negligible effect on the winter index and subsequent management objectives.

With regard to debate about the magnitude of harvest that is necessary to bring about the desired population reduction, we point out that the debate is centered around the annual harvest that is required to achieve the reduction by the year 2005. Rockwell et al. (1997) recommend a 2–3 fold increase in annual harvest to achieve the desired population reduction. The authors stated that, ''different assumptions will lead to somewhat different values under this type of strategy * * * (Rockwell et al. 1997:99). Subsequently, Cooke et al. (unpublished report) estimated that annual harvest would need to be increased by a factor of anywhere from 3.5 to 6.7 to reduce the MCLG population. We note the near overlap in the ranges of recommended increases in annual harvest contained in the two reports. At the present, we believe that pursuing a three-fold increase in annual harvest represents a responsible approach to MCLG population reduction. Implementation of new regulatory strategies will allow managers to measure the actual effects of such strategies on the MCLG population. If this harvest level is subsequently deemed inadequate to achieve the population-reduction goal, this strategy will be re-evaluated.

With regard to the relationship between current MCLG population levels and those experienced in the past, we point out the problems with comparisons of anecdotal accounts of MCLG population levels with population indices derived from modern aerial surveys. We suggest that debates about anecdotal accounts of former MCLG abundance will not be fruitful. What is known, is that current MCLG population indices derived from standardized aerial surveys are higher than ever previously recorded. Therefore, we believe that alternative regulatory strategies to address overabundant MCLG and their impacts on habitat are appropriate and urgently needed.

Concerning consultation with Native groups that may be affected by alternative regulatory strategies implemented in the U.S., we point out that the U.S. has met the legal obligation to consult with the government of Canada. In turn, various territorial, provincial and federal governments in Canada have consulted with aboriginal groups through various forums, and through the distribution of reports and proposals for Canadian hunting seasons. These consultations are and will continue to be ongoing. Because the locations of many of the largest light goose breeding colonies are north of 60 degrees north latitude, much of the direct consultation to date has been with people in those areas. We have also been informed that a number of Inuit groups such as the Arviat Hunters and Trappers Organization, and the Aiviq Hunters and Trappers Association in Cape Dorset have already participated in pilot programs to increase their harvest of light geese. The Nunavut Wildlife Management Board has had the light goose overabundance issue as a standing item for some time. Other northern wildlife management boards, including the Inuvialuit which participated in a stakeholder's committee, have been informed of the light goose issue. In light of this information, we feel claims that Native groups have not been consulted are unfounded.

We disagree with the view that an ecosystem approach to managing

overabundant MCLG requires a ''hands off'' rather than a direct interventionist approach by managers. In fact, we believe that implementation of alternative regulatory strategies to address this problem is the epitome of ecosystem management. The Service's goal of its ecosystem approach is the effective conservation of natural biological diversity through perpetuation of dynamic, healthy ecosystems (USFWS 1995). Others have defined ecosystem management as ''the integration of ecologic, economic, and social principles to manage biological and physical systems in a manner that safeguards the ecological sustainability, natural diversity, and productivity of the landscape'' (Wood 1994). We believe that if MCLG populations are not immediately controlled by direct methods, that biological diversity on breeding areas will decline, productivity of the landscape will be severely reduced, and the health of the ecosystem will be compromised to the extent that it will take many decades to recover, if ever.

With regard to the comment that requiring closure of all other migratory bird seasons is overly restrictive, we agree. Our intent is to minimize the impacts of regulatory strategies on non-target species, and we believe that limiting the required closure to all waterfowl and crane hunting seasons, excluding falconry, will not increase the potential impacts on non-target species. These closures can be undertaken on a zone basis within a state. Such strategies could be implemented prior to March 11 in a given year, as long as the above requirement is met. With regards to the eligibility of the States of MI, OH, WI, IN, KY, and TN to implement alternative regulatory strategies, we agree that these States harvest light geese during normal hunting seasons, and thus would have the potential to harvest MCLG using alternative regulatory strategies. For example, 20,000 to 60,000 snow geese annually winter in western Kentucky. Therefore, we are including all Mississippi Flyway and Central Flyway States as being eligible for implementation of such strategies.

With regards to baiting regulations, we prefer to utilize current regulations that pertain to waterfowl. Implementation of dove baiting regulations in a waterfowl management strategy may create confusion among hunters. The larger question of the use of baiting to increase harvest of MCLG may need to be re-visited, once we have experience with the alternative regulations options currently being implemented. We note that baiting regulations for all migratory birds are currently under review and a decision with regards to the use of baiting to control MCLG should be postponed until the review is completed.

Concerning the requirement to close several crane wintering and migration areas to implementation of MCLG regulatory strategies, we feel that this requirement will help ensure protection of whooping cranes. We believe a conservative approach to implementing new MCLG strategies is warranted, at least initially. Once we gain experience in dealing with these new strategies, and if a determination is made that such closures are unnecessary, they can be discontinued at that time.

With regard to monitoring programs that are needed to evaluate MCLG control measures and the status of their population, we note that the Arctic Goose Joint Venture has developed a draft science needs document that outlines various population and habitat monitoring programs. Included in this document are banded sample sizes that are needed to detect average annual changes in survival rates of MCLG. The document outlines banding goals for various breeding colonies. Breeding population surveys that will be utilized include photo inventories and helicopter surveys of selected breeding colonies. Annual indices to MCLG population size will continue to be derived from winter surveys conducted in the U.S. Harvest estimates for normal light goose hunting seasons will continue to be derived through existing federal harvest surveys. Estimates of harvest during the conservation order will be obtained from individual State wildlife agencies. We will accomplish habitat monitoring through satellite imagery and continuation of on the ground sampling associated with current research projects.

We agree that we should not to wait until five years have elapsed before an evaluation of the MCLG conservation order is completed and other alternatives are considered. Annual monitoring will indicate if the conservation order is effective in reducing the MCLG population. We will consider additional population-reduction strategies if the conservation order is deemed ineffective. We note that non-lethal management strategies to control MCLG populations recently have been completed or are under development (e.g. Bisbee 1998). We look forward to working with all stakeholders in the development of long-term strategies to deal effectively with overabundant MCLG.

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Effective Date

Under the APA (5 U.S.C. 553(d)) we waive the 30-day period before the rule becomes effective and find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and this rule will, therefore, take effect immediately upon publication. This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. During the public comment period we received 615 comments consisting of 468 from private citizens, 21 from State wildlife agencies, 2 from Flyway Councils, 27 from private organizations, 10 from Native organizations, 65 from individuals that signed a petition, and 22 from private organizations that signed a petition. It is in the best interest of migratory birds and their habitats to implement a conservation order to reduce the number of MCLG. It is in the best interest of the hunting public to provide alternative regulatory options to address the problem of overabundant MCLG that may affect other migratory bird populations and hunting seasons.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment in January 1999. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the information in the EA, we determined that amending 50 CFR Part 21 to establish a conservation order for the reduction of MCLG populations would not be a major Federal action that would significantly affect the quality of the human environment. This Environmental Assessment considers short-term options for addressing the ever-increasing MCLG population. In 2000, we will initiate the preparation of an Environmental Impact Statement to consider the effects on the human environment of a range of long-term resolutions for the MCLG population. Completion of the EIS by summer 2002 will afford the Service the opportunity to assess the effectiveness of the current preferred alternative. It will also allow for a more detailed evaluation of options to correspond with the results of the assessment and ongoing MCLG issues.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that '' Each Federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' We have completed a Section 7 consultation under the ESA for this rule and determined that establishment of a conservation order for the reduction of MCLG populations is not likely to affect any threatened, endangered, proposed or candidate species. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The economic impacts of this rulemaking will fall disproportionately on small businesses because of the structure of the waterfowl hunting related industries. The regulation benefits small businesses by avoiding ecosystem failure to an ecosystem that produces migratory bird resources important to American citizens. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. We expect this action to reduce the risk of light-goose season closures in the Central and Mississippi Flyways subsequently avoiding a $70 million loss in output and reducing the possibility of increased agricultural loss. We expect special MCLG population control efforts to create additional take opportunities which is expected to add $18 million in output to local economies. We have determined that a Regulatory Flexibility Act Analysis is not required.

Executive Order 12866

This rule was not subject to review by the Office of Management and Budget under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Congressional Review

This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808).

Paperwork Reduction Act and Information Collection

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d). Under the Act, information collections must be approved by the Office of Management and Budget (OMB). Agencies may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We estimate that State/Tribal governments that participate in the program will expend an average of 30 hours annually to fulfill the information

collection requirements. Any suggestions on how to reduce this burden should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street, NW, Washington, DC 20204. We will use the recordkeeping and reporting requirements imposed under regulations established in 50 CFR Part 21, Subpart E to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on MCLG and other migratory bird populations. We will require the information collected to authorize State and Tribal governments responsible for migratory bird management to take MCLG within our guidelines. Specifically, OMB has approved the information collection requirements of this action and assigned clearance number 1018–0103 (expires 01/31/2002).

Unfunded Mandates

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act (2 U.S.C. 1502 et seq.), that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. This rule will not ''significantly or uniquely'' affect small governments. No governments below the State level will be affected by this rule. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under Unfunded Mandates.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. This rule has been reviewed by the Office of the Solicitor. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. The rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, the rule allows hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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 have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects.

Authorship

The primary author of this final rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby amend parts 20 and 21, of the subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C 742a–j.

§ 20.22 [Amended]

2. In § 20.22, the phrase ''except as provided in part 21'' is added following the word ''season''.

PART 21—[AMENDED]

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

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Subpart E, consisting of § 21.60, is added to read as follows:

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation Order for Mid-continent light geese.

(a) *Which waterfowl species are covered by this order?* This conservation order addresses management of lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese that breed, migrate, and winter in the mid-continent portion of North America, primarily in the Central and Mississippi Flyways (Mid-continent light geese).

(b) *In what areas can the conservation order be implemented?* (1) The following States, or portions of States, that are contained within the boundaries of the Central and Mississippi Flyways: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) Tribal lands within the geographic boundaries in paragraph (b)(1) of this section.

(3) The following areas within the boundaries in paragraph (b)(1) of this section above are closed to the conservation order after 10 March: Monte Vista National Wildlife Refuge (CO); Bosque del Apache National Wildlife Refuge (NM); the area within 5 miles of the Platte River from Lexington, Nebraska to Grand Island, Nebraska; the following area in and around Aransas National Wildlife Refuge; those portions of Refugio, Calhoun, and Aransas counties that lie inside a line extending from 5 nautical miles offshore to and including Pelican Island, thence to Port O'Conner, thence northwest along State Highway 185 and southwest along State Highway 35 to Aransas Pass, thence southeast along State Highway 361 to Port Aransas, thence east along the Corpus Christi Channel, thence southeast along the Aransas Channel, extending to 5 nautical miles offshore; except that it is lawful to take Mid-continent light geese after 10 March

within the Guadalupe WMA. If at any time evidence is presented that clearly demonstrates that there no longer exists a need to close the above areas, we will publish a proposal to remove the closures in the **Federal Register**.

(c) *What is required in order for State/Tribal governments to participate in the conservation order?* Any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, mid-continent light geese under the following conditions:

(1) Activities conducted under this section may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, re-opening, or extending any open hunting season contrary to any regulations promulgated under section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in this section may limit or initiate management actions on Federal land without concurrence of the Federal Agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of this section.

(7) States and Tribes must inform participants of the requirements/conditions of this section that apply.

(8) States and Tribes must keep records of activities carried out under the authority of this section, including the number of mid-continent light geese taken under this section, the methods by which they were taken, and the dates they were taken. The States and Tribes must submit an annual report summarizing activities conducted under this section on or before August 1 of each year, to the appropriate Assistant Regional Director—Refuges and Wildlife (see § 2.2 of this chapter).

(d) *What is required in order for individuals to participate in the conservation order? Individual participants in State or tribal programs covered by this section are required to comply with the following requirements:*

(1) Nothing in this section authorizes the take of mid-continent light geese contrary to any State or Tribal laws or regulations; and none of the privileges granted under this section may be exercised unless persons acting under the authority of the conservation order possesses whatever permit or other authorization(s) as may be required for such activities by the State or Tribal government concerned.

(2) Participants who take mid-continent light geese under this section may not sell or offer for sale those birds nor their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants acting under the authority of this section must permit at all reasonable times including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants acting under the authority of this section may take mid-continent light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(ii) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the person a means of concealment beneath the surface of the water;

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds;

(v) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take Mid-continent light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of Mid-continent light geese;

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of Mid-continent light geese;

(vii) By the aid of baiting, or on or over any baited area. As used in this paragraph, ''baiting'' means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and ''baited area'' means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of Mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin, or other shots that are authorized in 50 CFR 20.21(j). Season limitations in that rule do not apply to participants acting under this order.

(e) *Under what conditions would the conservation order be revoked?* The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that there no longer exists a serious threat of injury to the area or areas involved, we will initiate action to revoke the conservation order.

(f) *Will information concerning the conservation order be collected?* The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1018–0103. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The recordkeeping and

reporting requirements imposed under regulations established in 50 CFR Part 21, Subpart E will be utilized to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on Mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take Mid-continent light geese within the guidelines provided by the Service.

Dated: February 10, 1999.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–3649 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970129015–9044–09; I.D. 031997C]

RIN 0648–AI84

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Final rule.

SUMMARY: NMFS by this action issues a final rule implementing a plan to reduce serious injury and mortality to four large whale stocks that occur incidental to certain fisheries. The target whale stocks are the North Atlantic right whale (*Eubalaena glacialis*) western North Atlantic stock; humpback whale (*Megaptera novaeangliae*) western North Atlantic stock; fin whale (*Balaenoptera physalus*) western North Atlantic stock; and minke whale (*Balaenoptera acutorostrata*), Canadian East Coast stock. Covered by the plan are fisheries for multiple groundfish species, including monkfish and dogfish, in the New England Multispecies sink gillnet fishery; multiple species in the U.S. mid-Atlantic coastal gillnet fisheries; lobster in the Gulf of Maine and U.S. mid-Atlantic trap/pot fisheries; and sharks in the Southeastern U.S. Atlantic gillnet fishery. This final rule includes time and area closures for the lobster, anchored gillnet and shark gillnet fisheries; gear requirements, including a general prohibition on having line floating at the surface in these fisheries; a prohibition on storing inactive gear at sea; and restrictions on setting shark gillnets off the coasts of Georgia and Florida and drift gillnets in the mid-Atlantic. The plan also contains non-regulatory aspects, including gear research, public outreach, scientific research, a network to inform mariners when right whales are in an area, and increasing efforts to disentangle whales caught in fishing gear.

DATES: The regulations in this final rule are effective April 1, 1999.

ADDRESSES: Copies of progress reports on implementation of the Atlantic Large Whale Take Reduction Plan (ALWTRP) and of the Final Regulatory Flexibility Analysis for this rule may be obtained by writing Doug Beach, NMFS, 1 Blackburn Dr., Gloucester, MA 01930. Copies of the most recent Stock Assessment Reports for northern right whales, humpback whales, fin whales and minke whales may be obtained by writing to Gordon Waring, NMFS, 166 Water St., Woods Hole, MA 02543.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, NMFS, Northeast Region, 508–495–2367; Katherine Wang, NMFS, Southeast Region, 727–570–5312; or Greg Silber, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) requires commercial fisheries to reduce the incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate by April 30, 2001 (section 118(b)(1)).

For some marine mammal stocks and some fisheries, section 118(f) requires NMFS to develop and implement take reduction plans to assist in recovery or to prevent depletion. The immediate goal of a take reduction plan is to reduce, within 6 months of its implementation, the mortality and serious injury of stocks incidentally taken in the course of U.S. commercial fishing operations to below the Potential Biological Removal (PBR) levels established for such stocks. The PBR level 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. The long-term goal of a take reduction plan is to reduce, within 5 years of its implementation, the incidental mortality and serious injury of strategic marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

On July 22, 1997, NMFS published in the **Federal Register** an ALWTRP, or a ''Plan'', and interim final regulations implementing that Plan (62 FR 39157). In this notice, NMFS reports on actions taken pursuant to the Plan, and issues a final rule for it. The final rule makes minor changes to the regulations in the interim final rule, but the general outline of the Plan remains the same.

The Plan, in conjunction with other management actions, is intended to meet the goals stated here for right whales, humpback, and fin whales, all of which are listed as endangered species under the Endangered Species Act (ESA), and for minke whales. The Plan may be amended in the future to take account of new information or circumstances.

The fisheries most affected by this plan are: anchored gillnet fisheries, including the New England sink gillnet fishery; the Gulf of Maine/U.S. Mid-Atlantic lobster trap/pot fishery; the U.S. mid-Atlantic coastal gillnet fisheries; and the Southeastern U.S. Atlantic shark gillnet fishery. The New England Multispecies sink gillnet fishery has an historical incidental bycatch of humpback, minke, and possibly fin whales. This gear type has been documented to entangle right whales in Canadian waters. Additionally, entanglements of right whales in unspecified gillnets have been recorded for U.S. waters, although U.S. sink gillnets have not been conclusively identified as having entangled right whales. The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery has an historical bycatch of right, humpback, fin, and minke whales. The mid-Atlantic coastal gillnet fisheries have an historical incidental bycatch of humpback whales. The Southeastern U.S. Atlantic gillnet fishery (for which sharks are generally the target species) is believed to be responsible for bycatch of at least one right whale.

Some waters are exempt from this plan. The basic rule for the exempted water boundaries is that all waters landward of the first bridge over any embayment, harbor, or inlet will be exempted. Some bays that do not have bridges over them are also exempted, including Long Island Sound and Delaware Bay. South of the Virginia/

North Carolina border, all waters landward of the demarcation line of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS line) are exempted. These are all areas where large whale occurrences are so rare that NMFS believes gear requirements will have no measurable effect on reducing entanglements. In a change from the interim final rule, the only exempted waters in the Gulf of Maine are those waters landward of the first bridge over any embayment. For a discussion of the rationale for this change, see ''Changes From the Interim Final Rule''. For a precise definition of the exempted areas, see the regulation section of this final rule.

Current Entanglement Rates and Population Status

The information in this section is from the 1996 Stock Assessment Reports (Waring *et al.,* 1997) compiled by NMFS, as required by the MMPA, from information collected for the 1998 Stock Assessment Reports, and from 1997 and 1998 entanglement reports compiled by NMFS. Additional information about the population biology and human-caused sources of mortalities and serious injuries is included in the 1996 Stock Assessment Reports, which are available from NMFS (see **ADDRESSES**). The 1998 Stock Assessment Reports are currently under review.

Some entanglements of large whales were observed by the NMFS sea sampling program; however, most records come from various sources such as small vessel operators. Limitations on the use of the available entanglement data include (1) not all observed events are reported; (2) most reports are opportunistic rather than arriving from systematic data collection, and, thus, conclusions cannot be made regarding actual entanglement levels; (3) identification of the gear type or of the fishery involved is often problematic; and (4) identification of the location where the entanglement first occurred is often difficult since the first observation usually occurs after the animal has left the original location.

North Atlantic Right Whales

The northern right whale is the rarest of all large cetaceans and one of the most endangered species in the world. The western North Atlantic population is estimated at 295 animals (Knowlton *et al.,* 1994) and is unlikely to be significantly higher. The best published estimate of the population growth rate is 2.5 percent per year (Knowlton *et al.,* 1994). However, many uncertainties exist in this estimate, and further assessment is required, notably in light of the known high levels of anthropogenic mortality in this species. The PBR level for this population is 0.4 incidents of serious injury or mortality per year.

Approximately one-third of all known right whale mortality is caused by human activities (Kraus, 1990). Further, the small population size and low annual reproductive rate suggest that human sources of mortality may have a greater effect on population growth rates of the right whale than on those of other whales. The principal factors retarding growth of the population are believed to be ship strikes and entanglement in fishing gear.

For the period 1991 through 1996, the total human-caused mortality and serious injury to right whales is estimated as 2.3 incidents per year. Of this figure, 1.0 incident per year is attributed to entanglements and 1.3 to ship strikes. Note that some injuries or mortalities may go undetected, particularly those that occur offshore. Therefore, the estimates above should be considered minimum estimates.

In June 1997 (prior to the publication of the interim final rule), there was an entanglement in U.S. offshore lobster gear off Chatham, MA. This whale was disentangled without evidence of compromising injury and is not likely to be classified as a ''serious injury'' when analysis of the event is complete. There was another entanglement also reported in U.S. waters in 1997, in which a right whale was seen carrying a line from unknown gear. This whale was later seen by researchers from the New England Aquarium, who believe the line may have been shed during the summer.

Four entangled right whales were sighted in the Bay of Fundy in 1997, after the interim final rule was published. At least two of these entanglements are likely to be classified as serious injuries or mortalities when the reports are reviewed. None of these entanglements can be positively attributed to U.S. fisheries. No entangled right whales were seen in U.S. waters during the first 6 months of the implementation of the Plan (from July 22, 1997, to January 22, 1998). In 1998, there were extensive aerial surveys of right whale critical habitats in the United States; no entangled right whales were seen during these surveys.

In 1998, four right whales were reported entangled. On July 12, two right whales were trapped in a weir near Grand Manan Island, Canada. Both whales were released 2 days later with apparently minor scratches.

One right whale was seen entangled in rope of unidentified origin on August 15 near Mingan Island in the Gulf of St. Lawrence. The whale was too active to approach safely to disentangle it. It appeared to free itself of most of the gear but may still be trailing some line.

One right whale was entangled twice (and actually disentangled three times) in Cape Cod Bay. The whale had been first seen entangled in 1997 in the Bay of Fundy. On July 24, 1998, the whale was seen near Dennis, MA (Cape Cod Bay). Most, but not all, of the gear it had been carrying from the 1997 entanglement was removed by the disentanglement team on that date. (NMFS has not been able to identify the type of gear responsible for this 1997 entanglement. However, the gear is still being studied.) The same whale was seen again near Provincetown, MA, on September 12 with a lobster buoy line through its mouth. This line was cut but not completely removed at that time. The right whale was seen again 2 days later (September 14) near Barnstable, MA. In the interim, it had picked up additional lobster gear, which was entirely removed. At last report, the whale was swimming freely but still had a thin line in its mouth from the entanglement in 1997.

A final evaluation as to whether these entanglements will be considered serious injuries has not yet been made. The agency is in the process of developing guidelines to standardize this kind of evaluation.

Humpback Whales

The best estimate of abundance for North Atlantic humpback whales is 10,600 (Coefficient of Variation (CV) = 0.067, Smith *et al.,* 1998). The minimum population estimate for this stock is 10,019 (CV = 0.067) (Waring *et al.,* in prep). Within this population, the humpback whales in the Gulf of Maine constitute a distinct, relatively small, feeding sub-population. However, it is not genetically distinct from other sub-populations in the western North Atlantic, which are all treated as a single stock for the purposes of the Plan and the estimation of PBR. For purposes of the current stock assessment, the maximum net productivity rate for western North Atlantic humpback whales is assumed to be 0.065 (Barlow and Clapham, 1997). The PBR level for this stock is 32.6 humpback whales per year.

For the period 1991 through 1996, the total estimated human-caused mortality and serious injury to humpback whales in U.S. waters is estimated as 5.8 per year. This is derived from three components: (1) Entanglements that have been reported by NMFS observers, (2) additional fishery interaction records, and (3) vessel collision records.

Fin Whales

The best available estimate of abundance for the western North Atlantic fin whale is 2,700 (CV = 0.59), which is considered conservative (Waring *et al.*, in prep). The minimum population estimate is 1,704 (CV = 0.59) (ibid.). For purposes of the current stock assessment, the maximum net productivity rate for fin whales is assumed to be 0.04. The PBR for this stock is 3.4.

Entanglements of fin whales are rarely documented. Because of the paucity of stranded animals or other records, NMFS has not calculated an average entanglement rate, although it believes that serious injuries or mortalities due to entanglements of fin whales occur at a rate below 10 percent of PBR. A review of 26 records of stranded or floating (dead or injured) fin whales for the period of 1992 through 1996 showed that three had formerly been entangled in fishing gear. Two of these had net or rope marks on the body, and one had line through the mouth and around the tail.

Minke Whales

Minke whales off the eastern coast of the United States are considered to be part of the Canadian east coast population, which inhabits the area from the eastern half of Davis Strait south to the Gulf of Mexico. The best estimate of the population is 2,760 (CV = 0.32) (Waring *et al.*, in prep.), which is considered conservative. The minimum population estimate for Canadian east coast minke whales is 2,145 (CV = 0.32) (ibid.). The current and maximum net productivity rates are not known, but the maximum rate is assumed to be 0.04. The PBR for this stock of minke whales is 17.

Accurate estimates of human-caused mortality are not available for this species because it is likely that many entanglements, injuries, and mortalities go unobserved and/or unrecorded. The total annual estimated average fishery-related mortality and serious injury to this stock in fisheries that have been observed by NMFS is 0.8 minke whales. However, the total number of entanglements from all fisheries is unknown. The figure is believed to be less than PBR but greater than 10 percent of PBR. Entanglements are known to occur in Canadian waters as well.

Atlantic Large Whale Take Reduction Plan

As stated earlier and as required by the MMPA, the Plan has two goals. The short-term goal is to reduce serious injuries and mortalities of right whales in U.S. commercial fisheries to below 0.4 animals per year by January 1998. The long-term goal is to reduce by April 30, 2001, entanglement-related serious injuries and mortalities of right whales, humpback whales, fin whales, and minke whales to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fisheries, the availability of existing technology, and existing state and regional fishery management plans.

To reach the short-term goal, the Plan was expected to achieve the necessary take reductions within 6 months through (1) establishing closures of critical habitats to some gear types during times when right whales are usually present; (2) restricting the way strike nets are set in the southeastern U.S. gillnet fishery to minimize the risk of entanglement and requiring observers on shark gillnet vessels operating adjacent to the southeast U.S. critical habitat; (3) requiring that all lobster and sink gillnet gear be set in such a way as to prevent line from floating at the surface; (4) requiring all lobster and anchored gillnet gear to have at least some additional characteristics that may reduce the risks of entanglements, (5) requiring that drift gillnets in the mid-Atlantic be either tended or stored on board at night; (6) improving the voluntary network of persons trained to assist in disentangling right whales; and (7) prohibiting storage of inactive gear in the ocean.

Although NMFS is not aware of any right whales entangled in U.S. fishing gear during the first 6 months of the implementation of the Plan, it is unable to determine whether the short-term goal of the Plan was met. Because right whale entanglements are rare and because there is no way of knowing that all entanglements were detected, it is impossible to demonstrate conclusively that the goals of the MMPA were achieved. At the same time, NMFS cannot conclude that PBR was exceeded. The 1997 entanglements that might be classified as serious injuries or mortalities were first observed in Canadian waters. The two known entanglements that occurred in U.S. waters during the first 6 months of the Plan did not appear to be serious. It is clear, however, that entanglement in fishing gear remains a danger to individual right whales and that continued reductions in the risk of such entanglements would be prudent, given the endangered status of the population.

The steps in the implementation of the Plan designed to achieve the long-term goal include (1) improving public involvement in take reduction efforts, including conducting outreach and educational workshops for fishermen; (2) instituting ''Take Reduction Technology Lists'' from which fishermen must choose gear characteristics that are intended to decrease the risks of entanglement; (3) facilitating research and development of fishing gear that will reduce the risk of entanglement; (4) continuing to improve the disentanglement effort, including encouraging more cooperation from fishermen; (5) implementing a gear marking program, (6) developing contingency plans in cooperation with states for when right whales are present at unexpected times and places; (7) working with Canada to decrease entanglements in its waters; (8) improving monitoring of the right whale population distribution and biology; (9) conducting aerial surveys to monitor whale distribution, fishing effort and shipping traffic, (10) maintaining a network to alert maritime users about right whale distribution; and (11) establishing the framework of an abbreviated rule-making process to allow NMFS to change the requirements of the plan through notification in the **Federal Register**, thereby improving the responsiveness of NMFS.

NMFS intends to make active use of the Atlantic Large Whale Take Reduction Team (TRT), an advisory group that includes fishermen, scientists, and representatives of environmental groups and state governments, to review progress on reaching the goals of the ALWTRP and to make recommendations on how to continue to decrease serious injuries and mortalities due to entanglements. NMFS also intends to continue to seek technical advice on matters pertaining to gear development for its Gear Advisory Group (GAG), which is composed of persons with direct knowledge of fishing gear or disentangling large whales. NMFS convened the GAG on October 7–8, 1998, and will convene the TRT on February 8–10, 1999. NMFS may modify the plan if it receives a recommendation from the teams to do so.

Report of First Year Activities

During the first year of the Plan, NMFS raised the level of funding for research and development of fishing gear that reduces the risks of entanglement, expanded its disentanglement efforts, increased efforts to raise awareness of marine mammal entanglement problems, conducted or contributed funds to conduct aerial surveys to monitor the distribution of right whales, to collect

photographs for individual identification, and to alert ship operators of the locations of right whales, and increased funding for basic research on right whale population and conservation biology.

The goal of the gear research is to develop new fishing gear or methods that minimize the risk of entanglements by large whales, either by reducing the chances that a whale will encounter the gear or by reducing the likelihood that gear, when encountered, will entangle the animal. Since the publication of the Plan in 1997, research has been conducted in the following areas: (1) Design, development, testing, and manufacture of inexpensive weak links, (2) remotely operated vehicle observations of the configuration of gillnets and lobster gear, (3) estimation of the tractive (pulling) force of right whales, (4) land testing of gillnet modifications, (5) baleen tests with various lines, knots, and splices (to understand how a line gets caught in baleen), and (6) design and fabrication of underwater and dry load cell systems for measuring the hauling and towing loads of fishing gear and the tractive force of animals.

The current disentanglement effort consists of a primary team which has field station support in the northern Gulf of Maine/Bay of Fundy, central Gulf of Maine, southern Gulf of Maine, and Georgia/Florida. The northern Gulf of Maine/Bay of Fundy field station is operational only when biologists are conducting seasonal right whale research. The U.S. Coast Guard (USCG) provides critical support in monitoring initial entanglement reports and transporting persons experienced in disentangling whales. Although the Disentanglement Team currently attempts to respond to all legitimate entanglement reports, the priority for response is for any immediately life-threatening event of endangered right and humpback whales. NMFS has also created a permanent contact point in Maine to supplement the existing infrastructure operating out of the Center for Coastal Studies in Provincetown, Massachusetts. Plans are also underway to establish a disentanglement team in the mid-Atlantic region.

The success of the Plan depends on the cooperation of fishermen in assisting disentanglement efforts as well as in providing ideas for gear research. During the first year of the Plan, NMFS hired a person in Maine to work directly with the fishermen on these matters. NMFS has held 21 meetings in Maine to date, with over 300 fishermen in attendance, of which about 200 have indicated they wish to participate in additional training to further assist in any disentanglement effort in their area. From this series of meetings, a network of qualified responders will be established to coordinate reports, carry out monitoring, and assist the existing Team in response to entangled whales along the coast of Maine. NMFS also met with fishermen directly at fishermen's forums and contracted Sea Grant to discuss proper reporting and operational procedures regarding entangled whales and to gather ideas for appropriate gear modifications. Continued outreach activities in Maine, southern New England, the southeast U.S. and in the Mid-Atlantic are planned.

Existing partnerships with the USCG and the Massachusetts Division of Marine Fisheries and Massachusetts Environmental Trust have resulted in significant additional resources for carrying out the tasks outlined in the Plan. Similar partnerships with the 5th, 7th, and 8th U.S. Coast Guard (USCG) districts are currently being finalized. The USCG conducted aerial surveys for large whales, assisted in disentanglement response support, and provided funds for additional aerial survey contracts carried out by NMFS. The State of Massachusetts funded aerial survey coverage of Cape Cod Bay, as well as a habitat characterization study of the Bay in 1998. Right whale sightings information from all sources were provided to the northeast right whale alert system, designed to inform mariners of the presence of right whales in critical habitats. The sighting data were coordinated, verified, and processed by NMFS. Verified sightings for each survey day are disseminated by an automated fax system immediately after processing, and made available to all marine resource users through various media. The coordinates of the right whale sightings were broadcast for 24 hours by USCG via Broadcast Notice to Mariners and NAVTEX, NOAA Weather Radio, and Army Corps of Engineers Traffic Controllers at Cape Cod Canal to both target shipping traffic as well as other marine resource users. Maps with right whale sightings boxes are also posted on Massachusetts and NMFS web pages and linked to other sites such as WHALENET. An NMFS Inquiry Line at the Northeast Regional Office provides right whale sighting faxes on demand to all interested callers.

During the first year of the Plan, NMFS drafted a memorandum of Agreement (MOA) with USCG districts 5, 7, and 8 to formalize cooperation in protecting marine mammals and endangered species, especially in implementing a disentanglement network. (This MOA is currently undergoing final review within the Department of Commerce.) An MOA was also signed with the Navy, USCG, and the Army Corps of Engineers to formalize cooperation in measures to protect northern right whales in the southeast United States. This has provided a mechanism for funding the southeast U.S. aerial surveys of right whale critical habitat and the associated right whale alert system. NMFS has continued to provide administrative support for the right whale alert system. It has also conducted aerial surveys to the east, north, and south of critical habitat in order to determine whether there may be a need to extend current critical habitat boundaries.

Aerial surveys are also being conducted in the U.S. coastal waters of the mid-Atlantic states to document abundance and distribution of humpback whales in relation to vessel traffic and fishing effort.

Outreach activities are an integral part of all components of the ALWTRP. NMFS contracted the Sea Grant offices at the University of Maine and University of Rhode Island to set up an outreach program in the New England and Mid-Atlantic areas. Sea Grant organized meetings, workshops, and seminars at key fishermen's forums held from Fall 1997 through Spring 1998, covering the area from North Carolina to Rhode Island. Sea Grant also prepared outreach handout materials and videos for use at these and other forums and for the local meetings set up in the Northeast. A letter was sent to all state and Federal lobster and gillnet fishermen in the Northeast providing information about right whales, the entanglement problem, and fishermen's responsibilities under the ALWTRP. As mentioned above, NMFS also hired a Maine Plan Coordinator to work closely with the Maine Lobster Zone Council system to carry out outreach education and gear research collaboration.

In 1998, NMFS also met with shark gillnetters to develop awareness of right whales and their current plight. This meeting was designed to explain threats to right whales in the southeast United States and to discuss the precautions necessary around them and what additional measures the fishery might take to decrease the risk of interactions. In addition to the above mentioned meeting, letters were sent to all known shark gillnetters explaining the ALWTRP regulations. The letters explained the need to contact NMFS to arrange for observer coverage during the right whale calving season. During the

year, this observer program was established.

The Northeast Fisheries Science Center has increased its Protected Species Branch staff to include a large whale research coordinator. Key research on large whales conducted or funded by NMFS include (1) maintaining the right and humpback whale photo ID catalogues where individual identification of animals from photographs taken throughout the western north Atlantic are processed; (2) analyzing data collected from the right whale photo-identification catalogue for population assessment; (3) expanding right whale genetics studies to determine the matriarchal lines that make up the population; (4) supporting right whale stranding response to maximize the information collected from each carcass; (5) conducting directed right whale photo-identification surveys in the Great South Channel; (6) assessing capabilities to locate whales acoustically; (7) evaluating the status of the North Atlantic humpback whale, and (8) surveying potential offshore summer habitats for right whales.

Changes From the Interim Final Rule

1. Definition of ''Lobster Trap.'' The definition of the term ''lobster trap'' in the interim final rule was not as precise as it should have been. Broadly interpreted, it could have been construed as applying to gillnets and to bottom trawls that can catch lobster as well as to traps. These gear types were not intended to be covered by this term. Therefore, in this final rule, NMFS changes the definition of ''lobster trap'' to be: ''any trap, structure or other enclosure that is placed on the ocean bottom and is designed to or is capable of catching lobsters.'' The intent of this definition is to include traps and pots into which lobsters may crawl and be caught by virtue of their inability to find their way out, and not to include mobile gear or devices that catch lobsters through entanglement. The definition includes black sea bass traps and scup traps. The terminology ''lobster trap'' is used in this final rule, instead of ''lobster pot'' (used in the interim final rule) solely to make the terminology consistent with fishery management regulations. The Plan applies to the same gear, whether called ''traps'' or ''pots.''

2. Definition of ''Gillnet''. The definition of ''gillnet'' in the interim final rule could cause confusion as to which nets were included in the regulations. Therefore, in this final rule, NMFS is amending the definition to be as follows: ''fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term 'gillnet' includes gillnets of all types, including but not limited to, sink gillnets, other anchored gillnets (e.g. stab and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.'' The term is intended to include gillnets with or without tie-downs.

3. Elimination of exempted waters in the Gulf of Maine. The State of Maine and groups representing Maine fishermen did not agree with the lines delineating the exempted waters in the Gulf of Maine. These groups commented that the lines chosen by NMFS were confusing and difficult to enforce. On any given day, most lobstermen in Maine fish on both sides of the exemption lines established in the interim final rule. Because most fishermen in Maine waters will need to comply with the ALWTRP regulations for some of their gear (that are set in waters not exempted by the interim final rule), NMFS eliminates the exempted waters in the Gulf of Maine until such time as the TRT can advise NMFS on the most appropriate boundaries for exempted waters in that area. Note, however, that the gear marking provisions that would have applied in all non-exempted waters under the interim final rule have also been changed and will not apply in most coastal waters in the Gulf of Maine.

4. Addition of exempted waters in Rhode Island. The State of Rhode Island noted that the interim final rule failed to exempt some coastal ponds from its regulations. In this final rule, waters are intended to include the following rivers and coastal ponds where right whales have never been seen: Winnapaug Pond, Green Hill Pond, Potter Pond, and the Sakonnet River.

5. Gear marking requirements. In the interim final rule, the gear marking system required the application of two color codes on the buoy lines. In this final rule, the method of applying the marks has not been changed from the interim final rule. However, gear marking is no longer required in most areas.

The gear marking requirements of the interim final rule were criticized by many. Some persons felt they were not specific enough to give clear information about where entanglement problems occur. Others were concerned that if gear was lost in a storm or towed by a boat to another region and then entangled whales, it might give a false impression of where the entanglement problem occurred. Some questioned whether gear marking would provide any useful information, and others wondered whether the method of marking would work.

In this final rule, NMFS no longer requires gear marking of lobster and gillnet gear in most affected waters. Instead, it requires these types of gear to be marked only in right whale critical habitat, in the southeast observer area and on Stellwagen Bank and Jeffreys Ledge in the Gulf of Maine. These are the areas where the risk of entanglement is highest. If entanglements occur in the critical habitat areas during times of high right whale use, they are subject to closure. The Jeffreys Ledge/Stellwagen Bank area is an area used year-round by large whales, and there have been calls for more action to lower entanglements in that area. The marking scheme in the final rule could give NMFS relatively precise information about entanglements that occur in these key areas without requiring an extremely complex system that would have to be devised to identify a large number of areas. It also allows NMFS and the TRT to assess the value of gear marking and to refine the technique without burdening most of the industry. If gear marking proves workable and useful, the system could be expanded after consultation with the Gear Advisory Group and the Take Reduction Team.

In a further change from the interim final rule, gillnetters in the southeast U.S. need only mark their lines every 100 yards (91.4 m), not every 100 feet (30.5 m), when this requirement comes into effect in November 1999. The purpose of this change is to ease the marking burden until it is known whether the system works as expected.

This gear marking requirement constitutes a collection of information under the Paperwork Reduction Act. The Office of Management and Budget (OMB) has given its approval to this collection of information (OMB No. 0648–0364).

6. Gear requirements for lobster fishers in Cape Cod Bay critical habitat. Several persons commented that the Federal government's regulations for lobster gear in Cape Cod Bay critical habitat from January 1 to May 15 were different from the regulations of the Commonwealth of Massachusetts for the same area. NMFS believes that the Commonwealth, working directly with the affected fishermen, has developed a workable plan that has the allegiance of the fishermen to lower the risk of entanglement. Therefore, in this final

rule, NMFS adopts the current version of the regulations established by the Commonwealth for lobster gear set in this area and time. Specifically, during the period from January 1 to May 15, weak links with a breaking strength of no more than 500 lb (226.7 kg) must be installed in all buoy lines, and it is permissible to set traps in ''doubles'', in which only two traps are joined together by a ground line. Doubles can have only one buoy line. In the interim final rule, the NMFS' regulations for Cape Cod Bay from Jan. 1 to May 15 called for a breaking strength of 1100 lb (498.8 kg). The lower breaking strength required by this final rule will reduce the risk that an entanglement becomes serious. Fishing conditions in Cape Cod Bay appear to be such that a 500 lb (226.7 kg). breaking strength does not pose a difficulty for the industry. Allowing the use of doubles may reduce the number of buoy lines in Cape Cod Bay. At least some fishermen have been using four trap trawls (which may have two buoy lines) where they would prefer to use a double (with one buoy line).

7. Elimination of anchoring options from the gillnet take reduction technology list. The Gillnet Take Reduction Technology List in the interim final rule allowed gillnets to hold down the lead line with anchors, weights, or heavy rope as a bycatch reduction option. Allowing the methods that increased the holding power of the lead line as separate options without also requiring weak links to be installed in the net panels has been determined to be ineffective. Without the weak links, the extra weight could make it harder for the whale to carry a net rather than help it to break free of the net as intended. Therefore, in this final rule, NMFS eliminates from the Gillnet Take Reduction Technology List the options for anchoring the lead line with 22-lb (10 kg) danforth-style anchors, 50 lb (22.7 kg) dead weights or lead lines weighing 100 lb (45.4 kg) or more per 300 ft (92.4 m).

NMFS retains on the Gillnet Take Reduction Technology List the option of putting weak links in the net panels. Although weak links will only fail if the resistance to movement by the net is greater than the breaking strength of the link (which was the original intent of the anchoring requirements), NMFS notes that many gillnets are set with 22-lb (10 kg) danforth-style anchors or weights with similar holding capacity, whether or not such characteristics are on the Gillnet Take Reduction Technology List.

The genesis of the anchoring options was a discussion within the TRT of a suite of gear modifications consisting of weak links in the nets and weighted lead lines. These discussions were based on a more complex suite of gillnet modifications used in California with the aim of reducing marine mammal entanglements. The TRT did not have before it the full suite of modifications required by California. NMFS will provide this to the TRT and to the GAG and will ask those groups to consider the likely effectiveness of the California modifications and the feasibility of applying those modifications to the New England gillnet fishery. NMFS is also funding research on the forces that gillnets can withstand under a range of conditions, including those that might occur if a whale becomes entangled in the net. The GAG and the TRT will also be asked to review the results of these tests.

8. The definition of ''anchored gillnet'' is modified slightly to make clear that ''stab nets'' are included in this definition. Likewise, the definition of ''sink gillnet'' is amended to clarify that the regulations applying to sink gillnets are intended to apply to ''stab nets''. Similarly, the definition of ''gillnet'' has been modified to clarify that what is termed ''meshes'' in some places is included in the definition. The definition of ''Strikenet or to fish with strikenet gear'' is amended slightly to make clear that strikenets are considered a category of gillnets for the purposes of this rule and that persons fishing with strikenets must comply with the call-in requirement to fish anywhere within the SEUS observer area.

9. Several definitions were modified slightly to correct for grammatical errors or to add clarity, including: (1) ''driftnet, drift gillnet, or drift entanglement gear'', (2) ''tended gear or tend'', and (3) ''weak link.''

10. New definitions for ''shark gillnetting'' and ''to strikenet for sharks'' are included to clarify the fisheries affected by this rule. These new definitions do not change the fisheries intended to be covered by the Plan.

Fishery-Specific Measures of the Plan

American Lobster Trap/Pot Fisheries

Except for gear set in exempted waters, all lobster trap gear must be set in such a way as to avoid having line floating at the surface at any time. Floating line is allowed between two buoys on the same buoy line and between a buoy and a high flyer.

Throughout the year, lobster trap buoy lines in the Great South Channel must be marked with red and yellow marks. Lobster trap gear is prohibited from the Great South Channel critical habitat area from April 1 through June 30, until the Assistant Administrator for Fisheries (AA) determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels. From July 1 through March 31, lobster trap gear set in the Great South Channel critical habitat must have at least two characteristics from the Take Reduction Technology List that follows. Note that, although portions of the Great South Channel critical habitat would be considered offshore, NMFS believes that the weaker maximum breaking strengths allowed for inshore gear are more appropriate in the critical habitat, since right whales may return to the area when not expected. Therefore, the Great South Channel critical habitat is not considered ''offshore'' for the purposes of the Plan. Lobster trap gear set in this area must comply with the inshore gear characteristics.

From January 1 through May 15, lobster trap gear may not be set in the Cape Cod Bay critical habitat unless it meets certain criteria. All lobster trap gear set during that time must have all four of the following characteristics: (1) All buoys must be attached to the buoy line with a weak link with a maximum breaking strength of up to 500 lb (226.7 kg). (2) All traps must be set in either ''doubles'' (two trap trawls with a single buoy line) or trawls of four or more traps. Single traps and trawls with exactly three traps are not allowed. (3) All buoy lines must be made of sinking line, except for the bottom third of the line, which may be floating line. (4) All ground lines between traps must be made of sinking line. These measures are intended to conform to the current requirements set by the State of Massachusetts for its portion of the critical habitat during that period. From May 16 to December 31, lobster trap gear set in the Federal portion of the Cape Cod Bay critical habitat must have at least two characteristics from the Take Reduction Technology List. Throughout the year, the buoy lines of lobster trap gear set in the Cape Cod Bay critical habitat must be marked with red and orange marks.

The Stellwagen Bank/Jeffreys Ledge (SB/JL) area is defined as all Federal waters in the Gulf of Maine that lie to the south of the 43°15′ N lat. line and west of the 70° W long. line, except right whale critical habitat. In this area, lobster trap gear must always have at least two characteristics from the Lobster Take Reduction Technology list. In addition, the buoy lines of lobster trap gear set in this area must be marked with red and black marks. Fishermen

should be aware that humpback and/or right whales are present in this area most months of the year. If the gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to achieve the 5-year zero mortality and serious injury rate goal, additional restrictions or closures in some or all of this area may be necessary. A decision to close any portion of this area would be made in consultation with the TRT, and after public comment.

In all other areas, lobster trap gear must be set with at least one characteristic from the Lobster Take Reduction Technology list. This requirement applies year-round in the inshore and offshore lobster fishery north of 41°30′ N lat. and from December 1 through March 31 in the inshore and offshore lobster fishery south of 41°30′ N lat. Some of the gear characteristics are applicable only to offshore lobster fishing because conditions offshore require heavier gear. However, fishermen using offshore gear are encouraged to use the inshore standards. No gear marking is required in these other areas.

Figure 1 shows the boundaries of the areas where the requirements for the lobster fishery apply.

The Lobster Take Reduction Technology List is as follows:

1. All buoy lines are 7⁄16 inches (1.11 cm) in diameter or less.

2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.

3. For lobster traps set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb (1714.3 kg).

4. For traps set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than 3⁄4 the diameter of the buoy line.

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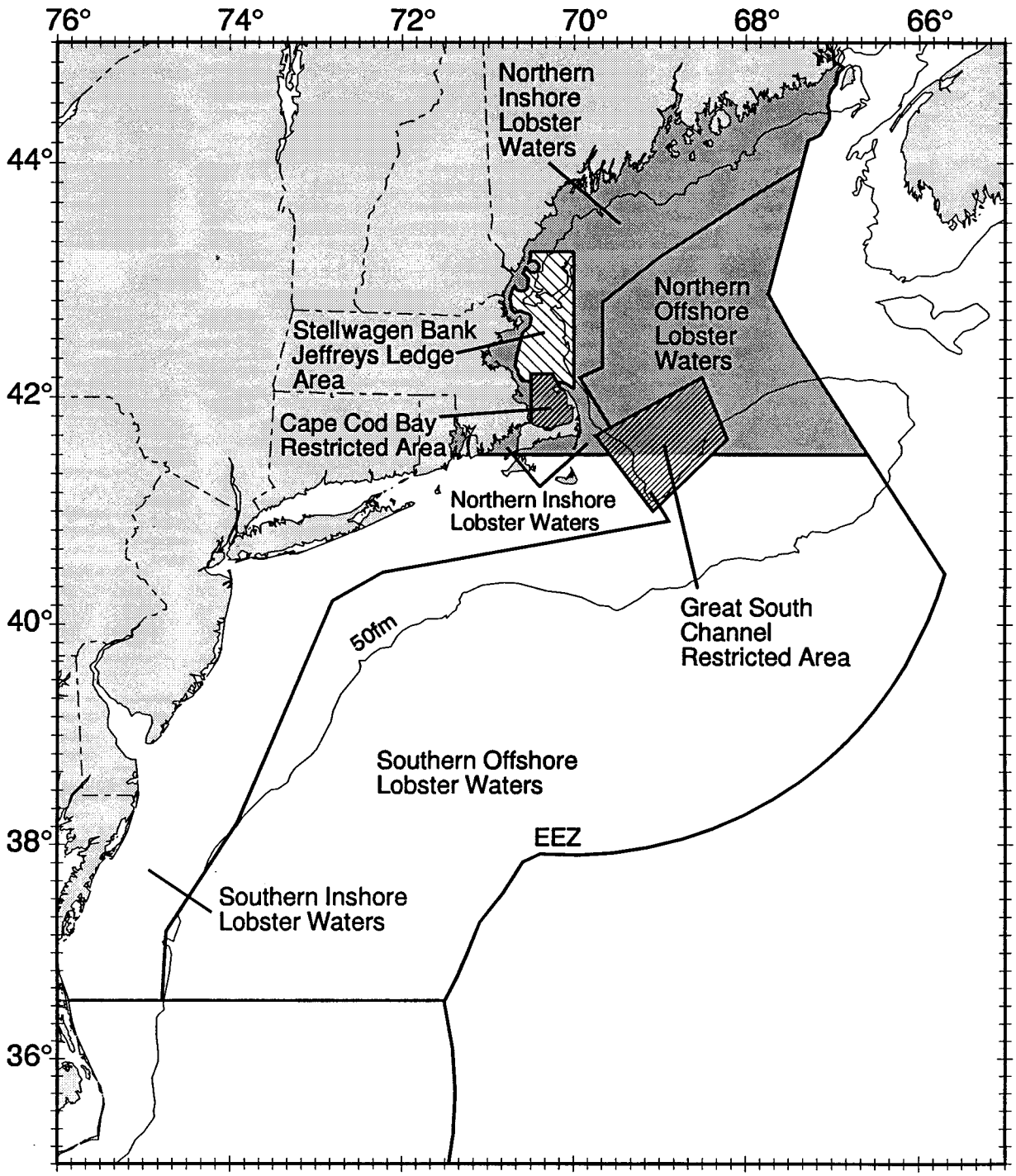

Lobster Gear Restrictions

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5. All buoy lines are composed entirely of sinking line.

6. All ground lines are made of sinking line.

Anchored Gillnet Fisheries

All sink gillnet gear and other anchored gillnet gear must be set in such a way as to avoid having line floating at the surface at any time. Floating line is allowed between two buoys on the same buoy line and between a buoy and a high flyer attached to the same buoy line.

Sink gillnet gear is prohibited from most of the Great South Channel critical habitat area from April 1 through June 30, until the AA determines that alternative fishing practices or gear modifications have been developed that reduce the risk of serious injury or mortality to whales to acceptable levels. Sink gillnets may be used year-round in the ''sliver area'' and from July 1 to March 31 in the entire Great South Channel critical habitat, provided that such gear has at least two characteristics from the Gillnet Take Reduction Technology list. Throughout the year, gillnet buoy lines in the Great South Channel must be marked with yellow and green marks.

From January 1 to May 15, the Cape Cod Bay critical habitat is closed to sink gillnet gear. From May 16 to December 31, gillnet gear set in the Cape Cod Bay critical habitat must have at least two characteristics from the Gillnet Take Reduction Technology List. Throughout the year, the buoy lines of gillnet gear set in the Cape Cod Bay critical habitat must be marked with green and orange marks.

Gillnet gear in the SB/JL area (as defined in this notice under ''Fishery-specific Measures of the Plan, American Lobster Trap/Pot Fisheries'') must always have at least two characteristics from the Gillnet Take Reduction Technology List. In addition, the buoy lines of gillnet gear set in this area must be marked with green and black marks. Fishermen should be aware that humpback and/or right whales are present in the SB/JL area most months of the year. If the gear modifications are not sufficient to reduce serious injury or mortality to right and humpback whales to achieve the 6-month PBR goal or the 5-year zero mortality and serious injury rate goal, additional restrictions or closures of certain portions of the SB/JL area may be necessary.

In all other ''northeast waters'' (defined as Federal and state waters east of 72°30′ W long.), gillnet gear must be set with at least one characteristic from the Gillnet Take Reduction Technology List at all times. Mid-Atlantic gillnets (gillnets set west of 72°30′ W long. and north of 33°51′ N lat.) must have at least one characteristic from this list from December 1 to March 31. No gear marking is required in either area.

Figure 2 shows the boundaries of the areas where the requirements for the sink gillnet fishery apply.

The Gillnet Take Reduction Technology List is as follows:

1. All buoy lines are 7/16 inches (1.11 cm) in diameter or less.

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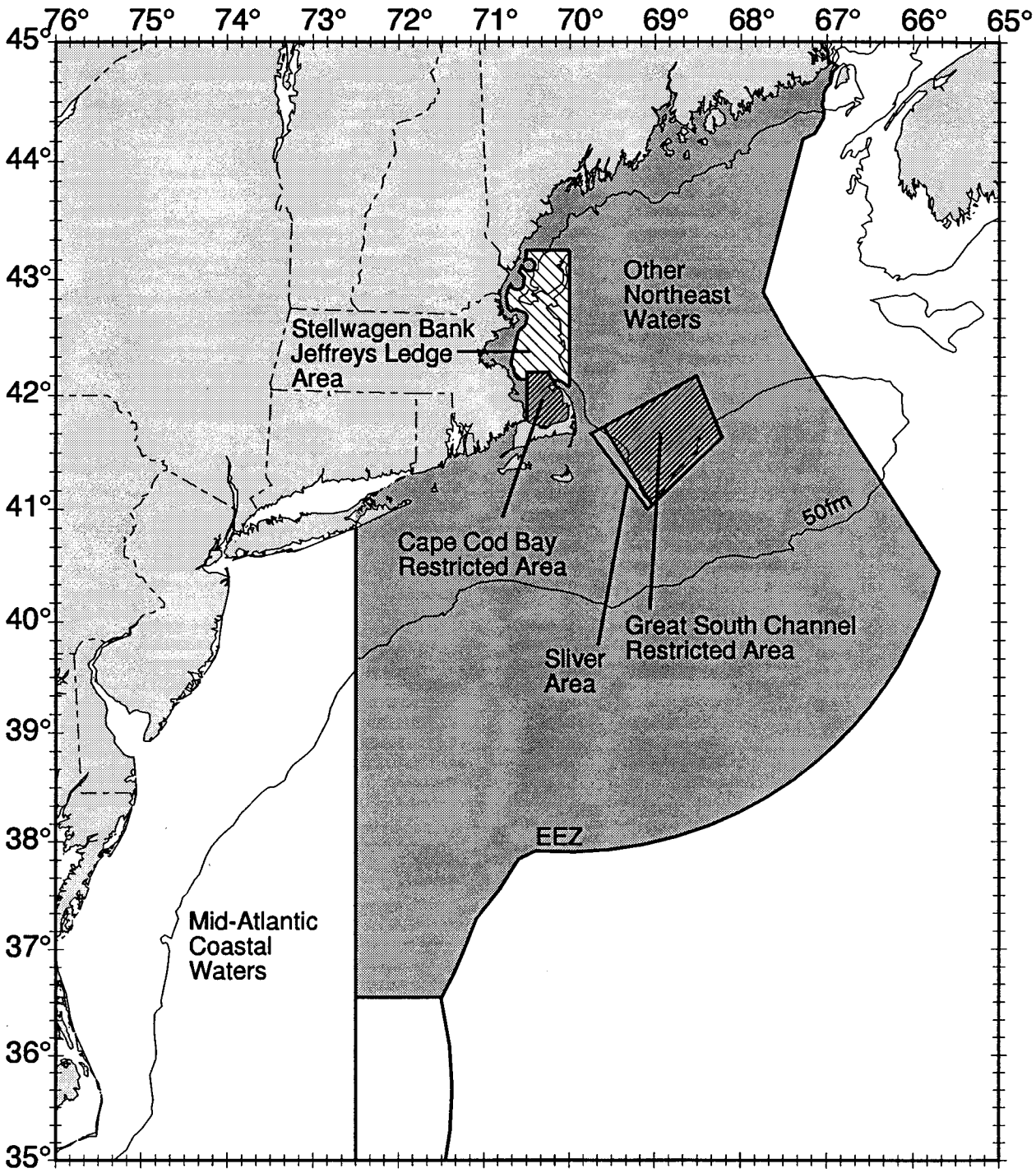

Gillnet Gear Restrictions

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2. All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate breaking strength, hog rings, or rope stapled to a buoy stick.

3. Weak links with a breaking strength of up to 1100 lb (498.8 kg) are installed in the float rope between net panels.

4. All buoy lines are composed entirely of sinking line.

Mid-Atlantic Coastal Gillnet Fishery—Drift Gillnets

From December 1 to March 31, all vessels using driftnets in the mid-Atlantic gillnet area are required to haul all such gear and stow all such gear on the vessel before returning to port. If driftnets are set at night, they must remain attached to the vessel.

Southeast U.S. Shark Gillnet Fishery

The area from 27°51′ N lat. (near Sebastian Inlet, FL) to 32°00′ N lat. (near Savannah, GA) extending from the shore outward to 80° W long. is closed to shark gillnet fishing, except for strikenetting, each year from November 15 to March 31. Strikenetting is permitted under certain conditions set forth in the rule. In addition, observer coverage is required for the use of gillnets in the area from West Palm Beach (26°46.5′ N lat.) to Sebastian Inlet (27°51′ N lat.) from November 15 through March 31 and for the use of strikenets in the area between West Palm Beach, FL, and Savannah, GA, for the same time period. Vessel operators intending to use these gear types in these areas must notify NMFS at least 48 hours in advance of departure to arrange for observer coverage. It should be noted that state waters in this area presently ban gillnetting. In addition, shark gillnets, including strikenets, must be marked with green and blue marks to identify the fishery and region in which the gear is fished.

Figure 3 shows the boundaries of the areas where the requirements for the shark gillnet fishery apply.

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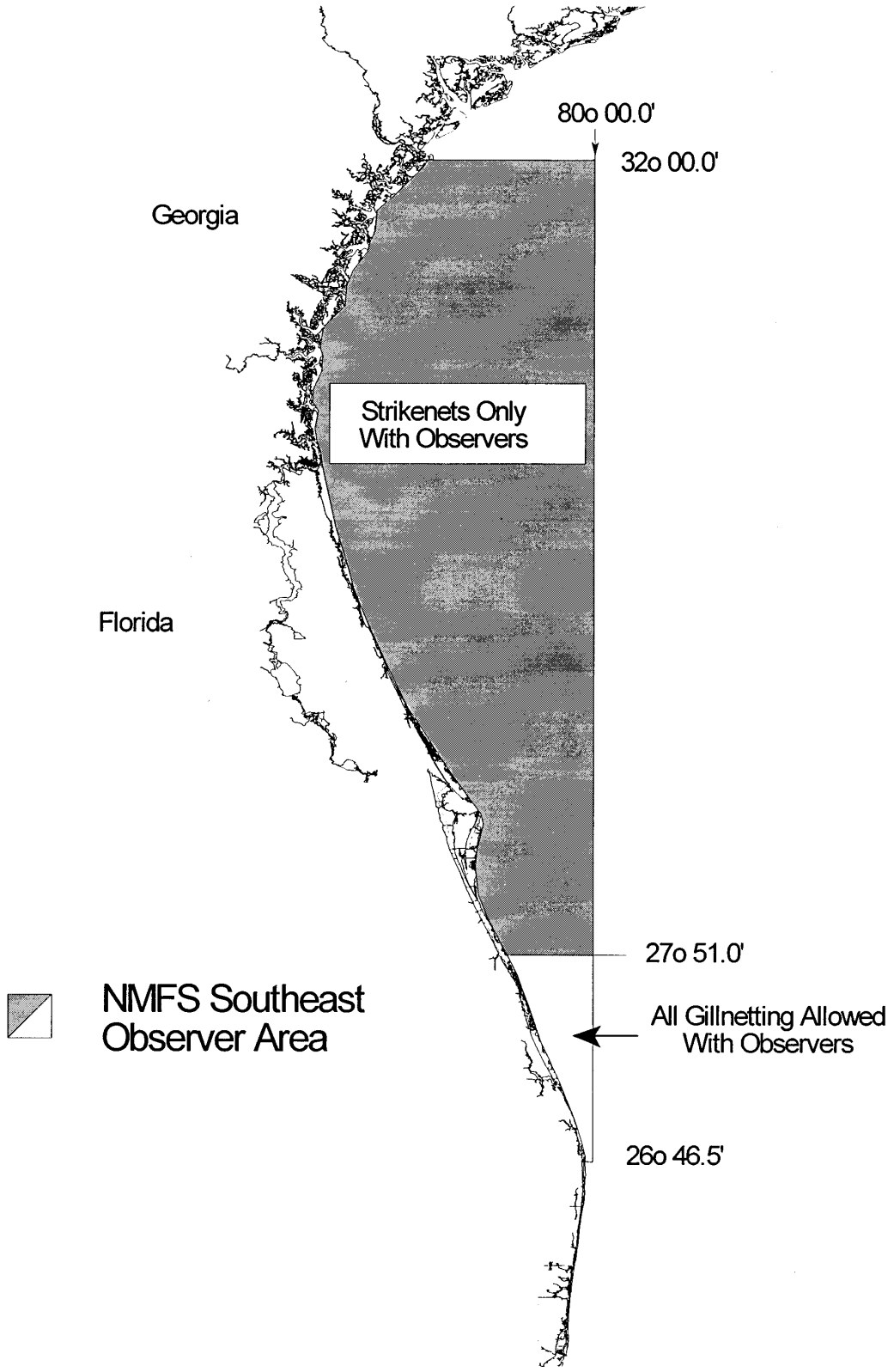

November 15 to March 31 Shark Gillnetting Restrictions

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Other Entanglement Reduction Measures Not Specified in This Plan:

Other measures under the Magnuson-Stevens Fishery Conservation and Management Act that are expected to decrease the risk of entanglement of whales in sink gillnets are either currently in effect or under consideration. Reductions in allowable days at sea and seasonal or year-round area closures to protect groundfish will reduce the risk of entangling right whales. A significant portion of the SB/JL restricted area is closed year-round to all gillnets (and other gear capable of catching groundfish). In addition, currently there are 1-month closures to gillnet and other groundfish fish gear in March, April, May, and June along the coast of the Gulf of Maine. Additional closures are being considered by the New England Fishery Management Council. A prohibition against setting gillnets with mesh size greater than 7 inches in the mid-Atlantic (from the South Carolina/North Carolina border to Delaware) from February 15 to March 15 coincides with a portion of the time when humpback whales are present in the area and when right whales may be migrating through the area on their way north. Proposed closures to monkfish gillnets in the Mid-Atlantic coincide with the time when humpback whales are likely to be in the area.

Some level of lobster trap gear effort reduction is expected to be proposed and implemented under the provisions of the Atlantic Coast Marine Fisheries Cooperative Act. The Atlantic States Marine Fisheries Commission has recommended that the maximum number of traps a person may set be limited in state and inshore Federal waters of the Gulf of Maine to 800 traps and to 2000 traps in Gulf of Maine offshore waters by the year 2000. Trap reductions may occur in areas south of Cape Cod as well. Some offshore areas south of Georges Bank are closed to lobster trap gear during some summer months in order to reduce conflicts with mobile gear. While the closed areas are not the usual right whale habitat, the times when lobster gear is prohibited include periods when right whales may wander into the areas. Gear conflict reduction measures are also expected to decrease the amount of lost gear, which should reduce the risk that whales would become entangled in ''ghost'' gear. Any effort reduction measures implemented for the lobster fishery would reduce the risk of entanglement of whales in that gear.

Comments and Responses

Comments on the interim final rule were received from the States of Maine and Rhode Island; the New England Fishery Management Council; the Rhode Island Coastal Resources Management Council; 19 conservation organizations including the Center for Marine Conservation, Chequamegon Audubon Society, Greenpeace, Humane Society of the U.S., the International Wildlife Coalition, and a joint letter from 18 conservation organizations (including most of the aforementioned ones); 6 fishermen's organizations, including Cape Cod Gillnetter's Association, Maine Lobster Promotion Council, Maine Lobstermen's Association, Maine Zone E Council, Offshore Lobster *ad hoc* Whale Working Group, and the New Hampshire Commercial Fishermen's Association; Cetacean Research Unit; Marine Mammal Commission; New England Aquarium; Washington Legal Foundation; and 23 individuals. Approximately 4700 signatures were received on petitions urging NMFS to strengthen the regulations in the interim final rule.

Comments in Support of the Interim Final Rule

Comment 1: A number of commenters expressed support for the interim final rule and appreciation for NMFS responsiveness to the concerns and suggestions made by the fishing industry on the proposed rule. These commenters felt that the interim final rule was a good step toward developing a cooperative relationship with the fishing industry to reduce the bycatch of large whales.

Response: NMFS appreciates the expressions of support. It believes that the cooperation of the fishing industry is essential to make the ALWTRP achieve its goals.

Comment 2: Several commenters believed that the ALWTRP had a realistic potential of achieving its stated goals.

Response: NMFS agrees, provided that the partnership with the industry continues to make progress in reducing serious injuries and mortalities of large whales in fishing gear. The zero mortality rate goal may be difficult to achieve. To reach it will require continued efforts to develop effective gear modifications and to improve the disentanglement teams.

Comment 3: The State of Maine expressed appreciation for NMFS commitment to fund a position to function as a liaison among the fishermen, coastal communities, the State, and NMFS.

Response: This position is important to the outreach and gear research efforts of NMFS in Maine to improve cooperation on the ALWTRP. When funding is available, NMFS hopes to fund a second such liaison position for southern New England.

Comments in General Opposition to the Plan and the Interim Final Rule

Comment 4: Many comments and petitions were received urging NMFS to strengthen the interim final rule on the grounds that the interim regulations offer virtually no protection for right whales and would probably not prevent future entanglements.

Response: NMFS acknowledges that some persons and groups are disappointed in the regulations implemented by the interim final rule. NMFS continues to believe that the approach taken by the ALWTRP has a reasonable chance of achieving its difficult goals. The ALWTRP is not just a set of regulations. It is a series of intertwined activities that include gear research, outreach and education, disentanglement, closed periods and gear restrictions. The Plan emphasizes cooperation with the fishing industry, which is essential for progress on gear development and is helpful for disentangling whales. Because there were no known cases of serious entanglements of right whales in U.S. waters during the first 6 months of the plan, because fishermen are developing and testing new ways to rig their gear to avoid entanglements, and because of the assistance of and the interest in disentanglement on the part of the fishing community, NMFS believes that the Plan has already reduced the risk of serious injury and mortality due to bycatch in U.S. fishing gear.

The ALWTRP is not a static plan. If it is not achieving its goals or if better ways to achieve the goals are identified, it can be modified. The support and cooperation of the fishing communities will be important in continuing to make progress on right whale conservation.

Comment 5: The ALWTRP will do nothing to fulfill the obligations of NMFS to reduce the take of northern right whales under section 118 of the MMPA.

Response: NMFS disagrees. The ALWTRP balances cooperation and regulation. NMFS believes the ALWTRP has a realistic chance of achieving its goals.

Comment 6: NMFS cannot quantitatively measure the level of risk reduction of various measures, and, therefore, it cannot assert that the plan is expected to achieve the necessary take reductions within 6 months.

Response: NMFS agrees that it is impossible to quantify the risk reduction of any of the measures in the ALWTRP. It acknowledged this when it published the interim final rule. However, the same problem besets all the measures seriously considered by NMFS or the TRT because entanglements are so unpredictable and take place at such a low rate. The TRT recognized this during its discussions. Even wide-scale closures cannot be quantified as to the degree of risk reduction. The impossibility of quantifying risk reduction should not force the Government into choosing the only quantifiable approach to the problem—total closure of all fixed gear fisheries where right whales might occur.

Comment 7: There is no guarantee that the ALWTRP or the associated interim final rule will result in the needed cooperation with the fishing industry. That cooperation can only be achieved through an intensive constituent outreach program.

Response: NMFS agrees. Constituent outreach is a key component of the ALWTRP, even though the benefits are not quantifiable. Outreach efforts have expanded greatly in the past year. Fishermen are reporting entangled whales, and they are experimenting with various gear modifications. Although more work may need to be done, progress is being made.

Comment 8: NMFS must balance a cooperative approach with the implementation of a take reduction plan that prevents entanglements rather than merely relies on disentanglement as a take reduction strategy.

Response: The ALWTRP contains specific measures to prevent entanglements, such as closures of critical habitat to some gear types and restrictions on ways that gear can be rigged. In addition to these measures and to strengthening the disentanglement program, NMFS has a third key component of the plan, namely research and development of gear that will either lower the risk of entanglement or reduce the risk that an entanglement will result in a serious injury.

Comment 9: A number of commenters criticized various aspects of the ALWTRP because they were weaker than the consensus portions of the TRT report, particularly in the mid-Atlantic anchored gillnet fisheries and for the SB/JL area.

Response: The TRT report was not a consensus document. Although the TRT reached consensus on parts of a plan, the understanding within the team was that these parts were contingent on reaching agreement on a complete set of recommendations. Because no overall consensus was reached, NMFS is unable to assume that all members of the TRT still support any particular part of the negotiations.

Comment 10: Several commenters criticized the ALWTRP because it was weaker than proposals that the industry had submitted to NMFS for various areas, including for Cape Cod Bay and the SB/JL area.

Response: Prior to the publication of the proposed ALWTRP, a group of industry and state agencies in the Gulf of Maine formed an informal Industry/State Agency Take Reduction Team (ISATRT) to advise NMFS on bycatch reduction measures. After the comment period for the proposed rule, it was no longer apparent that the industry supported the recommendations made by its representatives on the ISATRT.

Comment 11: The ALWTRP is almost worse than doing nothing, as it creates the appearance of meaningful action when, in fact, nothing has been done to reduce risk.

Response: As explained earlier, NMFS believes that the ALWTRP has a reasonable chance of reducing the risk of entanglement.

Comments Regarding Gear and Take Reduction Technology Lists

Comment 12: Several commenters liked the ''menu'' approach allowed by the Take Reduction Technology Lists and believed this approach allowed flexibility in adapting individual fishing operations to the requirements of the ALWTRP.

Response: NMFS appreciates this support for the flexibility allowed by the Take Reduction Technology Lists. Note, however, that many comments were received that opposed the Take Reduction Technology Lists.

Comment 13: Many commenters opposed the gear technology lists because they are not a departure from current fishing practices that have entangled whales. Therefore, the lists would not achieve the required bycatch reductions.

Response: The gear technology lists were not intended by themselves to meet the short-term goal of the ALWTRP, i.e., reducing right whale entanglements to below PBR. The reason for implementing the gear technology lists is to initiate a flexible process of gear modification over the next 4 years. As progress is made in developing fishing gear and practices that lower the risk of a serious entanglement beyond that gained from using the options on the current lists, new options will be added, and, if appropriate, less effective options may be deleted. There may also be a small immediate risk reduction because some fishermen not using any of these options would have to improve the way they set their gear. The gear technology lists may be modified in the future if new gear is developed and tested in field trials or if any of the characteristics on the list are determined by NMFS to be insufficient to reduce entanglement risks.

Comment 14: NMFS should revise the gear technology lists to require the use of gear characteristics that are more risk averse than is current practice.

Response: NMFS intends to continue funding research into gear technologies that reduce entanglement in order to upgrade the lists. Various possible weak links are being investigated. The operational forces exerted on fixed gear are being measured and the theoretical and actual forces exerted by whales are being studied to determine the best breaking strengths to use. So far, however, no new technology has been tested and determined to both lower the risk of a serious entanglement and be operationally feasible. NMFS intends to seek the advice of the TRT and the GAG, and to seek public comment, before changing the lists.

Comment 15: The gear technology lists undermine NMFS authority because these are regulations that serve no functional purpose.

Response: NMFS disagrees that the regulations serve no functional purpose and, therefore, does not agree with the conclusion that the lists undermine the authority of NMFS. As explained above, NMFS expects some fishermen to improve the way their gear is set, providing a small decrease in the risk of entanglement. Also, by establishing the concept of gear technology lists now and by working with fishermen and gear technology experts to develop gear modifications that will further reduce entanglement risk, more progress can be made in the future as we strive to achieve the long-term goal of the Plan.

Comment 16: A number of the options included on the gear technology lists have been proposed without adequate research to indicate that they may reduce entanglements.

Response: Because the process (or processes) by which entanglements occur is not known, it is difficult to conduct definitive research on whether any particular option on the gear technology lists is effective. The items on the gear technology lists were recommended by the GAG, based on descriptions by members of the disentanglement team of ways in which entanglements might occur. NMFS will

ask the GAG and the TRT to review the lists.

Comment 17: It would be useful to rank the options on the gear technology lists in order of their anticipated benefit.

Response: NMFS agrees, but is unable to rank the options at this time. It will refer this suggestion to the GAG and the TRT.

Comment 18: NMFS should postpone requiring compliance with the gear technology lists in areas where the risk of entanglement is low (i.e., those areas where only one option from the Gear Technology lists is required under the Plan).

Response: Entanglements have been reported from state and Federal waters throughout the northeastern U.S. waters. Therefore, there is value in requiring gear modifications in most waters. Part of the value of requiring compliance with the gear technology lists in all affected waters is to gain acceptance of the concept of a list of take reduction technologies. As technology is improved, NMFS believes it will be easier to make changes to the list than to get agreement to having the lists themselves. Also, if all persons fishing in affected waters are at least aware that they are subject to the lists, there may be more people thinking creatively about how to reduce bycatch without affecting the fishing characteristics of the gear.

Comment 19: Requiring only one option from the Gear Technology lists in lower risk areas is not enough.

Response: There was a divergence of views on this subject (see Comment 18). NMFS will refer this comment to the TRT and the GAG, which will review the gear technology lists.

Comment 20: Several commenters stated that a lead line weighing 100 pounds per 300 feet (91.4 m) is not manufactured. Some urged that the requirement be changed; others urged that it be dropped.

Response: Lead line with these characteristics is available, though it is not in common usage. However, since the option of using this kind of line is no longer on the gillnet gear technology list, the issue of availability is moot.

Comment 21: The breaking strengths of weak links may need to be adjusted for different fishing areas due to tide, current, and setting protocols, but the link should be the weakest link possible that is consistent with practical fishing gear handling and whale safety.

Response: NMFS agrees, but believes it needs more information before establishing region-specific breaking strengths. NMFS is collecting data on forces exerted on gear as well as by whales. This information will be presented to the GAG and the TRT.

Comment 22: There was support for allowing sinking buoy lines to have a section of floating line at the bottom to avoid snagging.

Response: This option is available to all fishing operations. The purpose of allowing the section of floating line is to minimize the risk of lost gear due to chafing on the ocean bottom.

Comment 23: The name ''Take Reduction Technology List'' is misleading and should be changed.

Response: For now, NMFS prefers the formal name because it is descriptive of its goal. However, ''gear technology list'' is already a more common informal term of the option lists.

Comment 24: One commenter urged NMFS not to amend gear or marking requirements without first obtaining the advice and consent of the GAG.

Response: NMFS intends to seek the advice of the GAG before changing the gear marking requirements or the Take Reduction Technology Lists. However, the consent of the GAG will not be a requirement of any changes.

Comment 25: The procedure NMFS has set forth for evaluating whether gear modifications may be allowed into closed areas is too vague. Setting a standard of reducing the risk of entanglement to ''acceptable levels'' is also too vague. A rigorous standard must be set.

Response: NMFS agrees that the standards are vague. Because the degree of risk reduction required to achieve the goals of the MMPA is not quantifiable, any standards are likely to be vague (see following comment). The value of engaging both the GAG and the TRT in review of any gear modifications is to ensure as much as possible that changes to the gear technology lists are appropriate from a variety of viewpoints.

Comment 26: The option of allowing lobster or gillnet gear into the closed areas should be exercised only if the gear reduces the risk of serious injury or mortality to whales to levels approaching zero.

Response: NMFS agrees with the point of view reflected in this suggestion, but notes that this standard is vague. The probability of entanglement in any given piece of fishing gear is already extremely low. Bycatch is a problem because right whales are so rare that even this low probability could harm the population. The suggested standard does not clarify (and perhaps cannot quantify) how much a gear modification must reduce that very low risk to be ''levels approaching zero.''

Comment 27: There were many comments making specific suggestions for changes to the gear technology lists. Included in these suggestions were (1) The 1100 lb (498.8 kg) maximum breaking strength for weak links is too great and will neither reduce the risk of entanglement to whales nor facilitate the whale breaking free from the gear; (2) Floating line at the bottom of a buoy line should be no longer than 10 percent of the depth of the water column; (3) There should be sinking ground lines between lobster traps year round in Cape Cod Bay, where the bottom is primarily sand and is less likely to cause extensive chafing or hinder the retrieval of lost gear as in the case of a rocky bottom; (4) NMFS should require four options of the Take Reduction Technology Lists in Cape Cod Bay, the Great South Channel and Stellwagen Bank/Jeffreys Ledge, instead of requiring only two; (5) NMFS should reduce the allowed diameter of line in critical habitat and the SB/JL area to 5⁄16 (0.79 cm); (6) NMFS should reduce the maximum breaking strength of weak links allowed in Cape Cod Bay and Stellwagen Bank/Jeffreys Ledge to 400 lb (181.4 kg); (7) NMFS should reduce the maximum breaking strength of weak links allowed on Stellwagen Bank/Jeffreys Ledge to 750 lb (340.1 kg); (8) NMFS should reduce the maximum breaking strength of weak links allowed in the Great South Channel to less than 1000 lb (453.5 kg); (9) NMFS should increase the maximum breaking strength of weak links allowed in the Great South Channel area to 1500 lb (680.3 kg); (10) In the Great South Channel, the floating line allowed for the bottom ten fathoms of the buoy line should be up to ½ inch (1.27 cm) diameter because of the problem of chafing in that region; (11) Lobster trawls should be required to use sinking ground line or at least to put a weight on each ground line to reduce the risk of entanglement in the ground line; (12) In Cape Cod Bay critical habitat and in the SB/JL area, NMFS should require gillnets to have (a) a floatline that is 5⁄16 inch (0.79 cm) diameter polypropylene when using net floats or ½ inch (1.27 cm) diameter polypropylene foam core for use in flounder nets; (b) weak links at or near the surface buoy of a breaking strength less than or equal to 400 lb (181.4 kg); (c) Danforth-style anchors to anchor the net instead of weights to increase the likelihood of the weak links parting; (d) nets attached to a lead line weighing 100 lb (45.4 kg) or more per 300 feet (91.4 m); (e) weak links between the net bridles on the float line; (f) sinking line for buoy line not to exceed 5⁄16 inch

(0.79 cm) diameter, except for the last 10 fathoms, which may be up to ½ inch (1.27 cm) polypropylene spliced in to prevent formation of a knot and to create no more than 2 fathoms of vertical lift; and (g) 15 fathom bridle and groundlines to anchors, and (13) In the Great South Channel critical habitat, NMFS should require gillnets to have: (a) a floatline that is 5⁄16 (0.79 cm) to 3⁄8 inch (0.95 cm) diameter polypropylene when using net floats or ½ inch (1.27 cm) diameter polypropylene foam core for use in flounder or monkfish nets; (b) weak links at or near the surface buoy of a breaking strength less than or equal to 1000 lb (453.5 kg); (c) Danforth-style anchors to anchor the net instead of weights to increase the likelihood of the weak links parting; (d) nets attached to a lead line weighing 100 lb (45.4 kg) or more per 300 feet (91.4 m); (e) weak links between the net bridles on the float line; (f) sinking line for buoy line not to exceed 5⁄16 inch (0.79 cm) to 3⁄8 inch (0.95 cm) diameter, except for the last 10 fathoms, which may be up to ½ inch (1.27 cm) polypropylene spliced in to prevent formation of a knot and to create no more than 2 fathoms of vertical lift; and (g) 15 fathom bridle and groundlines to anchors.

Response: These suggestions are useful. Some of them are conflicting; others may not work in all areas and, if implemented, could increase the amount of lost gear. NMFS intends to refer all these comments to the GAG and the TRT for their review.

Comments Regarding Gear Research

Comment 28: NMFS must make a strong financial commitment to an aggressive gear research and development program immediately.

Response: NMFS agrees and intends to continue to fund gear research for the foreseeable future. In the 1998 fiscal year, NMFS allocated $130,000 for gear research. Additional funds were dedicated to outreach. NMFS expects to allocate the same or more funds in 1999, 2000 and 2001.

Comment 29: The ALWTRP provides little incentive for the fishing industry to cooperate in gear research. NMFS must state clearly the implications of failing to find a technological solution to the entanglement problem.

Response: NMFS acknowledges the concern regarding the commitment of the fishing industry to cooperate in gear research. In actuality, the cooperation from the industry has been high, both in terms of ideas and testing. NMFS believes that the outreach efforts have informed the industry of the difficulties of reaching the zero mortality rate level, especially for right whales, and that the industry is working actively to find a technological solution to the problem.

Comment 30: NMFS should conduct research into the development of a weak buoy line, which might be more likely to reduce whale entanglements than weak links alone.

Response: NMFS agrees. NMFS is now in the process of awarding contracts to develop this kind of system.

Comment 31: Research should be done with baleen from dead whales to see how rope passes through it.

Response: NMFS agrees and has tested how rope passes through the baleen from several species this year. The results were presented to the GAG this fall.

Comment 32: NMFS should continue its research to determine whether a weaker breaking strength could be used in Cape Cod Bay.

Response: This research is now being undertaken; preliminary results were presented to the GAG this fall.

Comment 33: NMFS should not conduct research on weak links with 1100 lb (498.8 kg) breaking strengths, as this represents no risk reduction.

Response: NMFS agrees. It is not trying to develop a better link that breaks at 1100 lb (498.8 kg). Instead, it is trying to develop weaker links and is seeking information about what breaking strengths are appropriate in each region.

Comment 34: It would be useful to review photographs of entangled whales to try to determine how many of them have just line wrapped around the body (in which case a weak link at the buoy may not be helpful).

Response: NMFS agrees that this would be useful information. It is conducting detailed investigations of all entanglements reported in 1998.

Comment 35: Research should be done on how to put weak links at the bottom of fishing gear.

Response: NMFS agrees that this could be an important breakthrough, although it will take some creativity to design a weak bottom link that will still allow gear to be hauled. Research is now being conducted to develop a workable weak link to be used between the gear and the buoy line.

Comment 36: There should be research on ways to put weak links into offshore lobster gear because they are so much heavier than inshore gear.

Response: Offshore lobster gear tends to be substantially heavier than inshore gear. This may make it more difficult for a whale to break free if it becomes entangled. This heavier gear also makes the development of weak links more difficult. However, NMFS agrees that solving the problem of putting weak links into offshore lobster gear could be an important step forward in bycatch reduction and has issued a Request for Proposals to address this concern.

Comment 37: Research should be done on the configuration of ground lines between lobster traps; an upward bow of line between traps represents an entanglement risk.

Response: This is being done through in situ observations of both lobster and gillnet configurations while the gear is in the water.

Comments Regarding Gear Marking

Comment 38: Many commenters were opposed to the gear marking scheme as outlined in the interim final rule. Some commenters believed that the information that the gear marking would provide would not be specific enough to determine where entanglements were occurring. Others thought information about location might be misleading, since marked gear could be dragged to another location before an entanglement occurred. Some questioned whether the markings would remain detectable. Several believed that whatever benefit gear marking might provide would not outweigh the burden to the fishermen. Several commenters suggested that gear marking should not be required in exempted waters.

Response: The purpose of requiring gear marking is to obtain better information about where entanglements are taking place. NMFS agrees, therefore, that the marking scheme in the interim final rule was too general and would not have provided useful information about the specific region where an entanglement took place. However, a color-coded marking scheme that is specific for every region and gear type of interest would be extremely complicated. Given the reservations about gear marking, NMFS has decided that it would be best to have a relatively small-scale pilot program to determine whether the gear marking process works and if it provides useful information. Therefore, gear marking will only be required in critical habitats, in the southeast U.S. observer area, and in the SB/JL area. This scheme should provide specific information about where gear that entangles a whale was first set, provided the entanglements take place in one of these regions (which are the areas of greatest concern). It will also allow NMFS to determine whether gear marking works on an operational basis before requiring wide-scale marking. NMFS acknowledges that this gear marking scheme does not surmount the problem of gear that is dragged by some other force from one region to another and then entangles a whale. However,

implementation of gear marking in this pilot program may help to evaluate how big a problem this might be.

Comment 39: Gear marking is an important data gathering device that may assist in designing future bycatch reduction measures to achieve the zero mortality rate goal.

Response: NMFS believes that gear marking has the potential of providing important data on where entanglements occur. This information could contribute to future measures to reduce entanglement risk. There are questions about gear marking, both from an operational standpoint and with regard to the interpretation of the data it might provide. NMFS believes that the relatively restricted gear marking scheme in the final rule will help resolve those questions.

Comment 40: Gear marking does not reduce risk; it simply allows NMFS the possibility of knowing where entanglement occurred.

Response: NMFS agrees. However, the purpose of gear marking is exactly to know more about where an entanglement occurs in order to focus future take reduction measures on the places where the risk is greatest.

Comment 41: NMFS should consult with state governments, the TRT, and the GAG with a view to improving the gear marking system by 1999.

Response: NMFS will ask the GAG and the TRT to keep the gear marking scheme in this final rule under review. If major improvements are recommended, NMFS may modify the gear marking scheme again. However, NMFS expects to implement the current scheme for at least two years in order to get a better picture of its value. The states will be involved in the GAG and the TRT and their experience and concerns will be taken into account during the discussions in these groups.

Comment 42: Gear marking should not apply in exempted areas.

Response: NMFS no longer requires gear marking in exempted areas.

Area-specific Comments

Comment 43: The closures in critical habitats are not likely to result in significant risk reduction, even though they occur at times when right whales are most likely to be present, because the closures take place at times when fishing effort is low.

Response: NMFS believes the current closures are sufficient to achieve the short-term goal of the ALWTRP by providing protection in areas and times when right whales congregate. If it becomes apparent that the long-term goal cannot be met through gear modifications, further closures or other actions may be necessary.

Comment 44: The Cape Cod Bay critical habitat area should be closed to lobster gear as well as to sink gillnet gear from January 1 to May 15.

Response: NMFS believes that the restrictions imposed on lobster gear in Cape Cod Bay are sufficient to protect large whales from entanglement. If there is evidence that this belief is unfounded, NMFS will consider further restrictions in that area, including prohibiting lobster fishing from January 1 to May 15. The Commonwealth of Massachusetts is closely monitoring lobster fishing effort in Cape Cod Bay during the winter, so the effectiveness of the regulations in Cape Cod Bay should be determinable. The gear marking requirements for lobster gear in that area may also help to monitor the effectiveness of the regulations.

Comment 45: The decision to exempt Long Island Sound is appropriate, since no right whales have been seen there in 20 years.

Response: NMFS agrees.

Comment 46: The closure of the Great South Channel critical habitat to lobster gear from April 1 to June 30 is appropriate.

Response: NMFS agrees.

Comment 47: It is irresponsible to allow gillnetting in the ''sliver area'' of the Great South Channel because right whales are known to use the area during that time period.

Response: NMFS agrees that right whales and gillnet gear may occur in this area at the same time, as seen in the 1998 aerial surveys. It will consider closing this area in the future if the MMPA goals are not being met and will urge the TRT to discuss this option as a way to continue progress toward the long-term goal of the Plan. However, as explained in the interim final rule, NMFS understands that the gillnetters in the Sliver Area generally tend their gear, and hence are likely to see and report entangled whales quickly. One right whale that had been entangled elsewhere was disentangled based on a call from a gillnetter in the vicinity of the Sliver Area in 1997.

Comment 48: Gillnetting should be allowed in the Great South Channel once gear has been modified to prevent the potential of entanglement.

Response: NMFS agrees in concept but notes that this is another ''vague standard.'' It will be difficult to demonstrate that a gear modification will prevent entanglements, given our limited understanding of how entanglements occur. Because there will be differences in opinions of what constitutes an adequate demonstration of risk reduction, NMFS will seek the advice of the TRT and the GAG on whether to allow modified gear into a closed area.

Comment 49: The gillnet closure in the Great South Channel should only extend from April 1 to May 31 because the right whales are generally in the ''Area 1'' groundfish closure (where gear is prohibited year round) by June.

Response: NMFS is not aware of any analysis to support this assertion. Therefore, it will not change the timing of the closure in the Great South Channel in this final rule, but it will ask the TRT for advice on this suggestion.

Comment 50: The offshore lobster fishery represents a significant risk to right whales because the gear is heavier and because the chances of seeing an entangled whale and the ability to disentangle it are lower than the chances for inshore lobster gear. Therefore, more stringent measures should be applied to the offshore lobster gear.

Response: NMFS agrees that the gear used in the offshore lobster fishery is generally heavier than inshore gear. Furthermore, offshore lobster gear is known to entangle right whales. However, it is not clear that offshore lobster gear poses a greater threat to right whales than inshore gear. Lobster gear is sparse offshore, and right whales do not appear to be resident in any offshore area for predictable times of the year. NMFS notes that the heavier nature of the offshore gear will make it more difficult to devise a technological solution to the entanglement problems that may occur there. However, NMFS is funding gear research to find a solution to this problem.

Comment 51: There was support for the ALWTRP closure of the Cape Cod Bay critical habitat to gillnet gear for the period of 1 January to 15 May.

Response: NMFS continues to believe that a closure in this area for this duration is prudent. It notes, however, that there was support for allowing more flexibility in opening the area early if right whales leave before May 15. (See the following comment.)

Comment 52: The regulations for Cape Cod Bay critical habitat allow NMFS to lift restrictions if right whales have been determined to have left the Bay early. There should be a similar provision that allows NMFS to keep the area closed if right whales have not yet departed.

Response: Paragraph (g)(2)(v) of § 229.32 would allow NMFS to publish in the **Federal Register** criteria either to open an area if right whales had departed earlier than expected or to keep the area closed if right whales are

remaining in the area longer than expected.

Comment 53: The western boundary of the SB/JL area extends too far toward the coast. There have been whale sightings there, but no incidents of serious entanglements.

Response: Because there have been whale sightings in this area and because the actual locations of most entanglements are unknown, NMFS considers it prudent to keep the boundaries of the SB/JL area as in the interim final rule. It will seek the advice of the TRT as to whether the boundaries should be changed.

Comment 54: There is no need for gear modifications or gear marking in New Hampshire state waters.

Response: This final rule does not require gear marking in New Hampshire state waters. NMFS believes that the proximity to the relatively high-risk SB/JL restricted area, where several species of whales are commonly found, justifies requiring the use of at least one option from the Take Reduction Technology Lists.

Comment 55: There was support for the driftnet gear fishing practices requirements in mid-Atlantic waters.

Response: NMFS appreciates this statement of support. Note that the full rationale for this provision was presented in the **Federal Register** document containing the interim final rule.

Comment 56: One commenter supported the requirement that driftnets in the mid-Atlantic be tended, even though the commenter did not believe that it reduced risk. The commenter believed that tended nets were not less likely to entangle whales than were untended nets and that the only advantage would be the immediate knowledge that an entanglement occurred. Since the nearest disentanglement team was in New England, there would be no benefit to this knowledge.

Response: NMFS believes detecting an entanglement immediately improves the chances of a successful disentanglement. As the commenter noted, a whale caught in a tended driftnet would be noticed quickly. The exact position of that animal would then be known, and the fisherman could assist in keeping track of that animal until the disentanglement team could get to the site. This should increase the chances of disentangling the whale.

NMFS is expanding the disentanglement network to cover the mid-Atlantic area. The first workshop to train fishermen in the mid-Atlantic area to assist in responding to entanglements was held in early December 1998, and additional training sessions are planned for the future. NMFS hopes to avoid a similar situation as that which occurred in March 1998 when a humpback whale died in gillnet gear before a disentanglement team could reach the site.

Comment 57: There was support for the boundaries of the southeast U.S. restricted area and the southeast U.S. observer area and for the prohibition on driftnet use in the southeast U.S. restricted area during the times when right whales are likely to be present.

Response: NMFS appreciates the statement of support. The rationale for the boundaries was explained in the interim final rule.

Comment 58: The best dates for the closure of the southeast U.S. restricted area would be from November 1 through April 1.

Response: The dates of the southeast U.S. closure were selected by the TRT based on historical sighting data. Only two whales have been sighted in this area prior to November 15—one in 1986 and one in 1988. Therefore, NMFS believes the November 15 starting date for this closure is appropriate.

Comment 59: There was support for the strikenet provisions in the southeast U.S. restricted area.

Response: NMFS appreciates the statement of support. The rationale for the strikenet provisions was explained in the interim final rule.

Comment 60: There is no evidence that strikenetting has posed a risk to right whales. Therefore, restrictions on strikenetting offer little reduction in risk to right whales.

Response: As explained in the interim final rule, the southeast U.S. drift gillnet fishery for sharks is believed to be responsible for the entanglement of at least one right whale. Although strikenetting may pose less of a problem than other forms of gillnetting (and therefore is not prohibited during the closed season), the ALWTRP imposes some regulations to further reduce the potential for entanglement. Therefore, NMFS believes it is appropriate to take precautionary steps to reduce the risk of future entanglements.

Comment 61: NMFS should require that observers be on board vessels operating with strike nets in the southeast U.S. restricted area during the closed period.

Response: NMFS will attempt to place an observer on every vessel fishing for sharks with strikenets in the southeast U.S. restricted area during the closed period. It does not seem appropriate, however, to prohibit a person to fish in cases when NMFS fails to provide an observer for that trip.

Comment 62: Gear set adjacent to critical habitat should be subject to the same restrictions as that placed on gear fished within the critical habitat because animals do not respect lines drawn on maps.

Response: The boundaries of right whale critical habitats were selected because they enclosed about 85 percent of the historical right whale sightings. While it is true that right whales must pass through adjacent waters to reach any critical habitat, the chances of finding a right whale in an area adjacent to a critical habitat are substantially less than of finding a right whale in the critical habitat. Therefore, less restrictive measures are appropriate.

Because the right whale sighting record in the southeast U.S. area is relatively new, the critical habitat boundaries there may possibly be less appropriate than those in the northeast. As sighting data are collected, NMFS may consider revising the southeast U.S. critical habitat boundaries. However, gillnet restrictions in this area have been expanded north, south, and east beyond the critical habitat boundaries, encompassing all known sightings of right whales in the vicinity.

Comments Regarding Disentanglement Efforts

Comment 63: NMFS is placing too much faith in disentanglement as a key component of the ALWTRP. No serious wildlife management plan relies on first aid to injured animals in preference to preventing death and injury in the first place.

Response: NMFS agrees that preventing entanglement is preferable to disentangling whales if the cost and effectiveness of each method are equivalent. The ALWTRP relies on a mixture of measures to lower the risk of entanglement, such as closures of critical habitats and gear restrictions, and on disentanglements when whales do encounter gear. In addition, the ALWTRP encompasses research on cost-effective gear technologies that will further reduce entanglement risk and on outreach and education to show fishermen ways to set their gear that could reduce risk, to get ideas from fishermen as to fruitful avenues for gear research, and to encourage fishermen to assist in disentanglements.

Comment 64: The ALWTRP does not have a specific proposal to establish, train, and equip regional disentanglement response teams.

Response: NMFS is in the process of expanding the disentanglement teams. A permanent coordinator has been established in Maine, and efforts to set

up teams in the southeast and mid-Atlantic are underway.

Comment 65: Simply calling in an entanglement does not necessarily result in an animal being disentangled.

Response: NMFS agrees. However, reporting an entanglement is a necessary first step to removing the gear from an animal. The fishing industry can provide a wide-ranging sighting network in regions where other vessels rarely go. In addition, fishermen who call in an entanglement are sometimes able to keep track of the animal until the disentanglement team arrives and to assist in removing the gear. All these efforts can help improve the chances of removing the gear without serious injury to the whale.

Comment 66: Improving the disentanglement effort is more appropriate for achieving the long-term goal than the short-term goal.

Response: Improving the disentanglement effort is appropriate to achieve both the short-term and the long-term goal of the ALWTRP. NMFS intends to continue to improve the disentanglement effort to help achieve the long-term goal of the Plan.

Comment 67: Right whales are notoriously difficult to disentangle because they tend to thrash wildly, whereas other species may become more docile during disentanglements. Therefore, disentanglement should not be viewed as a long-term solution to the bycatch problem.

Response: NMFS acknowledges the difficulties in disentangling right whales. Although it intends to continue to improve the capabilities of the disentanglement network, it is also seeking to develop gear technologies that will reduce entanglements to help achieve the long-term goal of the Plan. NMFS will continue to support the disentanglement effort until an effective solution involving fishing gear or practices is found.

Comment 68: Because no vessel is allowed within 500 yd (457 m) of right whales, detecting entangled whales will be difficult, making reliance on disentanglement even more problematic.

Response: NMFS acknowledges the difficulties in detecting entangled right whales. Nevertheless, if an entangled right whale is seen, an effort should be made to remove the gear. The MMPA regulations specifically provide an exception for a vessel to approach a right whale closer than 500 yd (457 m) to investigate an entanglement, provided the vessel is authorized by NMFS to do so.

Comments Regarding Contingency Measures

Comment 69: Several commenters asked for clarification of the process by which NMFS could keep an area closed if right whales remain longer than expected or could open an area earlier than expected if the whales leave early.

Response: A timely process invoking the regulations of this final rule is not yet available. Because the criteria for opening an area early or for keeping an area closed are likely to both be controversial, NMFS intends to seek a recommendation from the TRT as to an acceptable process. Note, however, that section 118(g) of the MMPA gives NMFS authority to implement emergency closures to protect marine mammals if certain criteria are met. Likewise, the ESA allows emergency closures to protect right whales, humpback whales, and fin whales. These authorities could be used to keep critical habitats closed to fishing gear if right whales remain longer than expected (provided relevant criteria are met), although they cannot be used to open an area if right whales leave earlier than expected.

Comment 70: Several commenters expressed concern about the possibility that the SB/JL area might be closed to gillnetting if further take reduction measures are necessary. They asked for clarification on the process of making such a decision.

Response: Except when there is a need to implement emergency measures under the MMPA or the ESA as explained in response to comment 69, a decision to close the SB/JL area to gillnetting for the purposes of whale conservation would be made by NMFS after consultation with the TRT and after public comment on a proposed rule.

Comment 71: There was support for the provision to close critical habitat to a gear type if its allowance to be set in that area during a closed period results in a serious injury or mortality. However, if NMFS must take this action, it should consult with the TRT.

Response: NMFS intends to consult with the TRT if it is considering taking this action, unless an emergency situation exists.

Comment 72: One group felt that the provision that would require closure of critical habitat if gear that is allowed to be set there entangles a whale should not be mandatory. There are many factors in dealing with people, animals and the ocean, and some flexibility is needed. If fishermen believe that reporting an entanglement will lead to the closure of the fishery in that area, there will be less incentive to cooperate.

Response: NMFS is aware that regulations cannot account for every contingency, and that the possibility of closure could be a disincentive to reporting entangled whales. However, there is some risk in allowing gear to be set in areas when right whales are expected to be in the area. Although NMFS believes this risk is justifiable, it believes that it should have a clear contingency plan in case this risk is underestimated. It will, however, ask the TRT to provide advice on this matter.

Comment 73: Several commenters expressed disappointment that NMFS had removed specific criteria for extending gear requirements or closing an area in the event of anomalous right whales distributions. Some felt that the final rule must specify criteria for mandatory institution of closures in the case of anomalous right whale distribution. Others felt that NMFS should, at a minimum, implement an early warning mechanism to notify fishermen if right whales are in an area.

Response: The criteria contained in the proposed rule for closing an area in the event of anomalous right whale distributions were unilaterally developed by NMFS. During the comment period, a number of difficulties and ambiguities in the criteria were pointed out. Therefore, NMFS did not include the criteria in the interim final rule or in this final rule. It will, however, ask the TRT to develop appropriate ways of dealing with this situation. Note that NMFS has established a right whale alert program to inform marine users of the presence of right whales in an area.

Comments Regarding Constituent Outreach

Comment 74: Many commenters urged NMFS to continue and improve its outreach efforts, especially by going to where the fishermen are gathered, such as on the docks and at their forums and association meetings, rather than require industry to attend meetings convened by NMFS.

Response: NMFS intends to continue its outreach efforts, which are a key component of the ALWTRP.

Comments Regarding Process and Relationships

Comment 75: NMFS should clarify the roles of the TRT and the GAG.

Response: Each group serves a different function. The TRT is composed of persons representing all stakeholders and having a wide range of expertise on fishing practices and on scientific, technical, and policy matters. NMFS intends to use the TRT to advise

it on general strategies for reducing serious injuries and mortalities of large whales due to entanglements and for monitoring the progress of the ALWTRP toward its goals. The GAG is a technical body composed of persons with first-hand experience with fishing gear or disentanglements. Its function is specifically to provide technical advice on matters pertaining to fishing gear.

Comment 76: Several commenters supported the creation of a GAG and urged that it be continued.

Response: NMFS intends to continue to seek advice from the GAG on matters pertaining to development and use of technology that can reduce the risk of entangling large whales. NMFS convened a second meeting of the GAG in October 1998 and plans to convene the group at least once in 1999.

Comment 77: NMFS usurped the authority of the TRT by creating a competing body in the GAG. There was no representation from the conservation community in that Group.

Response: The TRT and the GAG are both advisory bodies to NMFS, and, as such, neither has authority to make decisions. One member of the conservation community with expertise in gear development was asked to participate on the GAG but was unable to do so. NMFS intends to continue to seek participation on the GAG from the conservation community, subject to the requirement that the participant have first-hand experience with fishing gear.

Comment 78: NMFS should require that recommendations of the GAG be reviewed by the TRT.

Response: To the extent that timing allows, NMFS will ask the TRT to review the recommendations of the GAG. In this regard, it will try to convene meetings of the GAG prior to meetings of the TRT in order that the work of the former can be reviewed by the latter.

Comment 79: Several commenters questioned the value of seeking the advice of the TRT on matters regarding the Take Reduction Technology Lists, since many of the TRT members are not fishermen or gear specialists. The GAG should have the lead responsibility for developing and recommending gear modifications.

Response: NMFS believes the GAG should have a leading role in developing and recommending gear modifications. However, the GAG need not be the only source of new ideas for gear modifications; the TRT or any person may make recommendations to NMFS about gear research. NMFS notes that keeping the TRT informed of the activities of the GAG will be essential for the TRT to fulfill its role of monitoring the progress of the ALWTRP.

Comment 80: All gear marking and modification proposals should be approved by the GAG.

Response: NMFS intends to consult with the GAG on matters pertaining to gear technology. However, the GAG does not have authority to approve gear or gear marking proposals.

Comment 81: The commitment to improving the involvement of the fishing industry in whale bycatch reduction is laudable but of questionable concrete benefit, especially if it results in recommendations to continue current fishing practice.

Response: NMFS believes that involving the fishing industry in whale bycatch reduction is the only practical way to achieve the goals of the ALWTRP. The fishing community has much to offer in the form of ideas for better gear and fishing techniques and in cooperation with disentanglements. NMFS recognizes that there are no guarantees that the Plan will reach its goals and that the success of the Plan will only be determined in retrospect, but it believes that the cooperation of the fishing community is essential to whatever actions are taken to reduce bycatch. Current research efforts are aimed at developing fishing practices and gear to protect whales that are feasible and, in some cases, can improve either fishing effectiveness or cost effectiveness.

Comment 82: NMFS should change its procedures for making changes to the regulations affecting the Cape Cod Bay critical habitat so as to keep in line with the regulations of the Commonwealth of Massachusetts.

Response: The regulations in this final rule are intended to be identical to the current regulations of the Commonwealth of Massachusetts regarding fishing in Cape Cod Bay critical habitat, except that NMFS cannot implement the Commonwealth's provisions to open the area early without going through a more formal rule making process.

Comment 83: NMFS and the New England Fishery Management Council should discuss the procedure for reviewing and testing gillnet gear modifications discussed in Framework 23 to the Northeast Multispecies Fishery Management Plan.

Response: NMFS agrees and will seek such a discussion.

Comments Regarding Exempted Waters

Comment 84: Several commenters felt that the boundary lines for exempted waters in the Gulf of Maine were confusing, especially as most coastal lobstermen in Maine set their gear on both sides of the exemption line. Some felt that NMFS should exempt all Maine state waters from the ALWTRP.

Response: Because right whales are known to move through Maine state waters, NMFS does not believe it would be prudent to exempt all state waters from the ALWTRP. Instead, to avoid the confusion caused by the exemption lines in the interim final rule, NMFS will exempt only the area designated in the proposed rule, i.e., waters landward of the first bridge. All other waters in the Gulf of Maine (including New Hampshire and Massachusetts State waters) are subject to the regulations in this final rule. NMFS notes that the gear marking requirement in the interim final rule no longer applies to Maine or New Hampshire State waters, and much of Massachusetts State waters is also exempt from gear marking.

Comment 85: The State of Rhode Island believed that the Sakonnet River and some coastal ponds were inadvertently omitted from the list of exempted areas.

Response: NMFS agrees. NMFS is not aware of any right whale sightings in these areas and, therefore, exempts them from the ALWTRP in this final rule.

Comment 86: One commenter believed that there was no justification for requiring any gear requirements in Rhode Island State waters, since right whale sightings are so rare there.

Response: Right whales occur in Rhode Island State waters from time to time, and therefore, the regulations in this final rule will apply to Rhode Island State waters (with limited exceptions). In 1998, one right whale was seen within 50 yards (45.7 m) of Watch Hill, RI, and 23 right whales were seen in one day east of Block Island off the mouth of Narragansett Bay.

Comments Regarding Other Aspects of the ALWTRP

Comment 87: The definition of ''lobster trap'' is too broad and could be construed to include black sea bass traps and even trawl gear.

Response: The definition in this final rule has been changed to clarify that it is intended to restrict only trap or pot-like gear, including black sea bass traps and scup pots, because they are so similar to lobster traps in the way they are set that it seems likely that large whales would have the same entanglement problems with this kind of gear.

Comment 88: Several persons felt that the prohibition on wet storage is unenforceable. At least one person believed that NMFS should require that gear that is not being actively fished be

removed from the water. While this requirement may be difficult to enforce, it has a greater potential for reducing entanglement risk to whales than simply requiring that gear be hauled at least every 30 days.

Response: NMFS recognizes that the prohibition on wet storage is difficult to enforce. It intends to seek the advice of the TRT on better ways to accomplish the purpose of this provision, which is to minimize the risk of entanglement in gear that is not actively being fished.

Comment 89: One commenter asked for clarification of whether the 30-day ''inspection'' requirement meant that gear had to be hauled back to land every 30 days to be inspected.

Response: Gear must be hauled at sea by its owner or designee at least once every 30 days. It does not need to be brought back to land every 30 days.

Comment 90: The prohibition on ''wet storage'' offers no risk reduction, because it only requires that a fisherman haul his gear once every 30 days. The gear does not need to be brought to land and can be left unbaited in the water.

Response: The intent of this provision was to reduce the practice of ''wet storage'' of inactive gear. The requirement that gear be hauled at least once every 30 days may not be the best way to achieve this. NMFS will ask the TRT to develop a better system for reducing entanglements in gear that is not being actively fished.

Comment 91: NMFS was asked to clarify the requirement that gear be set in such a way as to prevent line from floating at the surface at any time. One commenter pointed out that there will be line floating at the surface at some time during all normal lobster or gillnet fishing operations.

Response: The intent of this provision is that there should be no line floating at the surface when gear is not being hauled. NMFS understands that when gear is being set or hauled there will be time when some line floats at the surface. This is acceptable.

Comment 92: The prohibition on floating line at the surface will not result in any meaningful risk reduction, as current practice results in line that does not usually float at the surface.

Response: Not all fishermen set their gear so that there is no line floating at the surface, although doing so is considered to be the current best fishing practice. NMFS believes that this requirement will reduce the risk of entanglement, although the degree of risk reduction cannot be quantified.

Comment 93: There was support for the requirement that gear be set with no floating line at the surface, even though it might not result in any meaningful risk reduction.

Response: See response to Comment 92.

Comment 94: NMFS should develop an Early Warning System to alert fishermen to the presence of right whales in the high risk areas.

Response: In 1997, NMFS established a right whale alert system operating in and around Cape Cod Bay and Great South Channel critical habitats that informs any interested party of all reliable reports it receives of right whale sightings in the northeast. A similar program has been operating in the southeast U.S. for a number of years. Aerial surveys are flown every day that weather permits during the times when critical habitats are closed to fishing gear. All information is disseminated to a fax network, is available through a ''fax on demand'' system, and is posted on several web sites on the internet. The primary purpose of this alert system is to lower the risk of ship strikes, but the fishing community can avail itself of the information as well.

NMFS will ask the TRT to review the adequacy of this system.

Comment 95: NMFS must make a substantial financial commitment to improve monitoring the movements of large whales, as well as studying changes in the distribution of fixed gear.

Response: NMFS spent $1,000,000 in FY98 on right whale research and management along the U.S. east coast. NMFS expects the financial commitment to remain the same or to increase in FY99.

Comments on Other Matters

Comment 96: Several commenters expressed concern about the effects of ship strikes on the right whale population.

Response: NMFS is also concerned about the effects of ship strikes on right whales, although it cannot address these concerns under this Take Reduction Plan, which is limited under the MMPA to addressing interactions with commercial fishing. Several steps are being taken to address the ship strike problem in other ways. For example, the U.S. Government proposed and the International Maritime Organization (IMO) agreed that ships entering the Great South Channel call the Coast Guard, which can alert the ship when right whales are in the channel and can inform the ship of the general dangers of ships to right whales. The IMO approved this proposal in December, 1998. Implementation is scheduled to begin by July, 1999.

NMFS conducted aerial surveys to study the distribution of whales and ships during 1998. During these surveys, ships in the vicinity of right whales are contacted and informed of the importance of avoiding the whales. In addition, the right whale information in the Coast Pilots is being updated. Revisions to Coast Pilots 1 and 2 were published in May and June, 1998 (respectively); revisions to Coast Pilot 3 is scheduled to be published October, 1999 and to Coast Pilot 4 in June, 1999. Nearly all relevant navigation charts have been revised and updated with information on the 500-yard (457 m) approach rule and right whale critical habitat.

NMFS is also trying to develop cooperative agreements with individual shipping companies, both U.S. and foreign flagged, that operate routinely through right whale habitats.

Comment 97: Two commenters noted that NMFS had not commented on an analysis prepared by the State of Maine of the economic impact of the proposed rule.

Response: The analysis prepared by the State of Maine pertained to the proposed rule. The interim final rule was so different from the proposed rule that it was believed that a detailed response to the State's analysis was not necessary in the interim final rule. NMFS agreed in concept with the State of Maine's conclusion that the proposed regulations would have imposed a substantial economic impact on the Maine lobster fishery, although it disagreed with some of the specific assertions of the authors of the paper. NMFS has forwarded more detailed comments on the State of Maine's analysis to the State.

Comment 98: A suggestion was made that NMFS monitor the mid-water trawl fishery to determine its potential for takes of marine mammals.

Response: NMFS has placed some observers on mid-water trawl vessels, but it does not yet have information suggesting that this is an urgent or high priority situation for large whales. No large whales have been seen by observers to be entangled by this fishery.

Comment 99: One commenter noted that NMFS had said that it would continue to assess the appropriateness of the Category III fishery classification for the tuna hand line/hook-and-line fishery, groundfish longline/hook-and-line fishery, surface gillnet fishery for small pelagic fishes, trap fisheries other than lobster trap, finfish staked trap fisheries, and weir/stop seine fisheries. This commenter urged NMFS to change the classification of these fisheries to Category II in order to more effectively monitor them. The commenter also

recommended that NMFS require these fisheries to mark their gear.

Response: NMFS reviews the list of fisheries every year and seeks comments and information on the list through a **Federal Register** notification. So far, there has not been enough information submitted to justify classifying the preceding fisheries in Category II. NMFS intends to see if the gear marking scheme in this final rule provides useful information before broadening the scope of the gear marking requirement.

Comment 100: One commenter believed that NMFS could not issue an incidental take statement for right, humpback and fin whales, and felt, therefore, that NMFS does not have the authority to exempt fishermen from liability for illegal takes of listed species under the ESA. This commenter urged NMFS to inform fishermen that they should report entangled whales and that such a report would not result in prosecution if the whale is swimming with the entangled gear.

Response: NMFS agrees that it cannot exempt fishermen from liability for illegal takes of species listed under the ESA. It does, however, have discretion as to which cases it will prosecute. Unless there is evidence of willful harm to the whale, it is unlikely that NMFS would prosecute anyone calling in an entangled whale.

Comment 101: One commenter supported NMFS's plan to notify all Atlantic fisheries permit holders of the importance of bringing gear back to shore to be discarded.

Response: This has been done in the Northeast Region, where this problem is of greatest concern.

Comment 102: One commenter supported NMFS's decision to postpone further consideration of market incentives as a way to reduce bycatch.

Response: NMFS will refer the matter of market incentives to the TRT for further discussion.

Comment 103: NMFS should conduct a Regulatory Flexibility Analysis (RFA) of the ALWTRP regulations.

Response: NMFS conducted a regulatory impact review of the provisions of the interim final rule, describing the impact it was expected to have on small entities. Based on that review, NMFS certified that a Final Regulatory Flexibility Analysis (FRFA) was not necessary. The thresholds for Regulatory Flexibility Analysis determinations are: 5 percent loss of revenue for 20 percent of the participants; 5 percent increase in operations costs for 20 percent of the participants; and two percent of participants cease operations. None of these thresholds were met by the interim final rule.

Although no information was provided that called into question the conclusions of the Regulatory Impact Review for the interim final rule, NMFS conducted a FRFA for this rule. The FRFA concluded that the final rule of the ALWTRP would not constitute a significant regulatory action. In this final rule, the overall costs of compliance for the affected fisheries are expected to be less than for the interim final rule, because the gear marking requirement will apply to substantially fewer vessels.

The regulations in this final rule were also evaluated for purposes of E.O. 12866. It was determined that they would not have an annual impact on the economy of $100M or more and would not adversely affect the productivity, environment, public health or safety, or state, local, or tribal governments or communities in the long run. The final rule does not interfere with an action planned by another agency. It does not raise any novel legal and policy issues because it is implementing the provisions of the 1994 Amendments to the MMPA and the regulations already set in place to promulgate that statute.

Classification

An environmental assessment (EA) describing the impacts to the human environment that would result from the implementation of the ALWTRP was prepared for the interim final rule. The conclusion of that EA was that the action would pose no significant impact. There were no comments received disputing this conclusion. Because this final rule is substantially the same as the interim final rule, no further EA has been carried out.

NMFS prepared an Initial Regulatory Flexibility Analysis (IFRA) that described the impact the proposed rule was expected to have on small entities. The conclusion of this IFRA was that the economic impact on small entities was likely to be significant. This was due to the gear modifications which would have been required by the proposed rule. The interim final rule was substantially different than the proposed rule, which mitigated most of the economic consequences of the proposed rule. NMFS prepared a Regulatory Impact Review for the interim final rule. Based on that review, NMFS certified that the action would not have a significant economic impact on a substantial number of small entities, nonetheless, a Final Regulatory Flexibility Analysis (FRFA) was prepared for the final rule.

NMFS received only one public comment relating to the certification of the interim final rule. The commenter questioned the conclusion that the interim final rule would not have a significant impact on small businesses and asked that NMFS prepare a Regulatory Flexibility Analysis. No economic information was provided disputing the conclusions of the Regulatory Impact Review for the interim final rule. The final rule makes only minor changes to the interim final rule. However, to ensure that this final rule's economic impacts on small entities are fully considered, NMFS has prepared a FRFA. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The final rule is expected to have an economic impact on approximately 1100 lobster fishing operations and approximately 160 gillnet vessels (substantially fewer than the interim final rule). Based on 1996 logbook data, 8 gillnet vessels will have their revenue reduced by more than 5 percent. Approximately 72 lobster fishing operations may see their costs increase more than 10 percent. It is unlikely that 2 percent of participants will cease operations as a result of this action. The objectives and need for this action are described above in the preamble. In this final rule, the gear marking requirement will apply to substantially fewer vessels, thereby mitigating the overall economic burden of the interim final rule.

This final rule does not constitute a significant regulatory action under Executive Order 12866. (1) The action will not have an annual effect on the economy of more than $100 million. (2) The action will not adversely affect in a material way the economy, productivity, competition and jobs. (3) The action will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. (4) The action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect these fisheries. (5) The action will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The action does not raise novel legal or policy issues.

NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone

Management Act. The NMFS letter to the states indicated that responses regarding concurrence were due within 45 days of receipt of the letter and that lack of a response would be an assumption of concurrence with the consistency determination. No state disagreed with our conclusion that the ALWTRP is consistent with the approved coastal management program for that state.

This action contains two collection-of-information requirements and therefore is subject to the provisions of the Paperwork Reduction Act: (1) Persons setting lobster or gillnet gear in some areas of the Atlantic Ocean would be required to paint or otherwise mark their gear with two color codes, one color designating the type of gear, the other designating the area where the gear is set. These marking requirements apply in right whale critical habitats and in areas described below as the southeast Observer Area and as the SB/JL Restricted Area. The goal of this collection of information is to obtain more information on where large whales are being entangled and on what kind of gear is responsible for the entanglement. (2) From November 15 to March 31, persons netting for sharks in Atlantic waters off Florida and Georgia would be required to call NMFS 48 hours prior to departure to arrange for an observer. The purpose of this collection of information is to allow NMFS to coordinate fisheries observer coverage of the fishery.

The affected public includes business and other for-profit organizations (persons participating in the lobster and gillnet fisheries in specified areas). The gear marking requirements are expected to affect 1100 lobster fishermen and 160 gillnet fishermen. The call-in requirement in the southeast U.S. Observer Area is expected to affect 30 shark gillnet fishermen.

In a **Federal Register** document on June 5, 1998 (63 FR 30720), the public was asked to comment on the estimates of time and cost of compliance with the gear marking and call-in requirements. No comments were received during the comment period, which closed on August 4, 1998. The OMB has approved the gear marking requirement (OMB Control Number: 0648–0364). The call-in requirement is part of a general requirement for the shark industry and was approved earlier by OMB (OMB Control Number: 0648–0205). Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

The ALWTRP incorporates the reasonable and prudent alternatives of the three ESA Section 7 Biological Opinions on commercial fisheries for lobster, multispecies, and sharks, which remove the threat of jeopardy to the northern right whale. Furthermore, the ALWTRP incorporates other measures to reduce impacts to the other species of endangered large whales. In addition, a Section 7 consultation was conducted on the interim final rule implementing the ALWTRP. This consultation concluded that operation of the fisheries under the elements of this plan may affect but will not jeopardize the continued existence of any listed species under NMFS jurisdiction. This final rule incorporates few changes to the scope of the action considered in the biological opinion (July 15, 1997) prepared for the interim final rule, and a determination was made that no further consultation under Section 7 was necessary at this time. Therefore, all agency responsibilities under the ESA have been addressed.

Several marine mammal species, other than those listed as endangered or threatened under the ESA, are known to become entangled in gillnet and lobster gear. However, NMFS has determined that this action does not exacerbate the existing problem. Therefore, this action will not have an adverse impact on the marine mammals.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

NMFS has complied with the Administrative Procedures Act through publishing a proposed rule with a request for written comments, and by holding 12 public hearings in the action area of this rule. Because of substantial changes to the proposed rule based on public comments and the Gear Advisory Group, NMFS then published an interim final rule to allow for further comment on the plan. This final rule addresses the comments received on the interim final rule.

References

Barlow, J. *et al.* 1995. U.S. Marine Mammal Stock Assessments: Guidelines for preparations, background, and a summary of the 1995 assessments. NOAA Technical Memorandum NMFS–OPR–6. U.S. Department of Commerce, Washington, DC, p. 73.

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Kraus, S.D. 1990. Rates and potential causes of mortality in North Atlantic right whales (*Eubalaena glacialis*). Mar. Mamm. Sci. 6(4):278–291.

Smith, T.D. *et al.* 1998. An ocean-basin-wide mark-recapture study of the North Atlantic humpback whale (*Megaptera novaeangliae*). Mar. Mamm. Sci. (in press).

Waring, G.T. *et al.* 1997. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—1996. NOAA Technical Memorandum NMFS–NE–114. U.S. Department of Commerce, Northeast Fisheries Science Center, Woods Hole, MA. p. 250.

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Team Report. 1997. Draft Atlantic Large Whale Take Reduction Report. Report prepared by the Atlantic Large Whale Take Reduction Team and submitted to the National Marine Fisheries Service February 4, 1997. p. 79.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and record-keeping requirements.

Dated: February 8, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.2, definitions of ''Sink gillnet'', ''Lobster pot'', and ''Lobster pot trawl'' are removed. Definitions of ''Anchored gillnet'', ''Driftnet, drift gillnet or drift entanglement gear'', ''Gillnet'', ''Groundline'', ''Offshore lobster waters'', ''Strikenet or to fish with strikenet gear'', ''Tended gear or tend'', and ''Weak Link'' are revised, and the definitions of ''Lobster trap'', ''Lobster trap trawl'', ''Night'', ''Shark gillnetting'', ''Sink gillnet or stab net'' and ''To strikenet for sharks'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Anchored gillnet means any gillnet gear, including a sink gillnet or stab net,

that is set anywhere in the water column and which is anchored, secured or weighted to the bottom of the sea. Also called a set gillnet.

* * * * *

Driftnet, drift gillnet, or drift entanglement gear means a gillnet or gillnets that is/are unattached to the ocean bottom and not anchored, secured or weighted to the bottom, regardless of whether attached to a vessel.

* * * * *

Gillnet means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term ''gillnet'' includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g. stab and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

Groundline, with reference to lobster trap gear, means a line connecting lobster traps in a lobster trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

* * * * *

Lobster trap means any trap, pot or other similar type of enclosure that is placed on the ocean bottom and is designed to or is capable of catching lobsters. This definition includes but is not limited to lobster pots, black sea bass pots and scup pots.

Lobster trap trawl means two or more lobster traps attached to a single groundline.

* * * * *

Night means any time between one half hour before sunset and one half hour after sunrise.

* * * * *

Offshore lobster waters comprises entirely federal waters as defined by the area bounded by straight lines connecting the following points, in the order stated, except for waters in the Great South Channel critical right whale habitat:

Point	Latitude (°N)	Longitude (°W)
A	43° 58′	67° 22′
B	43° 41′	68° 00′
C	43° 12.5′	69° 00′
D	42° 49′	69° 40′
E	42° 15.5′	69° 40′
F	42° 10′	69° 56′
K	41° 10′	69° 06.5′
N	40° 45.5′	71° 34′
M	40° 27.5′	72° 14′
U	40° 12.5′	72° 48.5′
V	39° 50′	73° 01′
X	38° 39.5′	73° 40′
Y	38° 12′	73° 55′
Z	37° 12′	74° 44′
ZA	36° 33′	74° 47′

From point ''ZA'' east to the EEZ boundary and thence along the seaward EEZ boundary to point ''A''.

* * * * *

Shark gillnetting means to fish a gillnet in waters south of the South Carolina/Georgia border with webbing of 5 inches or greater stretched mesh.

Sink gillnet or *stab net* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Strikenet or *to fish with strikenet gear* means a gillnet that is designed so that, when it is deployed, it encircles or encloses an area of water either with the net or by utilizing the shoreline to complete encirclement, or to fish with such a net and method.

* * * * *

Tended gear or tend means fishing gear that is physically attached to a vessel in a way that is capable of harvesting fish, or to fish with gear attached to the vessel.

To strikenet for sharks means to fish with strikenet gear in waters south of the South Carolina/Georgia border with webbing of 5 inches or greater stretched mesh.

* * * * *

Weak link means a breakable component of gear that will part when subject to a certain tension load.

3. In § 229.3, paragraphs (g) through (j) are revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(g) It is prohibited to fish with lobster trap gear in the areas and for the times specified in § 229.32(c)(3) through (c)(9) unless the lobster trap gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(c)(1) through (c)(10).

(h) It is prohibited to fish with anchored gillnet gear in the areas and for the times specified in § 229.32(d)(2) through (d)(7) unless that gillnet gear complies with the closures, marking requirements, modifications, and restrictions specified in § 229.32(d)(1) through (d)(8).

(i) It is prohibited to fish with drift gillnets in the areas and for the times specified in § 229.32(e)(1) unless the drift gillnet gear complies with the restrictions specified in § 229.32(e)(1).

(j) It is prohibited to fish with shark gillnet gear in the areas and for the times specified in § 229.32(f)(1) and (3) unless the gear meets the marking requirements specified in § 229.32(f)(2) and complies with the restrictions and requirements specified in 229.32(f)(1) and (f)(3).

* * * * *

4. Section 229.32, in subpart C, is revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet and to waters landward of the following lines:

Rhode Island

41° 27.99′ N 71° 11.75′ W TO 41° 28.49′ N 71° 14.63′ W
(Sakonnet River)
41° 26.96′ N 71° 21.34′ W TO 41° 26.96′ N 71° 25.92′ W
(Narragansett Bay)
41° 22.41′ N 71° 30.80′ W TO 41° 22.41′ N 71° 30.85′ W
(Pt. Judith Pond Inlet)
41° 21.31′ N 71° 38.30′ W TO 41° 21.30′ N 71° 38.33′ W
(Ninigret Pond Inlet)
41° 19.90′ N 71° 43.08′ W TO 41° 19.90′ N 71° 43.10′ W
(Quonochontaug Pond Inlet)
41° 19.66′ N 71° 45.75′ W TO 41° 19.66′ N 71° 45.78′ W
(Weekapaug Pond Inlet)

New York

West of the line from the Northern fork of the eastern end of Long Island, NY (Orient Pt.) to Plum Island to Fisher's Island to Watch Hill, RI. (Long Island Sound)
41° 11.40′ N 72° 09.70′ W TO 41° 04.50′ N 71° 51.60′ W
(Gardiners Bay)
40° 50.30′ N 72° 28.50′ W TO 40° 50.36′ N 72° 28.67′ W
(Shinnecock Bay Inlet)
40° 45.70′ N 72° 45.15′ W TO 40° 45.72′ N 72° 45.30′ W
(Moriches Bay Inlet)
40° 37.32′ N 73° 18.40′ W TO 40° 38.00′ N 73° 18.56′ W
(Fire Island Inlet)
40° 34.40′ N 73° 34.55′ W TO 40° 35.08′ N 73° 35.22′ W
(Jones Inlet)

New Jersey

39° 45.90′ N 74° 05.90′ W TO 39° 45.15′ N 74° 06.20′ W
(Barnegat Inlet)
39° 30.70′ N 74° 16.70′ W TO 39° 26.30′ N 74° 19.75′ W
(Beach Haven to Brigantine Inlet)
38° 56.20′ N 74° 51.70′ W TO 38° 56.20′ N 74° 51.90′ W
(Cape May Inlet)
39° 16.70′ N 75° 14.60′ W TO 39° 11.25′ N 75° 23.90′ W
(Delaware Bay)

Maryland/Virginia

38° 19.48′ N 75° 05.10′ W TO 38° 19.35′ N 75° 05.25′ W
(Ocean City Inlet)
37° 52.50′ N 75° 24.30′ W TO 37° 11.90′ N 75° 48.30′ W
(Chincoteague to Ship Shoal Inlet)
37° 11.10′ N 75° 49.30′ W TO 37° 10.65′ N 75° 49.60′ W
(Little Inlet)
37° 07.00′ N 75° 53.75′ W TO 37° 05.30′ N 75° 56.50′ W
(Smith Island Inlet)

North Carolina to Florida

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Gear marking provisions*—(1)(i) *Specified gear.* Specified fishing gear consists of lobster trap gear and gillnet gear set in specified areas.

(ii) *Specified areas.* Specified areas are: Southeast U.S. Observer Area, Great South Channel Restricted Areas (including the Great South Channel Sliver Restricted Area), Cape Cod Bay Restricted Area, and the Stellwagen Bank/Jeffreys Ledge Restricted Area.

(iii) *Requirement.* From January 1, 1999, and as otherwise required in paragraphs (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), (d)(5)(ii), and (f)(2) of this section, any person who owns or fishes with specified fishing gear in specified areas must mark that gear as specified in paragraphs (b)(2) and (b)(3) of this section, unless otherwise required by the Assistant Administrator under paragraph (g) of this section.

(2) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

Lobster trap gear—red
Gillnet gear—green
Southeast U.S. Observer Area—blue
Great South Channel Restricted Areas—yellow
Cape Cod Bay Restricted Area—orange
Stellwagen Bank/Jeffreys Ledge Area—black

(3) *Markings.* All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the color codes must be permanently marked on or along the line or lines specified under paragraphs (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), (d)(5)(ii), and (f)(2) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. (For example, buoy lines of gillnet gear set in the Great South Channel Sliver Restricted Area must have a yellow mark and a green mark, each at least 4 inches (10.2 cm) long, with the yellow and green marks placed within 6 inches (15.2 cm) of each other. If the buoy line is yellow, the gear must have white and green marks.) In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic or heat shrink tubing, or other material, or a thin line may be woven into or through the line, or the line may be marked as approved in writing by the Assistant Administrator.

(4) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements under paragraph (g) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to lobster trap gear in regulated waters*—(1) *No line floating at the surface.* No person may fish with lobster trap gear that has any portion of the buoy line floating at the surface at any time, except that, if more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(2) *No wet storage of gear.* Lobster traps must be hauled out of the water at least once in 30 days.

(3) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with lobster trap gear in the Cape Cod Bay Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with lobster trap gear must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year. During the winter restricted period, no person may fish with lobster trap gear in the Cape Cod Bay Restricted Area unless that person's gear complies with the following requirements:

(A) *Weak links*—All buoy lines are attached to the buoy with a weak link. The breaking strength of this weak link must be no more than 500 lb (226.7 kg).

(B) *Multiple trap trawls*—All traps are set in either a two-trap string or in a trawl of four or more traps. Single traps and three trap trawls are not allowed. A two-trap string must have only one buoy line.

(C) *Sinking buoy lines*—All buoy lines are comprised of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(D) *Sinking ground line*—All ground lines are made entirely of sinking line.

(iv) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with lobster trap gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(4) *Great South Channel Restricted Lobster Area*—(i) *Area.* The Great South Channel restricted area consists of the Great South Channel Critical Habitat area specified under 50 CFR 216.13(a) unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with lobster trap gear in the Great South Channel Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with lobster trap gear must be marked within 2 ft (0.6 m) of the top

of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may fish with or set lobster trap gear in the Great South Channel restricted lobster area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iv) *Other restricted period.* From July 1 through March 31 no person may fish with lobster trap gear in the Great South Channel Restricted Lobster Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge restricted area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15′ N lat. line and west of the 70° W long. line, except for right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with lobster trap gear must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Gear requirements.* No person may fish with lobster trap gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with at least two of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(6) *Northern offshore lobster waters*—(i) *Area.* The northern offshore lobster waters area includes all offshore lobster waters (as defined in § 229.2) north of 41°30 N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* No person may fish with lobster trap gear in the northern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(7) *Southern offshore lobster waters*—(i) Area. The southern offshore lobster waters area includes all offshore lobster waters (as defined in § 229.2) south of 41°30 N lat., except for areas included in the Great South Channel Critical Habitat.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster trap gear in the southern offshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(8) *Northern inshore lobster waters*—(i) *Area.* Northern inshore lobster waters consist of all inshore lobster waters (as defined in § 229.2) north of 41°30′ N lat., except the Cape Cod Bay restricted area, Great South Channel restricted area and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Gear Requirements.* No person may fish with lobster trap gear in the northern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(9) *Southern inshore lobster waters*—(i) *Area.* The southern inshore lobster waters consist of all inshore lobster waters (as defined in § 229.2) south of 41°30′ N lat., except the Great South Channel restricted area.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with lobster trap gear in the southern inshore lobster waters area unless that person's gear complies with at least one of the characteristics of the Lobster Take Reduction Technology List in paragraph (c)(10) of this section. The Assistant Administrator may revise this requirement in accordance with paragraph (g) of this section.

(10) *Lobster Take Reduction Technology List.* The following gear characteristics comprise the Lobster Take Reduction Technology List:

(i) All buoy lines are 7⁄16 inches (1.11 cm) in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) For gear set in offshore lobster areas only, all buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 3780 lb (1714.3 kg).

(iv) For gear set in offshore lobster areas only, all buoys are attached to the buoy line by a section of rope no more than three fourths the diameter of the buoy line.

(v) All buoy lines are composed entirely of sinking line.

(vi) All ground lines are made of sinking line.

(d) *Restrictions applicable to anchored gillnet gear*—(1) *No line floating at the surface.* No person may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time, except that, if more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(2) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b), unless the Assistant Administrator changes that area under paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises the restricted period under paragraph (g) of this section. During the winter restricted period, no person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (g) of this section and the gear or practices comply with those specifications. The Assistant

Administrator may waive this closure for the remaining portion of any year through a notification in the **Federal Register** if NMFS determines that right whales have left the critical habitat and are unlikely to return for the remainder of the season.

(iv) *Other restricted period.* From May 16 through December 31 of each year, no person may fish with anchored gillnet gear in the Cape Cod Bay Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(3) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N/69°02′ W, 41°43.5′ N/69°36.3′ W, 42°10′ N/68°31′ W, and 41°38′ N/68°13′ W, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section. This area includes the Great South Channel critical habitat area specified under 50 CFR 216.13(a), except for the ''sliver area'' identified in paragraph (d)(4) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft (0.6 m) below a weak link) and midway along the length of the buoy line.

(iii) *Spring closed period.* The spring closed period for this area is from April 1 through June 30 of each year unless the Assistant Administrator revises the closed period in accordance with paragraph (g) of this section. During the spring closed period, no person may set or fish with anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (g) of this section and the gear or practices comply with those specifications.

(iv) *Other restricted period.* From July 1 through March 31 no person may fish with anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise this restricted period in accordance with paragraph (g) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N/69°02′ W, 41°43.5′ N/69°36.3′ W, 41°40′ N/69°45′ W, and 41°00′ N/69°05′ W, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft below a weak link) and midway along the length of the buoy line.

(iii) *Gear requirements.* No person may fish with anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area consists of all Federal waters of the Gulf of Maine that lie to the south of the 43°15′ N lat. line and west of the 70° W long. line, except right whale critical habitat, unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Gear marking requirements.* No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines used in connection with anchored gillnets must be marked within 2 ft (0.6 m) of the top of the buoy line (or 2 ft below a weak link) and midway along the length of the buoy line.

(iii) *Gear requirements.* No person may fish with anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that person's gear complies with at least two of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(6) *Other Northeast Waters Area*—(i) *Area.* The ''Other Northeast Waters Area'' consists of all northeast waters (as defined in § 229.2) except for the Cape Cod Bay Restricted Area, the Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area and the Stellwagen Bank/Jeffreys Ledge Restricted Area.

(ii) *Gear requirements.* No person may fish with anchored gillnet gear in the Other Northeast Waters Area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(7) *Mid-Atlantic Coastal Waters Area*—(i) *Area.* The mid-Atlantic Coastal Waters Area is defined in § 229.2.

(ii) *Gear requirements.* From December 1 through March 31, no person may fish with anchored gillnets in the Mid-Atlantic Coastal Waters Area unless that person's gear complies with at least one of the characteristics of the Gillnet Take Reduction Technology List in paragraph (d)(8) of this section. The Assistant Administrator may revise these requirements in accordance with paragraph (g) of this section.

(8) *Gillnet Take Reduction Technology List.* The following gear characteristics comprise the Gillnet Take Reduction Technology List:

(i) All buoy lines are 7/16 inches (1.11 cm) in diameter or less.

(ii) All buoys are attached to the buoy line with a weak link having a maximum breaking strength of up to 1100 lb (498.8 kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator.

(iii) Weak links with a breaking strength of up to 1100 lb (498.8 kg) are installed in the float rope between net panels.

(iv) All buoy lines are composed entirely of sinking line.

(e) *Restrictions applicable to mid-Atlantic driftnet gear*—(1) *Restrictions.* From December 1 through March 31 of the following year, no person may fish with driftnet gear at night in the mid-Atlantic coastal waters area unless that gear is tended. During that time, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator

may revise these requirements in accordance with paragraph (g) of this section.

(f) *Restrictions applicable to shark gillnet gear*—(1) Management areas—(i) *Southeast U.S. restricted area.* The southeast U.S. restricted area consists of the area from 32°00′ N lat. (near Savannah, GA) south to 27°51′ N lat. (near Sebastian Inlet, FL), extending from the shore eastward to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(ii) *Southeast U.S. observer area.* The southeast U.S. observer area consists of the southeast U.S. restricted area and an additional area along the coast south to 26°46.5′ N lat. (near West Palm Beach, FL) and extending from the shore eastward out to 80°00′ W long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(2) *Gear marking requirements.* From November 15 through March 31 of the following year, no person may fish with gillnet gear in the southeast U.S. observer area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines must be marked within 2 ft (0.6 m) of the top of the buoy line and midway along the length of the buoy line. From November 15, 1999, each net panel must be marked along both the float line and the lead line at least once every 100 yards (92.4 m).

(3) Restrictions—(i) *Observer requirement.* No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(ii) *Closure.* Except as provided under paragraph (f)(3)(iii) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the closed period. The closed period for this area is from November 15 through March 31 of the following year, unless the Assistant Administrator changes that closed period in accordance with paragraph (g) of this section.

(iii) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restriction under paragraph (f)(3)(ii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

(g) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay critical habitat from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, or in the Southeast U.S. Restricted Area from November 15 through March 31 as a result of an entanglement by lobster or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (g)(2) of this section or unless other measures are implemented under paragraph (g)(2).

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

[FR Doc. 99–3507 Filed 2–10–99; 2:45 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 020999F]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to protect the Atlantic Spanish mackerel resource.

DATES: This rule is effective 6:00 a.m., local time, February 10, 1999, through March 31, 1999, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

An adjusted quota and commercial trip limits were recommended by the Councils and implemented by NMFS for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 622.44(b)(2), (63 FR 8353, February 19, 1998), the adjusted quota is 3.75 million lb (1.70 million kg). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic group Spanish mackerel from the southern

zone is taken until 100 percent of the adjusted quota is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,500 lb (680 kg). The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42'45.6'' N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic group Spanish mackerel from the southern zone was taken by February 8, 1999. Accordingly, the 1,500–lb (680–kg) per day commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 6:00 a.m., local time, February 10, 1999, through March 31, 1999, unless changed by further notification in the **Federal Register**.

Classification

This action is taken under 50 CFR 622.44(b)(2)and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 9, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–3561 Filed 2–9–99; 5:05 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 020999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Mothership Component in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the mothership component in the critical habitat/catcher vessel operation area (CH/CVOA) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the A season limit of pollock total allowable catch specified to the mothership component for harvest within the CH/CVOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 9, 1999, until 1200 hrs, A.l.t., August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(C)(3), and the revised interim 1999 total allowable catch (TAC) amounts for pollock in the Bering Sea Subarea (64 FR 3437, January 22, 1999), the A season limit of pollock TAC specified to the mothership component for harvest within the CH/CVOA is 16,785 metric tons.

In accordance with § 679.22(a)(11)(iv)(A)&(C) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season limit of pollock total allowable catch specified to the mothership component for harvest within the CH/CVOA has been reached.

Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the mothership component within the CH/CVOA conservation zone in the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the A season limit of pollock total allowable catch specified to the mothership component for harvest within the CH/CVOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in jeopardizing the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 9, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–3574 Filed 2–9–99; 4:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 30
Tuesday, February 16, 1999

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–3]

Proposed Amendment of Class E Airspace; Toccoa, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: this notice proposes to amend Class E airspace at Toccoa, GA. The Visual Omni Range (VOR) or Global Positioning System (GPS) Runway (RWY) 20 Standard Instrument Approach Procedure (SIAP) has been amended for Toccoa RG Letourneau Field Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Toccoa RG Letourneau Field Airport. An extension via the 023 degree radial of the Foothills (ODF) VOR for the VOR or GPS RWY 20 SIAP will be necessary. The length of the Class E airspace extension northeast of the VOR will be 7 miles, and the width of the airspace extension will be 6.8 miles.

DATES: Comments must be received on or before March 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–3, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Toccoa, GA. The VOR or GPS RWY 20 SIAP has been amended for Toccoa RG Letourneau Field Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Toccoa RG Letourneau Field Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO GA E5 Toccoa, GA [Revised]

Toccoa RG Letourneau Field Airport, GA
(Lat. 34°35′37″N, long. 83°17′45″W
Foothills VOR
(Lat. 34°41′45″N, long. 83°17′52″W
Habersham County Airport
(Lat. 34°30′01″N, long. 83°33′20″W

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Toccoa RG Letourneau Field Airport and within 3.4-miles each side of the 023 degree radial from the Foothills VOR, extending 7 miles northeast of the VOR and within an 8.2-mile radius of Habersham County Airport.

* * * * *

Issued in College Park, Georgia, on February 4, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–3686 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AE98

Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Substantial Gainful Activity Amounts

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would raise from $500 to $700 the average monthly earnings guidelines used to determine whether work done by persons with impairments other than blindness is substantial gainful activity (SGA) for purposes of Social Security disability benefits provided under title II of the Social Security Act (the Act) and Supplemental Security Income (SSI) benefits based on disability under title XVI of the Act. (Eligibility for benefits under titles II and XVI also confers eligibility for related Medicare and Medicaid benefits under titles XVIII and XIX of the Act.) We propose to revise this level as part of efforts to encourage individuals with disabilities to attempt to work, and to provide an updated indicator of when earnings demonstrate the ability to engage in SGA. The proposed increase reflects our assessment of the amount which roughly corresponds to wage growth since the last increase in 1990.

DATES: In order to be considered, we must receive your comments on the specific proposal to increase the amount of the earnings guidelines, by March 18, 1999.

Note: Under the heading ''Additional Items,'' we ask for more general suggestions concerning work incentive provisions and how best to review and revise guidelines in the future. We will accept these suggestions until April 19, 1999.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235; sent by telefax to (410) 966–2830; sent by E-mail to ''*regulations@ssa.gov*''; or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Baumel, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–9834 or TTY (410) 966–6210.

SUPPLEMENTARY INFORMATION:

Background

Under 20 CFR 404.1572 and 416.972, the term ''substantial gainful activity'' means work activity that involves significant physical or mental effort and that is done for pay or profit. Work activity is gainful if it is the kind of work usually performed for pay or profit, whether or not a profit is realized. Sections 223(d)(4)(A) and 1614(a)(3)(E) of the Act require the Commissioner to prescribe by regulations the criteria for determining when earnings demonstrate an individual's ability to engage in SGA.

These proposed rules would increase the amount in the monthly earnings guidelines used in determining whether an individual's work activities demonstrate that he or she is able to perform SGA. Under the current guidelines in §§ 404.1574 and 416.974, if a person claiming title II or title XVI benefits or receiving title II benefits based on disability had earnings from work activities as an employee (including as an employee of a sheltered workshop or comparable facility) that averaged more than $500 a month, we would ordinarily consider that the person had engaged in SGA. Under the proposed rules, the $500 amount would be raised to $700 per month.

The amount of average monthly earnings that ordinarily demonstrates SGA has not been increased since January 1, 1990. We are revising this level now after reassessing the current guidelines as part of our effort to improve incentives to encourage individuals with disabilities to attempt to work. We believe that the increase in the amount of earnings that constitutes SGA would provide an updated indicator of when earnings demonstrate the ability to engage in SGA and would be a significant improvement to the existing work incentive provisions.

Proposed Regulations

We propose to revise §§ 404.1574(b)(2) and (4), and 416.974(b)(2) and (4) to increase from $500 to $700 the earnings guidelines that we use to determine whether a non-blind employee is engaging in SGA. (This standard would also be applied to the self-employed in certain circumstances by cross-references now present in §§ 404.1575 and 416.975.) We have not raised the SGA earnings amount for approximately nine years. We are proposing to raise the SGA level now to $700, which roughly corresponds to wage growth since the last increase in 1990.

Additional Items

While these proposed rules would make specific increases to the amount of earnings that will ordinarily show that a person has engaged in SGA, we will, at a future point, consider making other changes in this area as well. Therefore, we invite the public to provide us with general suggestions for changes which might be desirable in related provisions (e.g., the trial work period services amount, and the earnings level that ordinarily demonstrates that an individual has not engaged in SGA). We also request suggestions reviewing and revising SGA guidelines in the future. Please note that, in order to be considered, we must receive comments on the specific provisions in these proposed rules by March 18, 1999. However, we will accept general suggestions on the ''additional items'' mentioned in this paragraph if they are received by April 19, 1999.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the **Federal Register**. To download the file, modem dial 202–512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Justification for 30-day Comment Period

Executive Order 12866 states that, in most cases, an agency should provide a 60-day period for comments on its proposed rules. We ordinarily provide a 60-day period. However, for these proposed rules we are providing a 30-day comment period. As these proposed rules would increase the scope of disability eligibility for Old-age, Survivors and Disability Insurance and SSI benefits, as well as for related Medicare and Medicaid benefits, we believe it is in the public interest to proceed quickly to advance this change. In this way, this important change could have an impact at the earliest date practicable. However, it remains important to us to consider public comments on the proposal. Therefore, we are establishing a 30-day comment period.

Paperwork Reduction Act

These regulations impose no new reporting/record-keeping requirements necessitating clearance by OMB.

Executive Order 12866

Regulatory Impact Analysis

Introduction—Based on the costs associated with these proposed rules, the Social Security Administration has determined that they require an assessment of costs and benefits to society per Executive Order 12866 because they meet the definition of a ''significant regulatory action.'' These proposed rules also meet the definition of a ''major rule'' under 5 U.S.C. 801ff., and this assessment also fulfills the requirements of those provisions as well. In addition, SSA has determined, as required under the aforementioned statute, that these regulations do not create any unfunded mandates for State or local entities pursuant to sections 202–205 of the Unfunded Mandates Act of 1995. The Office of Management and Budget has reviewed this proposed rule.

Executive Order 12866 includes in its definition of a ''significant regulatory action'' one which generates a major increase in costs for the Federal government. Accordingly, a discussion follows of the effect of the regulations and general information on estimated costs and benefits to society.

Nature of the Program—Benefits to disabled and blind individuals are provided under title II and title XVI of the Act. Disability is defined under both programs as, ''* * * inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * *.'' Related medical benefits to disabled and blind individuals are provided under title XVIII and title XIX of the Act.

We use earnings guidelines to evaluate a person's work activity to determine whether the work activity is SGA and therefore whether that person may be considered disabled under the law. While this is only one of the tests used to determine disability, it is a critical threshold in disability evaluation. We evaluate the work activity of persons claiming or receiving disability benefits under title II of the Act and that of persons claiming benefits because of a disability under title XVI of the Act. These proposed regulations would increase the amounts of those earnings guidelines. We have not raised the SGA earnings amount for approximately nine years. We are proposing to raise it now to approximate wage growth during that time.

Intended Effect—We expect that the increase in the amount of earnings that constitute SGA would provide a greater incentive for many beneficiaries to attempt to work or, if already working, to continue to work or increase their work effort. Hundreds of thousands of beneficiaries already work and could be advantaged by the proposed revisions. For these individuals, as well as those not now working, the proposed revisions could enhance their potential to participate in the workforce, and, as a consequence, improve their economic well-being by increasing their income through earnings.

In addition, the increase would permit some individuals with disabilities who have earnings in excess of the current regulatory limit ($500) but less than the amount in these proposed rules ($700), to receive benefits. We estimate that by 2004, an additional 27,000 individuals who would not otherwise be receiving benefits will do so as a result of these changes. This estimate is based on analyses of the earnings distributions of a representative sample of disabled individuals.

The following chart provides the estimated increases in Old-age, Survivors and Disability Insurance payments, Federal SSI payments, Medicare benefits, and Federal share of Medicaid benefits due to the proposed increase in the SGA amount to $700 in 1999, for fiscal years 1999–2004. (Amounts are in millions.)

	Fiscal year						Total, 1999–2004
	1999	2000	2001	2002	2003	2004	
OASDI	10	30	55	75	100	120	390
SSI	15	20	25	25	30	30	145
Medicare	10	20	30	50	60	80	250
Medicaid	40	60	70	75	90	100	435
Subtotal, all programs	75	130	180	225	280	330	1220

Notes:
[1] Totals may not equal sum of rounded components.
[2] Above estimates based on the assumptions underlying the President's FY 2000 Budget, including the SSA Actuary's normal assumption of an SGA amount increasing with average wages.
[3] Estimates for Medicare and Medicaid provided by the Office of the Actuary in the Health Care Financing Administration (HCFA).

In addition, since States share in the costs of financing Medicaid, States will have some costs associated with the proposed increase in the SGA as well. These costs are estimated by HCFA to be (in millions):

	Fiscal year						Total, 1999–2004
	1999	2000	2001	2002	2003	2204	
Medicaid State Share	30	45	55	55	70	75	330

Although the costs are significant, we consider these changes as necessary improvements to existing work incentives. The costs of these regulations would be paid for through programmatic and regulatory changes.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect individuals who are applying for or receiving title II or applying for title XVI benefits because of disability, and States which administer the Medicaid program.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: February 10, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons stated in the preamble, the Social Security Administration proposes to amend parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1574 is amended by revising paragraph (b)(2)(vi) and (b)(2)(vii), adding a new paragraph (b)(2)(viii), revising paragraphs (b)(4)(vi) and (b)(4)(vii) and adding a new paragraph (b)(4)(viii) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990;

(vii) Your earnings averaged more than $500 a month after calendar year 1989 and before (*insert first day of the month beginning after 30 days following date of publication of the final rules in the* **Federal Register**); or

(viii) Your earnings averaged more than $700 a month after *(insert date that is one day earlier than date shown at the end of paragraph (b)(2)(vii) of this section).*

* * * * *

(4) * * *

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990;

(vii) Your average earnings are not greater than $500 a month after calendar year 1989 and before *(insert first day of the month beginning after 30 days following date of publication of the final rules in the* **Federal Register)**; or

(viii) Your average earnings are not greater than $700 a month after *(insert date that is one day earlier than date shown at the end of paragraph (b)(4)(vii) of this section).*

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for Subpart I of Part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c) and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

2. Section 416.974 is amended by revising paragraph (b)(2)(vi) and (b)(2)(vii), adding a new paragraph (b)(2)(viii), revising paragraphs (b)(4)(vi) and (b)(4)(vii) and adding a new paragraph (b)(4)(viii) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) * * *

(2) * * *

(vi) Your earnings averaged more than $300 a month in calendar years after 1979 and before 1990;

(vii) Your earnings averaged more than $500 a month after calendar year 1989 and before (insert first day of the month beginning after 30 days following date of publication of the final rules in the **Federal Register**); or

(viii) Your earnings averaged more than $700 a month after (insert date that is one day earlier than date shown at the end of paragraph (b)(2)(vii) of this section).

* * * * *

(4) * * *

(vi) Your average earnings are not greater than $300 a month in calendar years after 1979 and before 1990;

(vii) Your average earnings are not greater than $500 a month after calendar year 1989 and before (insert first day of the month beginning after 30 days following date of publication of the final rules in the **Federal Register**); or

(viii) Your average earnings are not greater than $700 a month after (insert date that is one day earlier than date shown at the end of paragraph (b)(4)(vii) of this section).

* * * * *

[FR Doc. 99–3677 Filed 2–12–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98D–0785]

Draft Guidance for Industry on Developing Medical Imaging Drugs and Biologics; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of guidance; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending until April 14, 1999, the comment period for the draft guidance for industry entitled ''Developing Medical Imaging Drugs and Biologics.'' FDA published a notice of availability of the draft guidance in the **Federal Register** of October 14, 1998 (63 FR 55067). FDA is taking this action in response to requests for an extension.

DATES: Written comments on the draft guidance may be submitted by April 14, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX or 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your request. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert K. Leedham, Jr., Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3500, or George Q. Mills, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 14, 1998 (63 FR 55067), FDA published a notice announcing the availability of a draft guidance for industry entitled ''Developing Medical Imaging Drugs and Biologics.'' The draft guidance is intended to assist developers of drug and biological products used for medical imaging, as well as radiopharmaceutical drugs used in disease diagnosis, in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance also provides information on how the agency would interpret and apply provisions in proposed regulations, published in the **Federal Register** of May 22, 1998 (63 FR 28301), for in vivo radiopharmaceuticals used in the diagnosis and monitoring of diseases. The draft guidance applies to medical imaging drugs that are used for diagnosis and monitoring and that are administered in vivo. The draft guidance is not intended to apply to possible therapeutic uses of these drugs or to in vitro diagnostic products. Interested persons were given until December 14, 1998, to submit written comments on the draft guidance.

In a notice published in the **Federal Register** of January 5, 1999 (64 FR 457), FDA reopened the comment period on the draft guidance until February 12, 1999.

At a January 25, 1999, public meeting on the draft guidance requested by the Council on Radionuclides and Radiopharmaceuticals (CORAR), a representative of Bracco Diagnostics Inc. (Bracco) requested that FDA extend the comment period on the draft guidance to allow manufacturers of contrast media to attempt to reach consensus and submit comments on the draft guidance. On January 27, 1999, FDA received letters from Bracco and from CORAR's legal counsel requesting that the agency extend the comment period.

In response to these requests, FDA has decided to extend the comment period on the draft guidance until April 14, 1999, to allow the public more time to review and comment on its contents. FDA also intends to hold another public meeting to discuss the draft guidance prior to the close of the comment period.

Interested persons may, on or before April 14, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 9, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–3634 Filed 2–12–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 25

[A.G. Order No. 2206–99]

RIN 1105–AA56

Regulations Under the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, as Amended

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Department of Justice is publishing proposed regulations to implement the Pam Lychner Sexual Offender Tracking and Identification Act of 1996, as amended. The proposed regulations describe the operation of the National Sex Offender Registry and set forth notification requirements to be followed by registered sex offenders who move to another state.

DATES: Submit comments on or before April 19, 1999.

ADDRESSES: Send comments to the Unit Chief, Office of Crimes Against Children, Federal Bureau of Investigation, 935 Pennsylvania Avenue, N.W., Room 4127, Washington, DC 20535.

FOR FURTHER INFORMATION CONTACT: Venetia Sims, Criminal Justice Information Systems Division, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306.

SUPPLEMENTARY INFORMATION: The proposed regulations address two topics: (1) The operation of the National Sex Offender Registry (''NSOR'') established by the Federal Bureau of Investigation (''FBI'') in accordance with Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. 104–236, 110 Stat. 3093, as amended (the ''Pam Lychner Act'' or the ''Act''); and (2) the action required of registered sex offenders who move to another state. With respect to the NSOR, the regulations describe how the interim and permanent registries will operate and what action can be taken by states to notify the FBI and update the NSOR if a convicted sex offender fails to comply with his or her state registration obligations. With respect to offenders who move interstate, the regulations notify such offenders that they should contact the local FBI office in their new state of residence so that the FBI can take the steps necessary to ensure that the new state of residence has also been

informed of the move and that the offender is included in the NSOR.

In a recent amendment, the Pam Lychner Act was modified so that states have additional time to establish ''minimally sufficient'' sex offender registration programs. As a result, the proposed regulations do not address FBI registration of sex offenders in states that do not have minimally sufficient programs.

The proposed regulations also do not address the Pam Lychner Act's amendments to prior legislation, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. 103–322, § 170101, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071) (the ''Jacob Wetterling Act''), which sets standards for state sex offender registration programs. On January 5, 1999, the Department published guidelines for the Jacob Wetterling Act (*see* 64 FR 572), that take those amendments into account.

Statutory Authority

The proposed regulations fulfill a statutory directive to the Attorney General in section 9 of the Pam Lychner Act to issue regulations to carry out the Act and the amendments made by the Act. The Pam Lychner Act amended subtitle A of title XVII of the Violent Crime Control and Law Enforcement Act of 1994 to add a new section, codified at 42 U.S.C. 14072. Since its enactment, the Pam Lychner Act has itself been amended, by section 115 of the General Provisions of Title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105–119, 111 Stat. 2440 (the ''CJSA''). These proposed regulations relate to the amended provisions of the Pam Lychner Act that are now in effect.

Executive Order 12866

The proposed regulations have been drafted and reviewed in accordance with Executive Order 12866. The Department of Justice has determined that the proposed regulations do not constitute a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly the proposed regulations have not been reviewed by the Office of Management and Budget.

Executive Order 12612

The proposed regulations will not have substantial direct effect on states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed these proposed regulations and by approving them certifies that the regulations will not have a significant economic impact on a substantial number of small entities for the following reasons. The proposed regulations primarily address the operation of the NSOR established by the FBI. Recent amendments to the Jacob Wetterling Act in section 115 of the CJSA condition the receipt of certain federal funds on a state's participation in the NSOR. In order to impose the least financial burden on participating states, the FBI allows them to provide data for the NSOR in three ways: (1) By making a computer entry on the existing Interstate Identification Index (''III''); (2) by submitting a computer tape to the FBI; or (3) by submitting a written form containing all the necessary registration information. In addition, in order to facilitate broad participation in the NSOR, the FBI permits—but does not require—authorized local government agencies to enter, delete, and modify information in the registry using the III, as long as the state has implemented the necessary programming changes. This option allows those small government entities that provide data to the NSOR to do so in the most cost-effective manner possible.

Unfunded Mandates Reform Act of 1995

As noted, recent amendments in the CJSA to the Jacob Wetterling Act make state participation in the NSOR a condition of receipt of certain federal funds. As a result, these regulations do not impose a ''federal mandate'' within the meaning of the Unfunded Mandates Reform Act of 1995. Moreover, these regulations will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandate Reform Act.

Small Business Regulatory Enforcement Fairness Act of 1996

These regulations do not qualify as a major role as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. The regulations will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Amendments to the Pam Lychner Act

Under the Pam Lychner Act, the FBI is required to register sex offenders who reside in states that have not established ''minimally sufficient'' sex offender registration systems. The CJSA amended the criteria that state registration programs must satisfy in order to qualify as minimally sufficient and extended the time period for states to establish such programs. As assessment of minimal sufficiency to determine in which states the FBI must directly register sex offenders will be made by the extended date for establishing a minimally sufficient program provided under the CJSA, October 3, 1999.

Amendments to the Jacob Wetterling Act

The Pam Lychner's Act amendments to the Jacob Wetterling Act, which set standards for state sex offender registration programs, are not addressed in these regulations. The Department of Justice has published guidelines under the Jacob Wetterling Act, *see* 64 FR 572, that take account of the Pam Lychner Act's changes and subsequent amendments.

List of Subjects in Part 25

Crime, Law enforcement.

Proposed Regulations

For the reasons stated in the preamble, the Department of Justice proposes to amend 28 CFR by adding part 25, subpart B, to read as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

Subpart B—The National Sex Offender Registry

Sec.

Subpart B—The National Sex Offender Registry

Authority: 42 U.S.C. 14072; Pub. L. 104–236, 110 State. 3093; Pub. L. 105–119, sec. 115, 111 Stat. 2440, 2461.

§ 25.200 The interim sex offender registry.

(a) The Pam Lychner Act, 42 U.S.C. 14072(b), requires the Attorney General to establish a national database at the FBI to track the whereabouts and movement of:

(1) Each person who has been convicted of a criminal offense against a victim who is a minor, as defined in 42 U.S.C. 14071(a)(3)(A);

(2) Each person who has been convicted of a sexually violent offense, as defined in 42 U.S.C. 14071(a)(3)(B); and

(3) Each person who is a sexually violent predator, as defined in 42 U.S.C. 14071(a)(3)(C).

(b) In accordance with section 2 of the Pam Lychner Act, the Federal Bureau of Investigation (''FBI'') has established an interim National Sex Offender Registry (the ''Interim Registry'') in the Fingerprint Identification Records System (''FIRS'').

(c) The Interim Registry functions as a ''pointer'' system, indicating on an individual's FBI Identification Record the fact that the individual is a registered sex offender and the name and location of the state agency that maintains the offender's registration information.

(d) States may participate in the Interim Registry by submitting the following information to the FBI pertaining to individuals who are registered in state sex offender registries: the name under which the person is registered; the registering agency's name and location; the date of registration; and the date registration expires. A notice indicating that an individual is a registered sex offender and listing the information described in this paragraph will be included on the individual's FBI Identification Record. In order to obtain more detailed information regarding a particular offender, an inquiring agency must contact the registering agency indicated on the FBI Identification Record.

§ 25.201 The permanent sex offender registry.

(a) The FBI is in the process of modifying and improving its National Crime Information Center (''NCIC'') to establish a new crime information system that will be known as ''NCIC 2000.'' NCIC 2000, which is expected to go online in mid-1999, will include a Convicted Sexual Offender Registry File that will serve as the permanent National Sex Offender Registry (the ''Permanent Registry'').

(b) In the Permanent Registry, sex offender registration information will be entered directly, via the NCIC Convicted Sexual Offender Registry File by federal, state, and local law enforcement agencies, and will include such information as the offender's name, address, and details regarding the conviction resulting in registration. This detailed information will be available to authorized agencies via the NCIC. The sex offender registration information will also be automatically posted to the individual's FBI Identification Record.

§ 25.202 Release of information from the National Sex Offender Registry.

(a) The Pam Lychner Act, 42 U.S.C. 14072(j), requires the FBI to release the information contained in the National Sex Offender Registry to:

(1) Federal, state, and local criminal justice agencies for law enforcement purposes and community notification; and

(2) Federal, state, and local governmental agencies responsible for conducting employment-related background checks under the National Child Protection Act, 42 U.S.C. 5119a.

(b) Both the Interim and Permanent Registries are available for these purposes.

§ 25.203 Non-compliant offenders.

(a) The Pam Lychner Act, 42 U.S.C. 14072(g)(5), provides for state notification to the FBI if a state cannot verify the address of or locate a person required to register with the state's registration program. The Act further provides that once the FBI receives such a notification, the FBI shall classify the offender as being in violation of the requirements of the National Sex Offender Registry and add a Wanted Person record to the NCIC Wanted Person File, provided that an arrest warrant meeting the requirements for entry into that File is issued in connection with the violation.

(b) The purpose of the requirement that states notify the FBI of non-compliant offenders is to permit the FBI to indicate on the national system that a sex offender is not complying with his or her registration obligations. States can comply with the notice requirement by obtaining an arrest warrant for non-compliant offenders and entering records for such offenders into the Wanted Person File, as described in paragraph (c) of this section. Upon entry of a wanted person record on the Wanted Person File, that fact will automatically be indicated on the offender's FBI Identification Record and will be accessible on a search of the National Sex Offender Registry.

(c) Under existing FBI procedures, state and local law enforcement authorities add records of fugitives to the NCIC Wanted Person File upon issuance of a state or local arrest warrant. The FBI will continue to follow those same procedures with respect to registered sex offenders. Accordingly, if an offender fails to comply with a state registration program requirement, state or local authorities should, if appropriate, seek an arrest warrant for that offender and then add a record for the offender to the NCIC Wanted Person File.

§ 25.204 Notice of an offender's move to another state.

The Pam Lychner Act, 42 U.S.C. 14072(g), requires an offender who moves to a different state to notify both the FBI and the new state of residence so that his or her registration information may be included in the appropriate state and federal databases. No later than 10 days after the offender establishes a new residence, the offender should contact the local FBI office in his or her new state of residence. Once notified by an offender that he or she has moved to another state, the FBI will take the steps necessary to ensure that the offender's new state of residence has also been notified.

Dated: February 9, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–3613 Filed 2–12–99; 8:45 am]

BILLING CODE 4410–19–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6301–2]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'')

constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add one new site to the General Superfund section of the NPL. The site is Midnite Mine located in Wellpinit, Washington.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before April 19, 1999.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway 1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Bob Myers, phone (703) 603–8851, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L. 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that

are generally evaluated and cleaned up by EPA (the ''General Superfund section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on January 19, 1999 (64 FR 2942).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of February 3, 1999, the Agency has deleted 181 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of February 3, 1999, EPA has deleted portions of 15 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 181 sites that have been deleted from the NPL, 172 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 413 sites also on the NPL CCL. Thus, as of February 3, 1999, the CCL consists of 585 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the Midnite Mine site in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 10 office.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Region 10 docket after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Region 10 docket for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Region 10 docket is as follows: David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101, 206/553–2103.

You may also request copies from EPA Headquarters or the Region 10 docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Region 10 Docket?

The Region 10 docket for this rule contains all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the Midnite Mine site. These reference documents are available only in the Region 10 docket.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the ''Addresses'' section.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their

earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Addition to the NPL

With today's proposed rule, EPA is proposing to add one site to the General Superfund section; the Midnite Mine site in Wellpinit, Washington. The site is being proposed based on an HRS score of 28.50 or above.

B. Status of NPL

Currently, the NPL consists of 1,206 sites; 1,053 in the General Superfund section and 153 in the Federal Facilities section. With this proposal of one new site, there are now 60 sites proposed and awaiting final agency action, 51 in the General Superfund section and 9 in the Federal Facilities section. Final and proposed sites now total 1,266.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of

small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), 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.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Oder 12898 Apply to this Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

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 E.O. 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.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Proposed Rule?

Under Executive Order 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, 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, 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.''

This 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 Executive Order 12875 do not apply to this rule.

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies 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.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: February 9, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–3661 Filed 2–12–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7274]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Maricopa County and Incorporated Areas.	Mockingbird Wash	Just upstream of U.S. Highway 60/89	*1,996	*1,994
			Approximately 3,610 feet upstream of U.S. Highway 60/89.	*2,071	*2,070
			Approximately 10,450 feet upstream of U.S. Highway 60/89.	None	*2,256
			Approximately 2,200 feet downstream of Verde Lane.	*1,004	*1,004
			Approximately 300 feet upstream of Indian School Road.	None	*1,024
		Arrow Wash	Just upstream of confluence with Ashbrook Wash.	None	*1,631
			Approximately 170 feet upstream of Cavern Drive.	None	*1,808
		Ashbrook Wash	Approximately 700 feet downstream of El Pueblo.	None	*1,509
			Approximately 3,000 feet upstream of Golden Eagle Boulevard.	None	*1,988
		Balboa Wash	Just upstream of confluence with Ashbrook Wash.	None	*1,557
			Just downstream of confluence with Hesperus Wash.	None	*1,724
		Caliente Wash	Approximately 340 feet downstream of El Pueblo Boulevard.	None	*1,530
			Approximately 110 feet upstream of McDowell Mountain Road.	None	*1,660
		Cereus Wash	Approximately 800 feet downstream of Shea Boulevard.	None	*1,527
			Approximately 110 feet upstream of McDowell Mountain Road.	None	*1,763
		Chukar Wash	Just upstream of confluence with Cereus Wash.	None	*1,640
			Approximately 1,340 feet upstream of Cereus Wash.	None	*1,671
		Colony Wash	Approximately 1,900 feet downstream of Panorama Drive.	None	*1,519
			Just downstream of Sycamore Drive	None	*1,697
		Cyprus Point Wash	Approximately 900 feet downstream of Saguaro Boulevard.	None	*1,504
			Approximately 950 feet upstream of DeMaret Drive.	None	*1,581
		Emerald Wash	Approximately 500 feet downstream of Saguaro Boulevard.	None	*1,508
			Approximately 700 feet upstream of Fountain Hills Boulevard.	None	*1,708
		Escalante Wash	Approximately 220 feet downstream of Escalante Drive.	None	*1,516
			Approximately 60 feet upstream of McDowell Mountain Road.	None	*1,554
		Fountain Channel	Just upstream of confluence with Colony Wash.	None	*1,561
			Approximately 1,450 feet upstream of El Lago Drive.	None	*1,587
		Greystone Wash	Just upstream of Sycamore Drive	None	*1,702
			Approximately 1,650 feet upstream of Sycamore Drive.	None	*1,764
		Hesperus Wash	Just upstream of confluence with Balboa Wash.	None	*1,724
			Approximately 4,000 feet upstream of Richwood Avenue.	None	*1,914
		Jacklin Wash	Approximately 300 feet downstream of Indian Wells Drive.	None	*1,498

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 3,420 feet upstream of Jacklin Drive.	None	*1,614
		Kingstree Wash	Just upstream of confluence with Jacklin Wash.	None	*1,522
			Approximately 1,550 feet upstream of Inca Avenue.	None	*1,625
		Laser Drain	Just upstream of confluence with Cereus Wash.	None	*1,545
			Approximately 200 feet upstream of Firebrick Drive.	None	*1,561
		Legend Wash	Just upstream of confluence with Ashbrook Wash.	None	*1,587
			Just downstream of confluence with Tulip Wash.	None	*1,677
		Logan Wash	Just upstream of confluence with Cereus Wash.	None	*1,618
			Approximately 3,330 feet upstream of Cereus Wash.	None	*1,687
		Malta Drain	Just upstream of confluence with Emerald Wash.	None	*1,510
			Approximately 1,970 feet upstream of Quinto Drive.	None	*1,616
		Magnum Wash	Just upstream of confluence with Jacklin Wash.	None	*1,537
			Approximately 1,100 feet upstream of Jacklin Wash.	None	*1,568
		North Colony Wash	Just upstream of confluence with Colony Wash.	None	*1,601
			Approximately 500 feet upstream of Thistle Drive.	None	*1,747
		Oxford Wash	Just upstream of confluence with Balboa Wash.	None	*1,610
			Approximately 400 feet upstream of Glenbrook Boulevard.	None	*1,719
		Powder Wash	Approximately 480 feet downstream of Leo Drive.	None	*1,572
			Approximately 960 feet upstream of Powderhorn Drive.	None	*1,677
		Sunburst Wash	Just upstream of confluence with Colony Wash.	None	*1,697
			Approximately 690 feet upstream of Sycamore Drive.	None	*1,733
		Sycamore Wash	Just upstream of Sycamore Drive	None	*1,702
			Approximately 2,100 feet upstream of Sycamore Drive.	None	*1,745
		Tulip Wash	Just upstream of confluence with Legend Wash.	None	*1,677
			Approximately 540 feet upstream of Glenbrook Boulevard.	None	*1,719
		Amir Wash	Approximately 1,500 feet upstream of U.S. Highway 89/Tegner Street.	None	*2,112
			At Vulture Mines Road	None	*2,234
			Approximately 2,900 feet upstream of Vulture Mines Road.	None	*2,264
		Blue Tank Wash	Just upstream of Jack Burden Road	None	*2,076
			Approximately 4,450 feet upstream of Jack Burden Road.	None	*2,176
		Calamity Wash	Approximately 150 feet downstream of Wickenburg Way.	None	*2,022
			Approximately 10,900 feet upstream of Wickenburg Way.	None	*2,332
		Cemetery Wash	Approximately 800 feet downstream of AT & SF Railroad.	*2,021	*2,021
			Just upstream of AT & SF Railroad	*2,034	*2,036
			Approximately 1,700 feet upstream of Kellis Road.	*2,163	*2,162
			Approximately 4,900 feet upstream of Vulture Peak Road.	None	*2,532
		Cemetery Wash Tributary R1.	Just upstream of confluence with Cemetery Wash.	None	*2,249

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 12,570 feet upstream of confluence with Cemetery Wash.	None	*2,501
		Cemetery Wash Tributary R2.	Just upstream of confluence with Cemetery Wash.	None	*2,294
			Approximately 8,100 feet upstream of Vulture Peak Road.	None	*2,525
		Cemetery Wash Tributary R3.	Just upstream of confluence with Cemetery Wash.	None	*2,446
			Approximately 1,000 feet upstream of Vulture Peak Road.	None	*2,525
		Deadman Wash	Approximately 2,000 feet upstream of confluence with New River.	None	1,490
			Approximately 14,630 feet upstream of Black Canyon Highway.	None	*1,894
		Deadman Wash Stream No. 4.	Just upstream of confluence with Deadman Wash.	None	*1,736
			Just downstream of 29th Avenue	None	*1,786
		Deadman Wash Stream No. 7.	At confluence with Deadman Wash	None	*1,733
			Approximately 5,150 feet upstream of confluence with Deadman Wash.	None	*1,782
		Deadman Wash Stream No. 12.	Approximately 3,700 feet downstream of Carefree Highway.	None	*1,572
			Approximately 3,450 feet upstream of Carefree Highway.	None	*1,614
		Flying ''E'' Wash	At confluence with Sols Wash	None	*2,135
			Approximately 1,000 feet downstream of Whipple Street (U.S. Highway 60).	*2,278	*2,276
			Approximately 2,400 feet upstream of Whipple Street (U.S. Highway 60).	*2,322	*2,317
			Approximately 9,850 feet upstream of confluence with Holly Wash.	None	*2,522
		Hartman Wash	At confluence with Sols Wash	None	*2,186
			Approximately 18,000 feet upstream of AT & SF Railroad.	None	*2,438
			Approximately 20,940 feet upstream of Old Highway 60.	None	*2,758
		Unnamed Tributary to Hartman Wash.	Just upstream of confluence with Hartman Wash.	None	*2,592
			Approximately 1,630 feet upstream of confluence with Hartman Wash.	None	*2,603
		Holly Wash	At confluence with Flying ''E'' Wash	None	*2,372
			Approximately 9,350 feet upstream of confluence with Flying ''E'' Wash.	None	*2,499
		Iona Wash	Approximately 1,930 feet downstream of Deer Valley Road.	None	*1,461
			At Lone Mountain Road	None	*1,697
			Approximately 8,450 feet upstream of Black Mountain Road.	None	*1,919
		Little San Domingo Wash	Approximately 700 feet upstream of confluence with Hassayampa River.	None	*1,787
			Approximately 4,450 feet upstream of Morristown New River Highway.	None	*2,062
		Monarch Wash	At U.S. Highway 60/89	None	*1,925
			Approximately 20,300 feet upstream of U.S. Highway 60/89.	None	*2,368
		Ox Wash	Approximately 800 feet downstream of AT & SF Railroad.	None	*1,830
			Approximately 7,200 feet upstream of U.S. Highway 60/89.	None	*1,983
		Power House Wash	At Jack Burden Road	*2,050	*2,050
			Approximately 5,950 feet upstream of Jack Burden Road.	*2,179	*2,173
			Approximately 8,750 feet upstream of El Recreo Drive.	None	*2,283
		Powder House Wash Tributary #1.	Just upstream of confluence with Powder House Wash.	None	*2,208
			Approximately 1,760 feet upstream of confluence with Powder House Wash.	None	*2,262

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Power House Wash Tributary #2.	Just upstream of confluence with Powder House Wash.	None	*2,242
			Approximately 1,350 feet upstream of confluence with Powder House Wash.	None	*2,280
		Rio Verde North—Wash A	Approximately 3,500 feet downstream of Forest Road.	None	*1,516
			Approximately 9,400 feet upstream of Forest Road.	None	*1,800
		Rio Verde North—Wash A South.	Approximately 300 feet downstream of Forest Road.	None	*1,583
			Approximately 4,450 feet upstream of Forest Road.	None	*1,681
		Rio Verde North—Wash F	Approximately 2,060 feet downstream of Forest Road.	None	*1,527
			Appriximately 3,020 feet upstream of Forest Road.	None	*1,662
		Rio Verde North—Wash 1	Approximately 980 feet downstream of Forest Road.	None	*1,530
			Approximately 2,320 feet upstream of Forest Road.	None	*1,651
		San Domingo Wash	Just upstream of U.S. Highway 60/89	None	*1,864
			Approximately 12,060 feet upstream of U.S. Highway 60/89.	None	*2,022
		Sols Wash Tributary AH2	At confluence with Sols Wash	None	*2,382
			Approximately 9,400 feet upstream of confluence with Sols Wash.	None	*2,426
		Sols Wash Tributary AH3	At confluence with Sols Wash	None	*2,324
			Approximately 6,550 feet upstream of U.S. Highway 24.	None	*2,635
		Unnamed Tributary to Sols Wash Tributary AH3.	At confluence with Sols Wash Tributary AH3.	None	*2,380
			Approximately 10,900 feet upstream of confluence with Sols Wash Tributary AH3.	None	*2,503
		Sols Wash Tributary AH4	At confluence with Sols Wash	None	*2,315
			Approximately 8,120 feet upstream of confluence with Sols Wash.	None	*2,437
		Sols Wash Tributary AH5	At confluence with Sols Wash	None	*2,260
			Approximately 2,000 feet upstream of Old Highway 60.	None	*2,576
		Sunny Cove Wash	At confluence with Sunset Wash	None	*2,076
			Just downstream of Flood Control Dam ...	None	*2,108
		Sunny Cover Wash (Upper Reach).	At Flood Control Dam	None	*2,155
			Approximately 200 feet upstream of Steinway Drive.	None	*2,330
		Sunset Wash	At confluence with Hassayampa River	None	*2,032
			Approximately 2,650 feet upstream of Jackson Street.	None	*2,108
		Turtle Back Wash	At confluence with Hassayampa River	None	*1,990
			Approximately 10,300 feet upstream of AT & SF Railroad.	None	*2,185
		Twin Peaks Wash	Approximately 520 feet upstream of confluence with Yucca Flat Wash.	None	*2,416
			Approximately 11,500 feet upstream of confluence with Yucca Flat Wash.	None	*2,553
		Wash AG	Approximately 900 feet downstream of AT & SF Railroad.	None	*2,028
			Approximately 4,300 feet upstream of AT & SF Railroad.	None	*2,120
		Wash E–2	Approximately 870 feet upstream of confluence with Mockingbird Wash.	None	*2,055
			Approximately 2,120 feet upstream of confluence with Mockingbird Wash.	None	*2,082
		Wash F	Approximately 400 feet upstream of U.S. Highway 60/89.	None	*1,872
			Approximately 5,100 feet upstream of U.S. Highway 60/89.	None	*2,028
		Wash F–2	At confluence with Wash F	None	*1,872

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 2,250 feet upstream of confluence with Wash F.	None	*1,953
		Wash G	Just upstream of U.S. Highway 60/89	None	*1,895
			Approximately 5,340 feet upstream of U.S. Highway 60/89.	None	*2,022
		Wash H	Just upstream of U.S. Highway 60/89	None	*1,898
			Approximately 9,250 feet upstream of U.S. Highway 60/89.	None	*2,052
		Wash I	Just upstream of U.S. Highway 60/89	None	*1,934
			Approximately 6,380 feet upstream of U.S. Highway 60/89.	None	*2,071
		Wash K	Approximately 900 feet downstream of U.S. Highway 60/89.	None	*1,944
			Approximately 19,650 feet upstream of U.S. Highway 60/89.	None	*2,394
		Wash K–1	Just upstream of confluence with Wash K	None	*2,292
			Approximately 4,400 feet upstream of confluence with Wash K.	None	*2,396
		Wash L	Just upstream of Palm Lake Spillway	None	*1,955
			Approximately 6,500 feet upstream of U.S. Highway 60/89.	None	*2,152
		Wash O	Approximately 700 feet downstream of U.S. High 60/89.	None	*1,997
			Approximately 7,000 feet upstream of U.S. Highway 60/89.	None	*2,189
		Wash P	Approximately 420 feet downstream of Jack Burden Road.	None	*2,089
			Approximately 1,430 feet upstream of Jack Burden Road.	None	*2,131
		Wash Q	Just downstream of AT&SF Railroad	None	*2,010
			Approximately 5,500 feet upstream of AT&SF Railroad.	None	*2,180
		Wash S–2	Approximately 1,850 feet upstream of confluence with Little San Domingo Wash.	None	*1,844
			Approximately 2,450 feet upstream of confluence with Little San Domingo Wash.	None	*1,854
		Yucca Flat Wash	At confluence with Upper Flying ''E'' Wash.	*2,315	*2,310
			At confluence with Twin Peaks Wash	None	*2,416
			Approximately 6,550 feet upstream of confluence with Twin Peaks Wash (just downstream of Yucca Tank).	None	*2,497
		White Tanks Wash	Approximately 2,000 feet upstream of Buckeye Flood Retarding Structure.	None	*1,081
			Approximately 350 feet downstream of Sun Valley Parkway.	None	*1,389
		White Tanks Wash Tributary No. J.	Just upstream of White Tanks Wash Approximately 300 feet downstream of.	None	*1,159
			Sun Valley Parkway	None	*1,336
		Skunk Tank Wash	At confluence with Skunk Creek	None	*1,760
			At Rockaway Hills road	None	*1,929
		Valley Wash	Approximately 750 feet upstream of confluence with Skunk Tank Wash.	None	*1,784
			Just downstream of 11th Avenue	None	*1,800
		Queen Creek	Just upstream of Hawes Road	None	*1,379
			Just downstream of Southern Pacific Railroad	None	*1,441

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, Arizona. Send comment to The Honorable Janice K. Brewer, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, Tenth Floor, Phoenix, Arizona 85003. Maps are available for inspection at the Town of Buckeye Town Hall, 100 North Apache Street, Buckeye, Arizona. Send comments to The Honorable Dusty Hull, Mayor, Town of Buckeye, 100 North Apache Street, Suite A, Buckeye, Arizona 85326. Maps area available for inspection at the Town of Fountain Hills Town Hall, 16836 East Palisades Boulevard, Fountain Hills, Arizona. Send comments to The Honorable Sharon Morgan, Mayor, Town of Fountain Hills, 16836 East Palisades Boulevard, Fountain Hills, Arizona 85268. Maps area available for inspection at the City of Goodyear City Hall, 119 North Litchfield Road, Goodyear, Arizona. Send comments to The Honorable William Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338. Maps are available for inspection at the City of Peoria City Hall, 8401 West Monroe Street, Peoria, Arizona. Send comments to The Honorable John Keegan Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345. Maps are available for inspection at the City of Phoenix Street Transportation Department, 200 West Washington Street, Fifth Floor, Phoenix, Arizona. Send comments to The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Phoenix, Arizona 85003–1611. Maps are available for inspection at the Town of Queen Creek Town Hall, 22350 South Ellsworth Road, Queen Creek, Arizona. Send comments to The Honorable Mark Schnepf, Mayor, Town of Queen Creek, 22350 South Ellsworth Road, Queen Creek, Arizona 85242. Maps are available for inspection at the City of Surprise, Community Development Services, 12425 West Bell Road, Suite D–100, Surprise, Arizona. Send comments to The Honorable Joan Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D–100, Surprise, Arizona 85374. Maps are available for inspection at the Town of Wickenburg Town Hall, 155 North Tegner Street, Wickenburg, Arizona. Send comments to The Honroable Dallas Gant, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, Arizona 85390.					
California	Alturas (City) Modoc County.	North Fork Pit River	Approximately 1,750 feet downstream from Main Street.	None	*4,359
			Approximately 6,800 feet upstream from Estalos Street.	None	*4,371
Maps are available for inspection at 202 West Fourth Street, Alturas, California. Send comments to The Honorable Dick Steyer, Mayor, City of Alturas, 200 North Street, Alturas, California 96101.					
California	Modoc County (Unincorporated Areas).	North Fork Pit River	Approximately 50 feet downstream from Southern Pacific Railroad.	None	*4,358
			Approximately 7,550 feet upstream from Estalos Street.	None	*4,372
Maps are available for inspection at 202 West Fourth Street, Alturas, California. Send comments to The Honorable Mike Maxwell, Director of Administrative Services, Modoc County, P.O. Box 1728, Alturas.					
California	Woodland (City) Yolo County.	Right Overbank Flow	Approximately 1300 feet downstream of County Road 102.	None	*34
			Approximately 400 feet upstream of intersection of North Kern Avenue and West Beamer Street.	None	*72
Maps are available for inspection at the City of Woodland Community Development, 300 First Street, Woodland, California. Send comments to The Honorable Gerald R. Davis, Interim City Manager, City of Woodland, 300 First Street, Woodland, California 95695.					
California	Yolo County (Unincorporated Areas).	Cache Creek	Downstream side of Southern Pacific Railroad.	None	*81
			At Capay Dam	None	*226
		Right Overbank Flow	At East Highway 113	None	*39
			At Cache Creek	None	*89
Maps are available for inspection at Yolo County Planning and Public Works, 292 West Beamer Street, Woodland, California. Send comments to The Honorable Vic Singh, Yolo County Administrative Officer, 625 Court Street, Woodland, California 95695.					
Nevada	Douglas County and Incorporated Areas.	Clear Creek	At Douglas County boundary, Approximately 200 feet downstream from Center Drive.	None	*4,715
			Approximately 200 feet upstream From R19E/R20E.	None	*4,824
Maps are available for inspection at Douglas County Planning, 1594 Esmeralda Avenue, Room 202, Minden, Nevada. Send comments to the Honorable Jacques Etchegoyhen, Chairman, Douglas County Board of Commissioners, P.O. Box 218, Minden, Nevada 89423.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 6, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–3536 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[ET Docket No. 98–206; DA 99–284]

Fixed Satellite Service and Terrestrial System in the Ku-Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for comments.

SUMMARY: This document extends the time to file comments on the Notice of Proposed Rule Making which published in the **Federal Register** of January 12, 1999, (64 FR 1786). Comments on this notice were due February 16, 1999, and reply comments were due on or before March 15, 1999. Pursuant to a request by the Boeing Company, the Commission is extending the time to file comments to afford interested parties the necessary time to coordinate and file substantive comments for the record. On February 5, 1999, the Commission released an Order (DA 99–284) which grants Boeing's ''Motion for Extension of Time.''

DATES: Comments must be filed on or before March 2, 1999, and reply comments on or before March 29, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Tom Derenge, Office of Engineering and Technology, (202) 418–2451.

SUPPLEMENTARY INFORMATION: 1. On November 24, 1998, the Commission released a Notice of Proposed Rule Making (NPRM), ET Docket No. 98–206, 64 FR 1786, January 12, 1999. Comments on the NPRM were due on or before February 16, 1999, and reply comments were due on or before March 15, 1999.

2. On February 1, 1999, the Boeing Company (''Boeing'') submitted a motion to the Commission to extend the comment and reply comment dates in the above captioned proceeding. Boeing states that it would like to incorporate into their comments detailed technical information being developed by the International Telecommunications Union, Radiocommunication Bureau, Joint Task Group 4–9–11 (''JTG 4–9–11''). Boeing argues that since a JTG 4–9–11 meeting recently concluded on January 29, 1999, commenters have little more than two weeks to analyze the outputs of the meeting and incorporate them into their comments. Boeing believes that extending the comment and reply comment dates by two weeks would permit parties to engage in a more in depth analysis of the JTG 4–9–11 information.

3. Although the Commission does not routinely grant extensions of time in rule making proceedings, we find that Boeing has demonstrated that providing more time will enable all interested parties to submit additional information that will be materially beneficial to the record in this proceeding. Accordingly, *it is ordered* that the date for filing comments and reply comments in the above captioned proceeding *is extended to March 2, 1999, and March 29, 1999,* respectively.

4. This action is taken pursuant to the authority found in Section 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303; and pursuant to Sections 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 25

Communications equipment, Radio, Satellites.

Federal Communications Commission.

Dale N. Hatfield,

Chief, Office of Engineering and Technology.

[FR Doc. 99–3576 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 99–6]

Creation of a Low Power Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* proposes to establish rules authorizing the operation of new, low power FM (LPFM) radio stations. It explores the appropriate technical parameters for such a service. It also examines potentially conflicting demands for such a service. In addressing these issues, we are and will remain mindful of the technical requirements necessary to protect existing radio services and preserve the excellent technical quality of radio service available today, as well as any impact on the future introduction of terrestrial digital audio broadcasting. We hope to receive comment from a wide range of existing and potential users of the FM spectrum regarding the nature and extent of different and possibly conflicting demands for this spectrum (including the development of future terrestrial digital audio services), and technical analysis to assist us in best resolving those conflicts for the benefit of the public.

DATES: Comments must be filed on or before April 12, 1999. Reply comments must be filed on or before May 12, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A306, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov. Alternatively, comments may also be filed by using the Commission's Electronic Comment Filing System (ECFS), via the Internet to http://www.fcc.gov.e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Paul Gordon or Bruce Romano, Policy and Rules Division, Mass Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *NPRM*, FCC 99–6, adopted January 28, 1999 and released February 3, 1999. The full text of this Commission *NPRM* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. S.W., Washington, D.C. The complete text of this *Notice* may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. It is also available on the Commission's web page at < www.fcc.gov//mmb/prd/lpfm.

Synopsis of Notice of Proposed Rule Making

I. Introduction

1. By this *Notice,* we are proposing to establish rules authorizing the operation of new, low power FM (LPFM) radio stations. In particular, we are proposing to create two classes of low power radio service: a 1000-watt primary service and

a 100-watt secondary service. We also seek comment on whether to establish a third, ''microradio'' class of low power radio service that would operate in the range of 1 to 10 watts on a secondary basis. These proposals are in response to two petitions for rule making and related comments. We believe that these new LPFM stations would provide a low-cost means of serving urban communities and neighborhoods, as well as populations living in smaller rural towns and communities. In creating these new classes of stations, our goals are to address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional diversity in radio voices and program services. We are proposing that LPFM stations not be subject to certain technical rules currently applied to other classes of radio service. In particular, we believe that current restrictions on third-adjacent channel operations are not needed for LPFM stations, and we believe it may be possible to disregard second-adjacent channel interference for these stations as well. We are also proposing new technical rules and geographic spacing requirements to ensure that new LPFM stations do not cause interference to existing full service FM radio stations. We are wary of any provisions that might limit the development of future terrestrial digital radio services. The *Notice* also addresses related matters such as service rules, ownership issues, and application processing procedures for LPFM services. We also welcome commenters to bring to our attention any alternatives or additions to our proposals that would encourage community participation and the proliferation of local voices.

II. Service Proposals and Issue Analysis

A. Need for Low Power Radio Service

2. We are concerned that recent consolidation may be having a significant impact on small broadcasters and potential new entrants into the radio broadcasting business by driving up station prices, thereby exacerbating the difficulty of entering the broadcast industry and of surviving as an independent operator. Additionally, we received over 13,000 inquiries in the last year from individuals and groups showing an interest in starting a low power radio station. Furthermore, hundreds of commenters have urged us to create opportunities for low power locally oriented radio service.

3. Accordingly, we seek comment on whether a low power radio service would provide new entrants the ability to add their voices to the existing mix of political, social, and entertainment programming, and would address special interests shared by residents of geographically compact areas. We are not persuaded by opponents who insist that alternative sources of information and entertainment are available to dissatisfied speakers and listeners, including acquisition of an existing frequency; leased time from full power stations; an internet website; and internet webcasting. Commenters are invited to address these issues.

B. Spectrum Considerations

4. New Spectrum Allocation. We do not intend to create a low power radio service on any spectrum beyond that which is currently allocated for FM use, because to do so would force consumers to purchase new equipment to gain the benefits of the new service.

5. Channels for Low Power Radio. It does not appear possible to designate a particular FM frequency or frequencies for one or more low power services. No single frequency is available that would protect existing radio service throughout the country, and there does not appear to be any particular segment of the FM spectrum that is generally more available for LPFM operation and to which we could accordingly restrict low power radio service, but we request comment on this assessment. We do not propose to authorize low power radio use in the AM radio band. The interference potential and present congestion in the AM band would make it a poor choice for a new radio service, and the propagation characteristics of AM signals could exacerbate the interference potential of low power stations. We seek comment on these positions.

6. Noncommercial Designation. 47 CFR 73.501 currently restricts the use of FM channels 201–220 (88–92 MHz) to noncommercial educational broadcasting. Pursuant to § 73.503(a) of our rules, 47 CFR 73.503, a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the broadcast of noncommercial educational programming. Accordingly, absent a change in our rules, only those noncommercial entities that meet these requirements would be eligible to apply for and operate LPFM stations in this part of the band, and all operations would have to be strictly noncommercial.

7. We seek comment on whether to continue the noncommercial educational channel reservation with respect to any new LPFM stations that would have a preclusive effect on the operation of full power stations in the reserved band, such as the primary low power stations discussed below, and on whether to extend a parallel reservation to any secondary low power or microradio stations that we might authorize on channels 201–220. Commenters should also address whether any or all low power (and microradio) services should be limited to noncommercial operation throughout the band, and whether eligibility should correspondingly be restricted to those who would qualify as noncommercial licensees under our current rules.

C. Technical Overview of LPFM Services

8. To accommodate the different visions and service demands for low power radio, we propose two distinct classes of service: (1) a primary LPFM service class with an ERP limit of 1,000 watts (designated ''LP1000'') and (2) a secondary class with an ERP limit of 100 watts (designated ''LP100''). We also seek comment on the advisability of establishing a very low power secondary ''microradio'' service with ERP limit of one to ten watts.

1. 1000-Watt Primary Service (''LP1000'')

9. We propose LP1000 stations that would operate at a maximum effective radiated power (''ERP'') of 1000 watts at an antenna height above average terrain (''HAAT'') of 60 meters (197 feet), and we propose to protect the maximum 1 mV/m (60 dBu) signal contour of LP1000 stations by minimum separation distances. (60 dBu is the protected contour for Class A stations, the next highest class of FM station.) This would provide for a minimum separation of 65 km (40 miles) between LP1000 stations on the same channel.

10. The proposed power/height combination would produce a 60 dBu signal contour at a distance of 14.2 kilometers (8.8 miles) from the station, or approximately one half the distance to the protected 60 dBu contour of a Class A station using maximum facilities. We ask whether the type of service envisioned for LP1000 stations could be met with lower power levels and/or antenna heights. We believe there should also be a lower ERP limit in the interest of efficient use of the radio spectrum. Therefore, we propose a minimum ERP of 500 watts (60 dBu signal at 12 km/7.5 miles). We ask whether different levels would be more appropriate either in general, or in specific circumstances such as to meet unique distance separation requirements or in order to

accommodate a negotiated settlement agreement.

11. Primary stations operating in the FM service are required to protect all other primary stations. We propose to extend such primary status to LP1000 stations, as secondary status might discourage potential new entrants from investing their time and money into this service, thereby frustrating its purpose.

12. These stations would operate under the majority of the service rules and obligations applicable to primary stations generally. As primary stations, LP1000 stations would be required to give and receive co-channel, first-adjacent channel, and IF interference protection equivalent to the protection levels other primary FM stations provide each other. Second- and third-adjacent channel protections are further discussed below. Likewise, new and modified facilities of existing classes of FM stations would be required to give co-channel, first-adjacent channel, and IF interference protection to LP1000 stations equivalent to the protection that they provide to each other. We propose that LP1000 stations protect other LP1000 stations on the same channel and first-adjacent channel, and we invite comment on whether these stations should have to protect each other's IF frequencies; *i.e.*, for FM channels separated by 53 or 54 channels.

13. We ask in what manner secondary FM translator and booster stations should protect LP1000 stations, and whether the current scheme for translator and booster protection of FM stations should be extended to protect LP1000 stations, including exiting FM translator and booster stations. We also ask whether to prohibit the establishment of any translator or booster stations for use in conjunction with LP1000 stations, given our desire to maximize ownership and service opportunities for locally owned LPFM stations.

2. 100-Watt Secondary Service (''LP100'')

14. The 100-watt class would be intended to meet the demand of people who would like to broadcast affordably to communities of moderate size (whether standing alone in rural areas or as part of a larger urban area). We propose secondary stations at maximum facilities of 100 watts ERP and 30 meters (98 feet) HAAT, to produce a 1 mV/m (60 dBu) signal contour at a distance of 5.6 kilometers (3.5 miles) from the station, for economical station construction. We propose a minimum LP100 ERP of 50 watts (60 dBu signal at 4.8 km/3 miles). We do not propose a minimum HAAT for LP100 stations. We also propose lesser operating and service requirements, see Section G., below, to compensate for the more limited service area of LP100 stations. We invite comment on these and other options to promote an affordable community broadcasting service.

15. We propose that LP100 stations would operate on a secondary basis with respect to all primary radio stations, including LP1000 stations. They would not be permitted to cause interference within the protected service contours of existing and future primary stations, nor would they be protected from present or future interference from these stations. LP100 stations would provide co-channel, first-adjacent channel, and IF interference protection to the existing FM station classes, and co-channel and first-adjacent channel protection to LP1000 stations. We invite comment on whether LP100 stations should also provide IF protection to LP1000 stations. By proposing secondary status for LP100 stations, we believe we could authorize more of these stations with less impact on present and future primary broadcast services.

16. We seek comment on whether new LP1000 stations should be required to protect existing co-channel and 1st-adjacent channel LP100 stations. In commenting on this issue, commenters should address the likely cost differences between LP1000 and LP100 stations, including costs of station construction and operation. We also seek comment on whether LP100 stations should be permitted to select channels without regard to interference received from other stations. Preliminary staff analysis suggests that many more LP100 stations could operate if these stations were permitted to apply for channels for which up to 10% of the area within the 60 dBu contour would be predicted to receive interference. We invite comment on our technical proposals.

17. We also seek comment on the likely impact of LP100 stations on FM translator and booster stations, and whether LP100 stations should be primary with respect to FM translators and boosters, which do not originate programming. To promote localism, should we prohibit translator or booster rebroadcasts of the programming of LP100 stations?

3. 1–10 Watt Secondary ''Microradio'' Service

18. We seek comment on the creation of a third class of LPFM service, intended to allow an individual or group of people with very limited means to construct a broadcast facility to reach listeners within the confines of a very localized setting. This service would operate with a maximum antenna height of 30 meters HAAT (and no minimum HAAT) and ERP levels in the range of one to ten watts, for a 1 mV/m (60 dBu) signal contour at distances of about 1.8 kilometers to 3.2 kilometers (1–2 miles). We seek comment on whether such facilities could satisfy some of the demand that has been expressed for very inexpensive community radio services, particularly in places where LP100 stations could not be located due to interference concerns or financial constraints.

19. If we adopt a microradio service, we propose to have an FCC transmitter certification requirement. We are vitally concerned that such stations meet transmitter out-of-channel emission limits and other standards related to interference protection of stations on adjacent channels.

20. If we were to establish a microradio class, we would envision it as being secondary to all other FM radio services, including LP100 stations, and thus required to protect all existing and future primary stations, as well as FM translator and boosters, against co-channel and 1st-adjacent channel interference, and would not receive protection from these stations. While a single station operating from 1 to 10 watts ERP may not pose a serious threat for 2nd-or 3rd-adjacent channel or IF interference, where the interference range might extend only a few hundred feet, we are concerned about uncertain effects of the combined interference potential of possibly many such stations operating on the same channel in the same general area, and we seek comment in this regard. Also, if we adopt a microradio stations class, should such stations be required to protect each other against interference?

D. Interference Protection Criteria

21. *Minimum Distance Separations Between Stations.* We believe minimum distance separations between stations may be the best practical means of governing interference to and from low power radio stations, due to the number of stations we anticipate and the effective simplicity of such a service. Appendix B of the Notice of Proposed Rule Making presents several tables which specify minimum distance separations for the LPFM classes described above, including an explanation of how these distances were determined. We seek comment on our proposed use of minimum distance separations and, in particular, on whether the specific values tabulated in

Appendix B of the Notice are appropriate for the different types of interference protections. We invite comment on these issues, including the effectiveness of alternative approaches for interference protection.

22. *Types of Interference Protection Standards.* We propose to protect stations operating on the same channel or on a 1st-adjacent channel from interference caused by LPFM facilities, and no commenter disagrees. At issue is the need to protect stations operating on the 2nd-and 3rd-adjacent channels with respect to LPFM stations. Commenters supporting LPFM services generally oppose any requirements for 2nd-or 3rd-adjacent channel protections, contending such interference from low power stations would be, at most, minimal. Other commenters believe these protections should be retained to prevent interference and/or protect future digital terrestrial radio service. As noted below and discussed in greater detail in the Notice, these protections would limit substantially the number of channels available for low power radio generally and could preclude altogether the introduction of LPFM service in mid-sized and large cities.

23. *Third-Adjacent Channel Protection.* We believe that not requiring 3rd adjacent protection to or from any of the contemplated classes of LPFM station would entail, at worst, little risk of interference to existing radio service. Areas of potential interference would be very small and occur only in the immediate vicinity of the low power transmission facility. Also we note that in 1997, we eliminated the 3rd-adjacent channel protection for full power ''grandfathered short spaced stations,'' including stations that operate at substantially higher power levels than LP1000 stations. We welcome comment on this position.

24. *Second-Adjacent Channel Protection Standards.* FM radio stations protect other stations operating on the 2nd-adjacent channel where the frequency separation is 400 kHz. In the case of grandfathered short-spaced FM stations, we did not receive any interference complaints as a result of such modifications during the period in which they were able to modify facilities without regard to 2nd-and 3rd-adjacent channel spacing (1964–1987). Similarly, in the noncommercial service, we have been willing to accept small amounts of potential second-and third-adjacent channel interference where such interference is counterbalanced by substantial service gains. Staff analysis suggests that the current 2nd-adjacent protection standards would be a substantially larger impediment to LPFM service than the 3rd-adjacent standard, especially in large and medium-size cities. We ask commenters to assess the level of risk of increased interference to stations in existing FM services that would result from permitting LPFM stations to locate without regard to 2nd-adjacent channel spacing for this service. The low ERP levels proposed for LPFM stations (especially LP100 stations), together with a tight spectral emission mask for such stations and our proposed requirement to certify transmitters, should significantly reduce the potential for harmful interference to existing service, even if 2nd-adjacent channel interference protections are not adopted. We also seek comment on the current state of receiver technology and the ability of receivers to operate satisfactorily in the absence of 2nd-adjacent channel protection.

25. It is also important to take into consideration the implications of 2nd-adjacent channel protection for the possible conversion of existing analog radio services to a digital mode. While the Commission has yet to formally advance any specific proposals, it has already expressed its support for a conversion to digital radio. One specific proposal was recently submitted in a rule making petition (RM–9395) filed by USA Digital Radio Partners, L.P. (''USADR''), a terrestrial digital radio proponent of a technology that uses an in-band-on-channel (''IBOC'') technology, in which an FM radio station's analog and digital signals would share portions of the same channel. In the existing radio environment, USADR suggests that 2nd-adjacent channel interference from current analog FM signals would not pose an interference threat to its IBOC signal.

26. We are concerned that our understanding of future IBOC systems is preliminary and that we may not be fully aware of any negative impact or restrictions that authorization of low power radio service would have on the transition to a digital IBOC technology for FM stations, and are particularly interested in the views of digital radio designers and manufacturers. We note that, as secondary services, LP100 and microradio stations would not be permitted to interfere with future digital radio stations within their protected service areas.

27. We accordingly seek comment on appropriate interference standards for the LPFM service. A staff study, attached to the Notice as Appendix D, demonstrates that if LPFM stations are required to comply with current interference restrictions, there will be few or no licenses available in most major markets. This study shows that we measurably increase the opportunity to engineer in LPFM stations if third-adjacent channel protection standards are eliminated and dramatically increase such opportunities if second-adjacent channel standards are not considered.

E. LPFM Emissions and Bandwidth

28. We believe that the extent to which LPFM stations would degrade FM radio service on the 2nd-adjacent channel would be considerably limited by their lower ERP and HAAT levels. In addition, we seek other technical means for further reducing this interference potential. We could restrict out-of-channel emissions by establishing a strict spectral emission mask and/or by reducing the transmission bandwidth for LPFM stations. We also ask whether a modulation monitor should be required or, alternatively, whether transmitters should be certified with built-in modulation limits.

29. *Emission Limits.* Outside of their assigned channels, the emissions of FM radio stations must be attenuated to specific levels. This emission mask ensures that FM broadcast emissions are reasonably confined within the 200 kHz channel width. The current emission mask requires a minimum attenuation of 35 dB below the level of the unmodulated carrier for emissions extending over the second-adjacent channel. We invite comment on the extent to which an increased emission attenuation requirement would reduce the potential for 2nd-adjacent channel interference, assuming no 2nd-adjacent channel spacing requirements. By how much would this attenuation have to be increased in this regard? 10 dB? 20 dB? What would be the consequences of a more restrictive emissions mask for LPFM stations? For example, at what point would tighter emission limits become cost prohibitive? Based on what is known about IBOC technology, could a strict emission mask for LPFM stations significantly reduce the potential for interference to IBOC signals, presuming we did not impose 2nd-adjacent channel spacing requirements on LPFM stations?

30. *Bandwidth Limits.* FM broadcast channels have a bandwidth of 200 kHz, and the frequency modulated (''FM'') signal in each channel swings in frequency from the center frequency toward the channel edges, with its radiated power envelope shaped such that virtually all of the energy of the signal is contained within the channel. The potential for interference could be further reduced if LPFM stations

operated with a reduced bandwidth, creating additional frequency separation to adjacent channels, and we seek comment on its effectiveness as an alternative means of interference protection, particularly with regard to 2nd-adjacent channels. What bandwidth reduction would best serve this purpose?

31. We inquire about the operational effects of reduced bandwidth on LPFM stations. Would LPFM signals still be received by existing radios; for example, car radios, home stereo systems, and boom boxes? A narrowed channel bandwidth could restrict or preclude the use of baseband subcarriers by LPFM operators. Would prospective LPFM operators be willing to sacrifice the use of subcarriers in return for the ability to broadcast a narrow band radio signal? Could the loss of LPFM subcarrier services such as those typically provided by full power FM stations be detrimental to the public? We seek comment on the optimal bandwidth that would strike the right balance between facilitating a larger number of potential stations and optimizing the services that could be offered by those stations. Commenters should address the specific stereophonic sound transmission standards which would be appropriate for a reduced channel bandwidth. Establishing a reduced channel bandwidth for LPFM could necessitate the development and manufacture of new lines of transmitting equipment, at an unknown cost, and reduce the availability of transmitters for LPFM stations, especially used transmitters designed for a 200 kHz bandwidth. We seek comment on these matters and, generally, on whether any adverse effects of LPFM operations on a reduced channel bandwidth could outweigh the increased channel availability that could result.

F. Ownership and Eligibility

32. *Local and Cross Ownership.* We see the increased opportunity for entry, enhanced diversity, and new program services as the principal benefits of a new low power service. Accordingly, we propose not to permit a person or entity with an attributable interest in a full power broadcast station to have any ownership interest in any LPFM (or microradio) station in any market, and to prohibit joint sales agreements, time brokerage agreements, local marketing or management agreements, and similar arrangements between full power broadcasters and low power radio entities. We seek comment on whether we should permit AM licensees to file applications contingent on the divestiture of their AM station. We also propose to limit multiple ownership by prohibiting any individual or entity from owning more than one LPFM (or microradio) station in the same community. We seek comment on the appropriate definition of ''market'' or ''community'' for purposes of the restriction proposed here, as well as on what other interests or relationships (if any) should be attributable in the LPFM context.

33. We seek comment on whether the proposed cross-ownership restriction would unnecessarily prevent individuals and entities with valuable broadcast experience from contributing to the success of the service, or is necessary in order to keep the service from being compromised or subsumed by existing stakeholders. Commenters should also address the alternative of permitting individuals and entities with attributable involvement in broadcasting to establish LPFM (or microradio) stations in communities where they do not have an attributable interest in a broadcast station. We also seek comment on whether the cross-ownership restriction should be extended to prevent ownership by newspapers, cable systems, or other mass media.

34. We are cognizant of the provisions of the Telecommunications Act of 1996 which permit significant local multiple ownership of existing full power stations. We tentatively believe, however, that those provisions would not apply to a service that did not exist in 1996. We also tentatively believe that Congress's intent, to enhance commercial efficiencies in the radio broadcast industry, does not sufficiently apply to the new classes of service we are contemplating.

35. *National Ownership.* We seek comment on whether a limit of five or ten stations nationally would provide a reasonable opportunity to attain efficiencies of operation while preserving the availability of these stations to a wide range of new applicants. We seek comment on the provisions of the 1996 Act which eliminate national ownership restrictions for full power radio service.

36. *Residency Requirements.* We do not propose to establish a local residency for any LPFM stations, and we do not propose to require that owners be involved in day-to-day management of the station. We have long recognized that full power stations require neither local residency nor integration between ownership and management to assess and address local needs and interests. Such a restriction would also frustrate any attempt at achieving certain efficiencies from national multiple ownership long recognized as beneficial for full-power stations. Additionally, because the service areas for all stations will be relatively small, a potential new entrant may hold residency in a location where no LP1000 channels can be found, so that we might frustrate one of the significant potentials of LP1000 stations with such a requirement. Moreover, we expect the nature of the service provided would attract primarily local or nearby residents in any event. We also note the probable limitations on our discretion to adopt an integration requirement. See Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992); see also Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993).

37. *Character Qualifications and Unauthorized Broadcasters.* We propose to apply the same standards for character qualifications requirements to all LPFM broadcasters as we do to full power broadcasters. We see no reason to distinguish between LPFM (or microradio) and other broadcast licensees for this purpose. Commenters believing otherwise are invited to explain the rationale for any distinction.

38. We note how this issue relates to the particular issue of previously and currently unlicensed operators. Unlicensed radio operators not only violate the longstanding statutory prohibition against unlicensed broadcasting and our present rules on unlicensed broadcasting, but they also use equipment of unknown technical integrity. Such illegal radio transmissions raise a particular concern because of the potential for harmful interference to authorized radio operations, including public safety communications and aircraft frequencies.

39. The Commission has repeatedly urged all unlicensed radio operators to cease broadcasting. When they have not, we have filed complaints in federal district courts to shut them down by seeking: (1) injunctive relief pursuant to 47 U.S.C. 401; (2) seizure and forfeiture of the radio station equipment pursuant to 47 U.S.C. 510; (3) monetary forfeitures pursuant to 47 U.S.C. 503; and/or (4) criminal penalties pursuant to 47 U.S.C. 501. In addition, we have issued cease and desist orders pursuant to 47 U.S.C. 312 to a number of unlicensed broadcasters. Nevertheless, despite repeated warnings by Commission officials and the Commission's successes in federal district court litigation, some unlicensed broadcasters have persisted in their unlawful activity.

40. We are concerned with misconduct which demonstrates the

proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with our rules and policies. Parties who persist in unlawful operation after the Commission has taken any of these enforcement actions could be deemed per se unqualified, and we seek comment as to the eligibility of such parties for a license in any new radio service. We seek comment on whether there are circumstances under which such a party could be considered rehabilitated. The reliability as licensees of parties who may have illegally operated for a time but have ceased operation after being advised of an enforcement action, however, is not necessarily as suspect. We seek comment on the propriety of accepting as licensees of low power (or microradio) licenses parties who may have broadcast illegally but have promptly ceased operation when advised by the Commission to do so, or who voluntarily cease operations within ten days of the publication of this summary in the **Federal Register**.

G. Service Characteristics

41. *Local Programming.* We seek comment on whether to impose a minimum local origination requirement on any of the three proposed classes of LPFM service. We are inclined to give low power (and microradio) licensees the same discretion as full-power licensees to determine what mix of local and nonlocal programming will best serve the community. However, in order to promote new broadcast voices, we propose that an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station.

42. *Public Interest Programming Requirements.* Because they would be primary stations with potentially substantial coverage areas, we propose to require LP1000 licensees to adhere to the same Part 73 requirements regarding public interest broadcasting as apply to full power FM licensees. We propose that an LP1000 licensee's service obligations pertain to those listeners within its predicted 1 mV/m signal contour in the same way that full power radio station must serve the listeners in its community of license. We expect the very nature of LP100 and microradio stations will ensure that they serve the public. Therefore, we are disinclined to put the burdens of complying with specific programming requirements on these licensees, particularly given the size of their stations and the simplicity we are striving for in this service. We seek comment on these issues.

43. *Other Service Rules.* We also request comment on whether LPFM stations of each class should be subject to the variety of other rules in Part 73 with which full power stations must comply, including, for example, the main studio rule (47 CFR 73.1125(a)), public file rule (47 CFR 73.3526, 73.3527), and the periodic ownership reporting requirements (47 CFR 73.3615). Given the purposes and power levels of LP1000 stations, we tentatively conclude that LP1000 licensees should generally meet the Part 73 rules applicable to full power FM stations, and we seek comment regarding any individual rules that should not be applied. We would be disinclined to apply these service rules to microradio stations, and we particularly seek comment with regard to the rules appropriate for LP100 stations. Where a rule should not apply to a particular class of service, commenters should analyze the characteristics of that service that warrant disparate treatment for the purposes of that rule. We also seek comment on the applicability of the various political programming rules to each class of low power service we might adopt, taking into consideration our statutory mandate.

44. We also propose to treat low power radio stations like full power stations with respect to protection against exposure to radiofrequency radiation. We invite comment on this matter, and specifically on whether and how we should treat LP100 stations differently from LP1000 stations and, if so, why. We also seek comment on how our environmental rules should apply to microradio stations, if this low power radio class is adopted.

45. *Operating Hours.* Because we intend LP1000 stations to help new entrants eventually participate in the full power radio industry, and because these stations may be able to compete with full power stations, we propose to require them to maintain the same minimum hours of operation as are required of the lowest class of full-power stations: generally two thirds of their authorized hours between 6 a.m. and midnight. With respect to LP100 and microradio stations, however, a combination of their lesser spectrum utilization, the nature of the anticipated licensees and their services, and practical enforcement concerns suggests at this time that a minimum operating schedule should not be established unless and until experience shows it to be necessary. Such a determination could also be affected by whether we designate these as secondary services.

46. Construction, License Terms, Sales, and Renewals. We initially believe that LP1000 stations should have the same construction period (three years), and restriction on extensions, as full-power radio stations. We believe that LP100 and microradio stations should be able to be constructed in much less time and propose an eighteen-month construction limit for LP100 stations and a twelve-month limit for microradio stations. Also, we seek comment on whether to prohibit the transfer of low power radio construction permits.

47. We propose that LP1000 stations follow the Part 73 rules applicable to full-power radio stations with regard to the length of their license terms and renewal procedures. However, we ask if there is some regard in which their renewal process could be further simplified appropriate to their status and the nature of their service, consistent with statutory requirements. If there is little specific regulation for LP100 and microradio stations, we query how often and how closely we should actively monitor their performance, within the parameters of our statutory responsibility (47 U.S.C. 307(a)).

48. We are open to comment on whether LP100 and microradio stations should be authorized for finite non-renewable periods, such as five or eight years, so that others may eventually take their turns at the microphone. Making broadcast outlets available to more speakers is a fundamental premise of this rule making effort, and we do not expect that such a limitation would discourage the very modest investment required to build such a station, particularly if the assets would be readily transferable. We also seek comment on whether nonrenewable licenses would contravene statutory provisions providing for a ''renewal expectancy'' for broadcast stations in Sections 309(k)(1) of the Communications Act of 1934, and the renewal provisions of Section 307(c). We question whether these provisions direct the Commission to accept renewal applications for all broadcast services, or instead set the standards for the Commission to follow when it chooses to have renewable licenses.

49. *Emergency Alert System.* Since we expect LP1000 facilities to reach a significant number of people, we propose to treat them like full power FM stations for the purposes of the Emergency Alert System (EAS). By contrast, due to their extremely small coverage areas and probably very small audiences, as well as their limited resources, we propose that microradio stations not be required to participate in the EAS. We request comment on these proposals and on how LP100 stations, with their intermediate size and

audience reach, should fit into the EAS structure.

50. *Station Identification.* We ask commenters whether we should adopt a call sign system that would identify a low power radio station as such. Commenters should explain whether listeners benefit by having an LPFM station's status identified through its call sign.

51. *Inspection by the Commission and Compliance with its Rules.* As with full power broadcast stations, we propose that all LPFM stations would be made available for inspection by Commission representatives at any time during their business hours or at any time they are in operation. Our rules provide for the Commission to immediately shut down FM translator and booster stations, which are secondary, if they cause any actual impermissible interference. We seek comment on whether similar provisions should apply to LP100 and microradio stations if authorized as secondary services.

H. Applications

52. *Electronic Filing.* We propose to require that LPFM and microradio applications be filed electronically. Without electronic filing, the Commission lacks the resources to promptly accomplish the necessary data entry for hundreds or thousands of LPFM (and, possibly, microradio) applications.

53. We seek information from commenters regarding the experiences in other services which have adopted electronic filing, particularly the availability of internet access for electronic filing and the reliability of the process, and their view of the relevance of that experience to what we have proposed here and the likely applicants for LPFM channels.

54. We may be able to develop a system whereby the application could first be analyzed against existing facilities and, perhaps, even against previously filed applications, and thus acceptable for filing based on current data. If we use a window filing system for low power applications, the system could allow an applicant to avoid submitting a conflicting application and thus avoid mutual exclusivity and the delay which resolving such exclusivity might entail. The filing system could also be designed to assist applicants in determining HAAT or appropriate derating of permissible transmit power. Parties wishing to operate LPFM (or microradio) facilities would benefit substantially, and the public would receive service far earlier than it would otherwise.

55. *Filing Windows/Mutual Exclusivity.* We propose to adopt a processing system with short windows of only a few days each for the filing of applications. We ask whether this would have advantages over longer windows and over a first-come, first-serve procedure. We also request comment on the optimal duration of any window that might be adopted. We expect that short filing windows would lessen the occurrence of mutually exclusive applications and speed service to the public. We are concerned, however, about whether short filing windows would result in a flood of applications in a short period that would be so great as to overwhelm any filing system we might be reasonably able to devise.

56. We note that electronic filing might give us the capacity to ascertain the precise sequence in which applications are submitted by different parties. This would allow us to use a first-come, first-serve filing system, thereby preventing the accumulation of numerous mutually exclusive applications. Such a process might avoid imposing a considerable burden and expense on the Commission and the applicants, and very greatly speed the initiation of new service. However, such a system may have costs, limitations, and inequities that might be avoided by the use of filing windows. Our consideration of this matter would include our statutory ''obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.'' 47 USC 309(j)(6)(E).

57. *Resolving Mutually Exclusive Applications.* We tentatively conclude that auctions would be required if mutually exclusive applications for commercial LPFM facilities were filed. *See* 47 USC 309(j). Commenters are welcome to address whether LPFM stations could be excluded from the auctions requirement of Section 309(j) consistent with legislative intent.

58. We seek comment on alternatives or modifications to the auction procedure which could promote localism and community involvement by low power and microradio stations. The Auctions Order, 63 FR 48615 (Sep. 11, 1998), sets forth new filing requirements for broadcast stations which replace the previous filing procedures with a specific time period, or auction window, during which all applicants seeking to participate in an auction must file their applications. Prior to any broadcast auction, we will release an initial public notice announcing an upcoming auction and specifying when the filing window will open and how long it will remain open. Initially, prospective bidders will electronically file a short-form application, along with any engineering data necessary to determine mutual exclusivity in a particular service. Once the auction is completed, a long-form application will be filed. We seek comment on the extent to which these procedures are appropriate for LPFM.

59. Licenses for noncommercial stations are specifically exempted from auction by the statute. We seek comment on the appropriate selection methodology for applications for such channels. We have the authority to resolve mutually exclusive noncommercial broadcast applications by lottery. In a *Further* Notice of Proposed Rule Making in MM Docket No. 95–31, 63 FR 58358 (Oct. 30, 1998), we explored possible selection criteria and procedures for noncommercial educational applicants for full-power FM service, including use of lotteries or of a point system, and commenters are invited to address the issues raised in that Further Notice. Commenters should provide a rationale for disparate treatment of full-power and low power applicants.

III. Administrative Matters

60. *Paperwork Reduction Act of 1995 Analysis.* This Notice proposes the creation of a new, low power FM radio broadcast service. Implementation of this service (*e.g.*, issuing construction permits, granting license assignment applications) may involve an information collection requirement. We estimate that at least several hundred parties may apply to construct LPFM facilities, and we may in the future receive numerous license renewal and sales applications. In addition, depending on the rules ultimately adopted, at least some licensees may be required to complete several forms that full power radio broadcasters submit, such as Forms 323 and 323–E (Ownership).

61. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collection that might be required, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this Notice (*i.e.*, April 12, 1999); OMB comments are also due April 12, 1999. Comments should address: (a) whether the proposed collection of

information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the internet to fain__t@al.eop.gov.

62. *Filing of Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 12, 1999, and reply comments on or before May 12, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

63. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

64. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, TW–A306, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The Mass Media Bureau contacts for this proceeding are Paul Gordon and Bruce Romano at (202) 418–2120, or pgordon@fcc.gov or bromano@fcc.gov, or Keith A. Larson at (202) 418–2600, or klarson@fcc.gov.

65. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Paul Gordon, Federal Communications Commission, 445 12th Street, S.W., Room 2C223, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the docket number in this case (MM Docket No. 99–25), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

66. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. It is anticipated that the Reference Center will be relocated to the Commission's Portals Building during the late spring or early summer of 1999. Accordingly, and especially after March 1, 1999, interested parties are advised to contact the FCC Reference Center at (202) 418–0270 to determine its location. Written comments by the public on the proposed and/or modified information collections are due on or before April 12, 1999. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 12, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

67. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under Section 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

68. *Initial Regulatory Flexibility Analysis.* With respect to this Notice, an Initial Regulatory Flexibility Analysis (''IRFA'') under the Regulatory Flexibility Act, see 5 U.S.C. 603, is provided below and in Appendix E of the Notice. Written public comments are requested on the IRFA, and must be filed in accordance with the same filing deadlines as comments on the Notice, with a distinct heading designating them as responses to the IRFA. The Commission will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

69. *Additional Information.* For additional information on this proceeding, please contact Keith A. Larson, Office of the Bureau Chief, Mass Media Bureau at (202) 418–2600, or Bruce Romano or Paul Gordon, Policy and Rules Division, Mass Media Bureau at (202) 418–2120.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rule Making.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 95. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small

[1] See 5 USC 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Business Administration. *See* 5 USC 603(a).

Need For and Objectives of the Proposed Rule Changes

The Commission received petitions for rulemaking asking for the creation of a low power radio service. Because they raised similar or identical issues, the Commission coordinated its responses to them. The Commission released Public Notices of its receipt of three of the proposals and invited public comment on them.

In response to significant public support, the Commission is now proposing to create a new, low power FM service. Specifically, it is proposing two classes of LPFM service, a 1000-watt maximum class (''LP1000'') and a 100-watt maximum class (''LP100''). We are also asking whether to create a third class (called ''microradio''), which would have a maximum power output of one to ten watts. Because of the predicted lower construction and operational costs of LPFM stations as opposed to full power facilities, we expect that small entities would be expected to have few economic obstacles to becoming LPFM licensees. Therefore, this proposed new service may serve as a vehicle for small entities and under-represented groups (including women and minorities) to gain valuable broadcast experience and to add their voices to their local communities.

Legal Basis

Authority for the actions proposed in this Notice may be found in §§ 4(i) and 303 of the Communications Act of 1934, as amended, 47 USC 154(i), 303.

Description and Estimate of the Number of Small Entities To Which the Rules Would Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.''[8] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[9] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

The Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[11] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[12] Included in this industry are commercial, religious, educational, and other radio stations.[13] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[14] As of December 31, 1998, Commission records indicate that 12,472 radio stations were operating, of which 7,679 were FM stations.[15]

The proposed rules, if adopted, would apply to a new category of FM radio broadcasting service. For the proposed service, the number of stations that could be licensed without causing unacceptable interference would depend on the interference criteria that we will apply to the various classes of low power radio service. Should we determine that second-and/or third-adjacent channel interference protection would not be necessary to prevent unacceptable interference to full power stations, then far more LPFM facilities could be authorized. The number of stations that we could authorize is also dependent upon the ratio of LP1000, LP100, and microradio stations for which we would accept applications. For instance, the greater the number of LP1000 stations, the less spectrum would remain available to accommodate other LPFM facilities. This, in turn, would affect how many new stations would be available to small entities.

The number of entities that may seek to obtain a low power radio license is currently unknown. We note, however, that the Commission has received over 13,000 inquiries in the past year from individuals and groups interested in operating such a facility. In addition, we expect that, due to the small size of low power FM stations, small entities would generally have a greater interest than large ones in acquiring them.

We seek comment and data regarding the number of small entities that may be affected by the proposed rules, if adopted.

Reporting, Recordkeeping, and Other Compliance Requirements

The Commission is proposing to create a new broadcasting service that may allow hundreds or thousands of small entities to become broadcast licensees for the first time. This endeavor would require the collection of information for the purposes of processing applications for (among other things) initial construction permits, assignments and transfers, and renewals. Given the power levels and purposes of LP1000 stations (such as their potential to be an entry-level radio service), we would likely require the same or similar reporting, recordkeeping, and other compliance requirements as full power radio broadcasters. However, recognizing that LPFM 100 and microradio licensees may be small, inexperienced operators who would be serving fairly limited

[2] 5 USC 603(b)(3).

[3] 5 USC 601(6).

[4] 5 USC 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 USC 601(3).

[5] Small Business Act, 15 USC 632 (1996).

[6] 5 USC 601(4).

[7] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 USC 601(5).

[9] U.S. Dept. of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[10] *Id.*

[11] 13 CFR 121.201, SIC code 4832.

[12] 1992 Census, Series UC92–S–1, at Appendix A–9.

[13] *Id.* The definition used by the SBA also includes radio broadcasting stations which also produce radio program materials. Separate establishments that are primarily engaged in producing radio program material are classified under another SIC number, however. *Id.*

[14] FCC News Release, No. 31327 (Jan. 13, 1993).

[15] FCC News Release, ''Broadcast Station Totals as of December 31, 1998'' (Jan. 25, 1999).

areas and audiences, we intend to keep this service as simple as possible. Accordingly, we intend to keep reporting, recordkeeping, and other compliance requirements to a minimum. The Notice seeks comment on these issues, including comment specifically directed toward the possible effects of such requirements on small entities.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

We are proposing a low power radio service that is divided into subclasses, defined by their power output (in watts): LP1000 and LP100. We are also requesting comment on a possible microradio class of 1–10 watts. With this subdivision, small entities would be able to apply for stations in the class that is most appropriate for their interests and their ability to construct and operate a station. The Notice asks for comment on the proposed classes and asks whether an alternative system would better serve the public interest.

The Notice proposes ownership rules intended to assist small entities construct or acquire LPFM stations. Parties with attributable interests in any full power broadcast facilities would not be eligible to have any ownership interest in any low power radio stations; this would prevent large group owners (or even large single-station owners) from constructing and operating LPFM facilities that might otherwise be available to small entities. The proposed local and national ownership restrictions of one station per community and five or ten nationwide similarly would be intended to ensure that ample LPFM stations are available for small entities. However, the ownership rules would also prohibit small entity full power broadcasters from acquiring LPFM licenses.

The Notice does not propose a local residency requirement on LPFM licensees. Regarding LP1000 stations, it notes that full power stations require neither local residency nor integration between ownership and management to assess and address local needs and interests. Such a restriction would also frustrate any attempt at achieving certain efficiencies from national multiple ownership long recognized as beneficial for full-power stations. Additionally, because the service areas for LP1000 stations will be relatively small, a potential new entrant might hold residency in a location where no LP1000 channels can be found, so such a residency requirement might frustrate one of the significant potentials of LP1000 stations. The same rationale can be applied to LP100 and microradio stations. Moreover, we expect that the nature of the service provided by the two smaller classes of stations would attract primarily local or nearby residents. The Notice seeks comment on these assumptions and resulting proposal.

The Notice requests comment on whether unlicensed operators, who have broadcasted illegally, should be considered eligible to hold LPFM licensees. Although we do not have data on this issue, we presume that most of these illegal operators are individuals, small groups, or small entities. As a result, our disposition of this issue could be of great concern to this relatively small group, should they desire to operate LPFM stations within the legal framework we are proposing. The Notice asks whether unlicensed operators have the requisite character qualifications to be Commission licensees. It also asks whether those who have promptly ceased operation when advised by the Commission to do so, or who voluntarily cease operations within ten days of the publication of the summary of this Notice in the **Federal Register**, should be considered differently in this regard.

The Notice also asks whether LPFM stations of each class should be subject to the variety of other rules in Part 73 with which full power stations must comply, such as the main studio rule, the public file rule, and the periodic ownership reporting requirements. Given the purposes and power levels of LP1000 stations, we tentatively conclude that LP1000 licensees should generally meet the Part 73 rules applicable to full power FM stations. However, we seek comment on whether sufficient useful purpose would be served in applying each rule to these licensees. The Notice states that we would be disinclined to apply most of these service rules to microradio stations, and we particularly seek comment with regard to the rules appropriate for LP100 stations. Commenters are invited to discuss which existing rules should apply or what new or modified rules would be more appropriate. Because of the costs of complying with Commission rules, this issue could be of importance in determining whether a small entity could afford to operate an LPFM station.

The Notice proposes a mandatory electronic filing system, envisioning an internet-based system that would provide substantial assistance to potential applicants with little technical or legal background. For example, we may be able to develop a system that could inform a potential applicant what frequencies are available before an application is filed. The Commission notes the increasing ease of accessibility to the internet through private homes, public libraries, and other publicly accessible places. Without electronic filing, the Commission lacks the resources to promptly accomplish the necessary data entry for hundreds or thousands of LPFM (and, possibly, microradio) applications. A manual filing system might result in applicants' not learning for many months (at least) whether their applications were acceptable for filing. As a result, electronic filing would provide superior service to LPFM applicants and speed service to the public.

The Commission proposes to adopt a window filing system with short filing periods of only a few days each, and it asks commenters to address if that would have advantages over a first-come, first-served system. One of the Commission's concerns is to reduce the number of mutually exclusive applications, due to the resulting delay in service implementation, and because Section 309(j) of the Communications Act of 1934, as amended, requires mutual exclusivity between or among commercial broadcast applications to be resolved through auctions. Also, Section 309(j)(6)(E) of the Communications Act of 1934, as amended, states that the Commission has the ''obligation, in the public interest, to continue to use engineering solutions, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.'' With auctions, receiving an LPFM construction permit could become too expensive for many of the people this service is intended to serve. With regard to a first-come system, the Notice questions the fairness of rejecting an application as unacceptable for filing because it would be mutually exclusive with one filed only a moment earlier, possibly solely because the latter party may have had a poor internet connection.

Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules

The initiatives and proposed rules raised in this proceeding do not overlap, duplicate or conflict with any other rules.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3569 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF35

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for the Mountain Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the mountain plover (*Charadrius montanus*) as a threatened species pursuant to the Endangered Species Act (Act) of 1973. The mountain plover is a bird of shortgrass prairie and shrub-steppe landscapes at both breeding and wintering locales. Breeding occurs in the Rocky Mountain States from Canada south to Mexico with most breeding birds occurring in Montana and Colorado. Most wintering birds occur on grasslands or similar landscapes in California; fewer wintering birds occur in Arizona, Texas, and Mexico. Breeding Bird Survey trends analyzed for the period 1966 through 1996 document a continuous decline of 2.7 percent annually for this species, the highest of all endemic grassland species. Between 1966 and 1991, the continental population of the mountain plover declined an estimated 63 percent. The current total population is estimated to be between 8,000 and 10,000 individuals. Conversion of grassland habitat, agricultural practices, management of domestic livestock, and decline of native herbivores are factors that likely have contributed to the mountain plover's decline. Pesticides may be a factor contributing to the decline of mountain plovers, but their effects are not completely understood.

DATES: We must receive comments from all interested parties by April 19, 1999. We must receive requests for public hearings by April 2, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Assistant Field Supervisor, U.S. Fish and Wildlife Service, 764 Horizon Drive, South Annex A, Grand Junction, Colorado 81506–3946. We will make comments and materials we receive available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Leachman at the above address, telephone 970/243–2778; facsimile 970/245–6933.

SUPPLEMENTARY INFORMATION:

Background

The mountain plover (*Charadrius montanus*) was described by John K. Townsend in 1837 from specimens collected near the Sweetwater River, Fremont County, Wyoming (Coues 1874, cited in Laun 1957). This species was originally named the Rocky Mountain plover because the first specimens were taken within sight of those mountains (Oberholser 1974). The mountain plover has since been known by several different scientific names, as well as other common names. The species name *Charadrius montanus* was formally adopted by the Committee on Classification and Nomenclature of the American Ornithological Union in 1983 (R. Banks, National Biological Service, pers. comm., 1994). There are no subspecies (Oberholser 1974).

The mountain plover is a small bird (about 17.5 centimeters (cm)) (7 inches)(in)), about the size of a killdeer (*Charadrius vociferus*). It is light brown above with a lighter colored breast, but lacks the contrasting dark breastbelt common to many other plovers. During the breeding season it has a white forehead and a dark line between the beak and eye, which contrasts with the dark crown. Mountain plovers are insectivorous, with beetles, grasshoppers, crickets, and ants their principal food items (Stoner 1941, Baldwin 1971, and Rosenberg et al. 1991, Knopf 1998).

The mountain plover is associated with shortgrass and shrub-steppe landscapes throughout its breeding and wintering range. Historically, on the breeding range, it occurred on nearly denuded prairie dog towns (Knowles et al. 1982, Olson-Edge and Edge 1987) and in areas of major bison concentrations (Knopf 1997). Many consider nesting mountain plovers to be strongly associated with prairie dog towns (Tyler 1968, Knowles et al. 1982, Knowles and Knowles 1984, Shackford 1991, Samson and Knopf 1994, Knopf 1996b). All of the endemic grassland birds evolved within a grassland mosaic of lightly, moderately, and heavily grazed areas, and mountain plovers are considered to be strongly associated with sites of heaviest grazing pressure, to the point of excessive surface disturbance (Knopf and Miller 1994, Knopf 1996b). Currently, the mountain plover is also attracted to man-made landscapes (e.g., sod farms, cultivated fields) that mimic the natural habitat associations, or sites with grassland characteristics (alkali flats, other agricultural lands).

Nesting mountain plovers are reported in some of the Rocky Mountain and Great Plains States from Canada south to Texas, and possibly in Mexico. Most mountain plovers breed in Colorado and Montana; breeding also occurs in Wyoming, New Mexico, Arizona, Nebraska, Utah, Kansas, Oklahoma, and Texas. Breeding is suspected in Mexico and historic nesting records occur from Canada. Nesting habitat in Canada is restricted to southeastern Alberta and southwestern Saskatchewan. Breeding adults, nests, and chicks have been observed on cultivated lands in Colorado, Kansas, Nebraska, Oklahoma, and Wyoming. Most mountain plovers winter in California where they are found on grasslands or landscapes resembling grasslands, and cultivated fields; many fewer wintering plovers are reported from Arizona, Texas, and Mexico.

The mountain plover is one of nine bird species endemic to the North American grasslands (Knopf 1996a). Endemic grassland birds have declined more rapidly than other species in North America, and the mountain plover's decline is greater than that of the other grassland endemics (Knopf 1994; Sauer et al. 1997). Unlike other plovers, mountain plovers are rarely found near water.

Habitat Characteristics

Mountain plovers evolved on grasslands that were inhabited by large numbers of nomadic grazing ungulates such as bison (*Bison bison*), elk (*Cervus elaphus*), pronghorn (*Antilocapra americana*), and burrowing mammals such as kangaroo rats (*Dipodomys* sp.), prairie dogs (*Cynomys* sp.), and badgers (*Taxidea taxus*) (Knopf 1996a). The herbivores dominated the grassland landscape at both breeding and wintering sites, and their grazing, wallowing, and burrowing activities created and maintained a mosaic of vegetation and bare ground to which mountain plovers became adapted (Dobkin 1994, Knopf 1996a).

Short vegetation, bare ground, and a flat topography are now recognized as habitat-defining characteristics at both breeding and wintering locales (Graul 1975, Knopf and Miller 1994, Knopf and Rupert 1995). Mountain plovers nesting

sites are dominated by short vegetation and bare ground, often with manure piles or rocks nearby. Mountain plovers historically nested on black-tailed prairie dog (*Cynomys ludovicianis*) towns (Flowers 1985, Godbey 1992, Kantrud and Kologiski 1982, Knowles et al. 1982, Knowles and Knowles 1993) or other areas heavily grazed by prairie herbivores.

Currently, in addition to nesting on prairie dog towns, mountain plovers show a strong affiliation for sites that are heavily grazed by domestic livestock (e.g. near stock watering tanks), and also attempt breeding on fallow and cultivated fields which mimic natural habitats (Knopf 1996b). In California, many of the preferred wintering sites are grazed by domestic livestock, or are within giant kangaroo rat (*Dipodomys ingens*) precincts or California ground squirrel (*Spermophilus beecheyi*) colonies (Knopf and Rupert 1995). Wintering mountain plovers in Mexico are almost entirely associated with prairie dog towns (N. Kaufman, U.S. Fish and Wildlife Service, *in litt.,* 1998). Since mountain plovers are usually associated with sites that are modified by grazing and digging mammals, Knopf and Miller (1994) suggested classifying the mountain plover as a species more closely associated with disturbed prairie sites, rather than pristine prairie landscapes.

Bison and elk are now functionally extirpated from all mountain plover breeding habitat, and numbers of pronghorn are greatly reduced. Similarly, prairie dog and/or kangaroo rat numbers are greatly reduced on mountain plover breeding and wintering sites. Now, the primary grazer on both breeding and wintering habitat is domestic livestock, although prairie dogs and/or giant kangaroo rats influence habitat locally at a few sites. Current domestic livestock grazing management emphasizes rotating the animals in time and space among allotments within fenced pastures (Dobkin 1994, Knopf 1996c). Currently accepted domestic livestock grazing management may cause grasses to become more dense and uniform in height, decrease the amount of bare ground, increase the abundance of shrubs, and reduce the frequency and effects of fire (Knopf and Rupert *in press*, Dobkin 1994). Therefore, some types of domestic livestock grazing management techniques do not result in the same habitat characteristics as those created by the native herbivores, with which the mountain plover evolved.

Life History

Mountain plovers arrive on their breeding grounds by late March. The nest is a simple scrape on the ground which is lined with organic debris (Graul 1975). Nests typically occur in areas with vegetation less than 10 cm (4 in) in height, with at least 30 percent bare ground, and with a conspicuous object such as a manure pile, clump of forbs, or rock nearby (Graul 1975, Knopf and Miller 1994, Olson and Edge 1985, Knowles and Knowles 1998). Although short vegetation, bare ground, and an object are characteristic of nest sites, the presence of some taller vegetation to shade chicks and adults also has been reported as necessary (Shackford and Leslie 1995a). Nest sites occur on ground with less than 5 percent slope, which is usually heavily grazed by domestic livestock and/or prairie dogs (Graul 1973, Kantrud and Kologiski 1982, Knowles and Knowles 1998). Vegetation at nest sites throughout the breeding range is variable, but usually dominated by needle-and-thread (*Stipa comata*), blue gramma (*Bouteloua gracilis*), buffalo grass (*Buchloe dactyloides*), plains prickly pear cactus (*Opuntia polycantha*), June grass (*Koeleria cristata*), and sagebrush (*Artemisia* sp.) (Graul 1975, Parrish 1988, Day 1994, Knowles and Knowles 1998).

On the Colorado breeding grounds, flocks of mountain plovers begin to form as early as mid-June prior to migration to wintering habitat. The flocks increase in size until mid-August, and then depart for the wintering grounds between August and October (Graul 1975). Mountain plovers begin to arrive on wintering grounds in California by September, but do not appear in large numbers until November (Jurek 1973; Knopf and Rupert 1995). Two mountain plovers that were color banded in Colorado in 1992 were seen in the San Joaquin Valley of California the same year, representing the first direct link between breeding and wintering habitat for the species (Knopf and Rupert 1995). A mountain plover banded as a chick in Phillips County, Montana, in 1995, was seen in the Sulphur Springs Valley of Arizona on January 1, 1998, supporting other indications that the fall migration to wintering habitat is less direct than migration to breeding grounds (F. Knopf, USGS-Biological Resources Division, pers. comm. 1998, Knopf and Rupert 1995).

Historically, the mountain plover has been reported from a variety of habitats during the wintering period, including grasslands and agricultural fields in California (Tyler 1916; Grinnell et al. 1918; Belding 1879 *in* Grinnell et al. 1918: Preston 1981 *in* Moore et al. 1990; Werschkull et al. 1984 *in* Moore et al. 1990). More recently, mountain plovers are reported from natural, noncultivated sites such as alkali sink scrub, valley sink scrub, alkali playa, and annual grasslands (S. Fitton, Bureau of Land Management (BLM), *in litt.*, 1992, Knopf and Rupert 1995) in the Central Valley. Although cultivated land is used by wintering mountain plovers and is more abundant than noncultivated land, Knopf and Rupert (1995) found that mountain plovers preferred alkali flats, burned grasslands, and grazed annual grasslands to cultivated sites. Grazing on such grassland sites was usually by domestic livestock or burrowing mammals (Knopf and Rupert 1995).

Mountain plovers are gregarious on their wintering habitat. Flock size averages from about 20 to 180 individuals, increasing in size as spring migration approaches (Knopf and Rupert 1995). Flocks with up to 1,100 individuals have been reported from the San Joaquin Valley and Imperial Valley (B. Radke, Service, *in litt.* 1992, Knopf and Rupert 1995). Mountain plovers begin leaving wintering areas by mid-March and may make a nonstop migration to breeding grounds (Knopf and Rupert 1995). In general, mountain plovers spend about 4 months on breeding grounds, 5 months on wintering habitat, and the remaining time mostly in their fall migration (Knopf and Rupert 1996).

Breeding Distribution and Abundance

As discussed by Knopf (1996), the continental breeding range of the mountain plover has been reduced from its historical extent, especially in the eastern portion of the range. The mountain plover was formerly common in western and central Kansas (Goss 1891), and reported as numerous between Fort Supply, Oklahoma and Dodge City, Kansas (McCauley 1877). The species is considered to have been historically numerous in Colorado (Bailey and Niedrach 1965) and Wyoming (Knight 1902). Mountain plovers formerly occupied western South Dakota (South Dakota Ornithologist's Union 1991) and Nebraska (Knopf 1996), and there is one known breeding reference in North Dakota (Roosevelt 1885). They may have bred in northern Mexico in 1901 (Sanford et al. 1924).

Colorado

Mountain plovers have been studied more intensively in Weld County than any other location throughout their range. Graul and Webster (1976)

considered Weld County the breeding stronghold for the mountain plover, a conclusion widely referenced by subsequent authors (e.g., Knopf and Rupert 1996). Inventories completed by the Colorado Bird Atlas Partnership from 1987 through 1995 reported mountain plovers from 8 percent of the survey blocks inventoried in eastern Colorado, and the number of mountain plover sightings in some survey blocks was nearly equal to or greater than those reported from Weld County (H. Kingery, Colorado Bird Atlas Partnership, pers. comm., 1994, *in litt.*, 1998). Kingery (*in litt.*, 1997) estimated that about 7,000 mountain plovers breed in Colorado, and that about 1,500 of those breed in Weld County.

Shackford and Leslie (1995b) reported mountain plovers seen on cultivated fields in 14 counties in eastern Colorado from 1992 through 1995, with most birds seen in Kiowa County. Adult mountain plovers also occur on cultivated fields in Las Animas County within the boundary of the Comanche National Grassland in southeast Colorado (J. Cline, U.S. Forest Service, *in litt.*, 1994). Breeding mountain plovers also have been reported from southeast Colorado by other researchers (Chase and Loeffler 1978; Nelson 1993; R. Estelle, no affiliation, *in litt.*. 1994). Carter et al. (1996) detected mountain plovers at very low densities in 10 Colorado Counties; mountain plovers were most numerous in Kiowa and Park Counties. The Colorado Natural Heritage Program conducted mountain plover surveys in Park County in 1994, 1995, and 1997 (Pague and Pague 1994, Sherman et al. 1996, Hanson 1997). About 1,000 mountain plovers were estimated in Park County in 1995, and these surveys also disclosed the vulnerability of some breeding sites to ongoing and potential urbanization (Sherman et al. 1996). Additionally, Service biologists have observed adults in Moffat County in July (R. Leachman, Service, pers. comm., 1998).

The Bird Atlas Partnership survey (H. Kingery, *in litt.*, 1998) and the inventory of cultivated fields (Shackford and Leslie 1995b) mentioned above resulted in observations of breeding behavior and relative abundance, not estimates of density or productivity. Knopf (1996) reported densities of breeding birds on the Pawnee National Grassland (Weld County) as ranging between 2.0 and 4.7 birds/square kilometer (km) between 1990 and 1994. In 1995, the Pawnee National Grassland experienced exceptionally wet, cold weather through June and few birds were found there during the breeding season (Knopf 1996). Sherman et al. (1996) estimated 1.32 birds/square km in Park County during 1995.

Estimates of nest success and productivity in Colorado are available from studies on prairie habitat in Weld County and cultivated lands in southeast Colorado. Nest success on the Pawnee National Grassland in Weld County was highly variable among years. Percentage of nests where at least one egg hatched varied from 26 percent (Knopf and Rupert 1996) to 65 percent (Graul 1975). Mountain plovers in Weld County fledged an estimated 1.4 young/nest during 1969–1974 (Graul 1975) and also in 1992, suggesting that breeding success in Weld County did not change much in nearly 30 years (Miller and Knopf 1993). McCaffery et al. (1984) estimated a brood size of about 1.3 chicks/adult in Weld County just prior to fledging. Knopf (1996) hypothesized that reported low fledging rates were attributable to drought, which affects the food supply and simultaneously increases predation pressures. The only other estimate of productivity in Colorado is from mountain plovers on cultivated fields in southeast Colorado, southwest Kansas, and northwest Oklahoma where Shackford and Leslie (1995a) estimated 34 percent of nests were successful and 47 percent of chicks that hatched also fledged. In comparison, on the Pawnee National Grassland, an estimated 50 percent of nests were successful and 47 percent of chicks that hatched also fledged (Miller and Knopf 1993). Further studies are needed to determine if average productivity and recruitment on cultivated land differs significantly from native grassland. In Weld County 60 to 70 percent of the mountain plover habitat occurs on the Pawnee National Grassland (F. Knopf, *in litt.* 1991). We therefore believe that areas within Weld County will be important to any future conservation efforts because mountain plovers have shown an affinity for this locale, independent studies over a 30 year period have confirmed successful reproduction, and the extensive Federal ownership improves opportunities for habitat maintenance and protection.

Recent reports of the mountain plover being more widely distributed in Colorado than previously known has led to some speculation that the population in Colorado is stable or improving. Pulliam (1988) expressed caution that basing a species' conservation needs on where it is most common rather than where it is most productive may lead to errors. Although additional sightings of mountain plovers in Colorado are encouraging, some of these sightings have occurred on cultivated lands. We know of no productivity estimates that are available to compare production on these cultivated areas with production estimated from historic breeding sites.

Montana

Breeding habitat for mountain plovers in Montana is usually characterized by grasslands and shrublands consisting commonly of needle-and-thread, blue grama, June grass, saltbush (*Atriplex gardneri*), and prickly pear cactus. Most breeding sites are grazed by domestic livestock or prairie dogs, and the largest number of breeding mountain plovers in Montana is found on a large complex of black-tailed prairie dog towns in Phillips and Blaine Counties (Knowles and Knowles 1998). The prairie dog towns occur on the Charles M. Russell National Wildlife Refuge, Fort Belknap Indian Reservation, BLM, State school lands, and private lands. Mountain plovers in these two Counties number fewer than 2,000 individuals, and are considered the second major breeding population for the species (Knopf and Miller 1994, Knowles and Knowles 1996, S. Dinsmore, Service, pers. comm., 1998).

Mountain plovers also breed on land administered by the BLM in Valley County (Little Beaver Creek), and on private land in Wheatland and Golden Valley Counties near the Little Belt and Big Snowy Mountains (Knowles and Knowles 1998). Surveys through 1997 now also confirm breeding mountain plovers in Big Horn, Broadwater, Carbon, Carter, Fergus, Jefferson, Hill, Madison, Musselshell, Petroleum, Rosebud, Toole, Treasure, and Teton Counties (Knowles and Knowles 1996, 1998; J. Grensten, BLM, pers. comm., 1998).

Only one mountain plover was located during a search of cultivated fields in 17 counties in Montana in 1995, and mountain plovers appear to use cultivated fields only for foraging and territorial display; nesting has not been observed in cultivated fields in Montana (C. Knowles, Fauna West, pers. comm., 1998). Shackford and Leslie (1995b) hypothesized that more frequent disturbance of fields, a shorter growing season, and more clayey soils in Montana compared to Colorado (Knowles pers. comm., 1998) may explain the fact that fewer birds are sighted nesting on cultivated fields.

With the exception of the population in Phillips and Blaine Counties, mountain plovers total less than 800 individuals at the other 8 locations. Therefore, Knowles and Knowles (1996) estimate fewer than 2,800 mountain plovers in Montana. Selected prairie-dog towns at the Charles M. Russell National Wildlife Refuge in Montana

yielded density estimates of 6.8 and 5.8 birds/square km in 1991 and 1992, respectively. The spring of 1995 was very wet in Montana, and densities in this area were reported at 1.3 birds/square km in that year (Knopf 1996).

Wyoming

The mountain plover is classified as common in Wyoming, with breeding known or suspected in 20 of 28 blocks of latitude/longitude. Six blocks in the southeast corner of the State make up the primary breeding range (Oakleaf et al. 1982). From 1992 to 1997, nesting was confirmed on the Thunder Basin National Grassland in northeast Wyoming with nearly all nests found on black-tailed prairie dog towns (Bartosiak 1992; M. Edwards, Forest Service, *in litt.*, 1994; T. Byer, Forest Service, *in litt.*, 1997). Based on 1997 survey data, about 150 mountain plovers occur on the Grassland (T. Byer, *in litt.*, 1997). Recently, Thunder Basin National Grassland acquired an adjacent parcel of privately-owned rangeland, which together with existing property forms a management unit that has been identified as the next potential site for black-footed ferret reintroduction. In addition, the current Forest Management Plan for Thunder Basin is being revised and the new plan will identify increased acreage to be managed specifically for prairie wildlife, such as prairie dogs and mountain plovers (M. Lockhart, U. S. Fish and Wildlife Service, pers. comm., 1998).

From 1979 to 1992, nesting was confirmed at the Antelope Coal Mine in the southern Powder River Basin. Reported breeding densities of 0.9 to 2.4 birds/square km are lower than those reported for Wyoming prior to 1965 and at other breeding sites in Montana and Colorado (Oelklaus 1989, Parrish 1988, M. Edwards, *in litt.*, 1994). Mountain plovers throughout the southern Powder River Basin are generally thought to be widely scattered at low densities, with a few areas of local concentrations (Oelklaus 1989). Knopf (*in litt.*, 1991) found mountain plovers on the Laramie Plains, on the Chapman Bench north of Cody, and in the vicinity of Shirley Basin. One nest and some adults were located on cultivated lands in Laramie County (Shackford and Leslie 1995b). Mountain plovers also breed in shrub-steppe habitat in southwest Wyoming (Oakleaf et al. 1982). Recent survey efforts in Wyoming have not been as intensive as those in Montana or Colorado. In 1991, Knopf (*in litt.*, 1991) estimated fewer than 1,500 mountain plovers nesting in Wyoming.

New Mexico

Historic reports from New Mexico indicate that mountain plovers numbered from several individuals (1968 to 1977 data) to 150 in a single flock in July 1937 (Hubbard 1978). Sager (1996) conducted mountain plover surveys in 1995 and found 152 breeding adults and 26 juveniles at 35 sites in 11 counties north of 34 degrees latitude. His search was primarily confined to areas north of 34 degrees latitude. However, one adult was located in Hidalgo County during 4 days of survey effort south of 34 degrees, suggesting that occasional breeding may occur in the southern parts of the State (Sager 1996). Migrating mountain plovers were also sighted in Valencia, Colfax, Union, and Torrance Counties, with most of these seen on turf farms at Moriarty and Los Lunas (Sager 1996). The recent surveys in New Mexico imply that additional searching may yield more mountain plovers (S. Williams III, New Mexico Department of Game and Fish, *in litt.*, 1997).

Oklahoma

Few breeding mountain plovers were found in Oklahoma native shortgrass prairie and prairie dog towns in 1986. The few plovers found, combined with the discovery of one mountain plover nest on a maize field, stimulated additional surveys of cultivated fields in Oklahoma (Shackford 1991). In Cimarron County in the panhandle of Oklahoma, Shackford (1991) found that during the nesting seasons of 1986–1990, 60 percent of mountain plovers observed were in native grassland and 40 percent were in cultivated fields. Ten of the 15 birds observed in native grassland were on prairie-dog towns. Annual counts of mountain plovers on cultivated fields from 1990 through 1995 have ranged from 3 to 428 (Shackford and Leslie 1995b).

Other Breeding Areas

In Utah, the only site known to have breeding mountain plovers is in Duchesne County, south of Myton, in the Uintah Basin. Counts of breeding mountain plovers in this area from 1992 through 1997 have ranged from 7 to 29, and broods have been found in each year except 1992 (T. Dabbs, BLM, *in litt.*, 1997). Counts of breeding mountain plovers on cultivated lands in western Kansas from 1992 through 1995 have ranged from 52 (6 counties searched) to 114 (4 counties searched) (Shackford and Leslie 1995b). Surveys of cultivated fields and rangelands within the boundary of the Cimarron National Grassland in Kansas also have been conducted. Counts on the Grassland in 1994, 1996, and 1997 ranged from 1 to 13, and most of the sightings were on plowed fields (J. Chynoweth, Forest Service, *in litt.*, 1997).

Three pairs of mountain plovers were reported near Fort Davis, Texas, in 1992 (K. Brian, Davis Mountain State Park, pers. comm., 1992), but more recent breeding in Texas cannot be confirmed due to lack of permission to access private land (P. Horner, Texas Parks and Wildlife Department, *in litt.*, 1997). An adult incubating three eggs was found near Springerville, Apache County, Arizona, in May 1996 (T. Cordery, U.S. Fish and Wildlife Service, pers. comm., 1998). A nesting mountain plover was found in western Nebraska in 1990 (F. Knopf, *in litt.*, 1990), and two mountain plover nests were found in a fallow field in the same vicinity in 1997 (W. Jobman, Service, *in litt.*, 1997). Seventeen mountain plovers were counted on 10 cultivated fields in western Nebraska in 1992 and 1995 (Shackford and Leslie 1995b). The most recent nesting record in Canada is one nest in southeastern Alberta in 1990 (C. Wershler, Sweetgrass Consultants Limited, pers. comm., 1992). Mountain plover breeding behavior was observed in 1998 in Nuevo Leon, Mexico, but additional surveys are needed to confirm nests and broods (F. Knopf, *in litt.*, 1998). The Service is not aware of any breeding records from other locations.

Winter Distribution

Historically, mountain plovers have been observed during the winter in California, Arizona, Texas, and Nevada; the California coastal islands of San Clemente Island, Santa Rosa Island; and, the Farallon Islands (Strecker 1912; Swarth 1914; Alcorn 1946; Jurek 1973 Jorgensen and Ferguson 1984; Garrett and Dunn 1981; B. Deuel, American Birds Editor, *in litt.*, 1992). In Mexico, wintering mountain plovers have been sighted in Baja, California, as well as north-central and northeastern Mexico, specifically in Chihuahua, Coahuila, Sonora, Nuevo Leon, and San Luis Potosi (Russell and Lamm 1978; A. Garza de Leon, The Bird Galley, *in litt.*, 1990; L. Stenzel, Point Reyes Bird Observatory, *in litt.*, 1992; R. Estelle, pers. comm., 1998). Currently, the majority of mountain plovers appear to winter in California, with fewer reported from Texas, Arizona, and Mexico.

The only published scientific study of mountain plovers on their wintering habitat documented movement patterns, habitat preferences, and winter survival rates in the San Joaquin Valley and

Carrizo Plain Natural Area of California (Knopf and Rupert 1995). Due to the lack of published information on wintering birds, we examined Christmas Bird Count data, notes of California sightings compiled from American Birds, National Wildlife Refuge records, BLM surveys, and other information (J. Lowe, Cornell Laboratory of Ornithology, *in litt.*, 1989; B. Deuel, *in litt.*, 1992).

California

In California, mountain plovers are most frequently reported and found in the greatest numbers in two general locations—(1) in the Central Valley south of Sacramento and west of U.S. Highway 99, and (2) the Imperial Valley in southern California. Throughout these areas, sightings occur on agricultural fields and noncultivated sites; noncultivated sites are preferred habitat (Knopf and Rupert 1995). Within the Central Valley, flocks of up to 1,100 birds have been seen recently in Tulare County (Knopf and Rupert 1995). The Carrizo Plain Natural Area in San Luis Obispo County also is recognized as an important wintering site, with wintering birds reliably reported from the west side of the Carrizo Plain Natural Area since 1971 (S. Fitton, *in litt.*, 1992). The Sacramento Valley portion of the Central Valley also provides wintering habitat for flocks of mountain plovers within Solano and Yolo Counties. During the 1998 census, 230 and 187 mountain plovers were observed within each of these counties, respectively (K. Hunting, California Department of Fish and Game, *in litt.*, 1998).

About 2,000 mountain plovers were counted on agricultural fields in the Imperial Valley in 1994 (B. Barnes, National Audubon Society, *in litt.*. 1994). At other locations in southern California, birds have been seen at Harper Dry Lake, Antelope Valley, San Jacinto Lake Wildlife Area, and the Tijuana River Valley (K. Garrett, no affiliation, pers. comm., 1989; G. Cardiff, no affiliation, pers. comm., 1992; T. Paulek, California Department of Fish and Game, pers. comm., 1992; E. Copper, unaffiliated, *in litt.*, 1992). Mountain plovers are considered extirpated (extinct) from Orange County (B. Harper, U.S. Fish and Wildlife Service, *in litt.*, 1990).

Arizona, Texas, Nevada and Mexico

Wintering mountain plovers also are reported from other areas, but in much lower numbers than are reported from California. From 1983 to 1991, a total of 30 to 180 mountain plovers were reported from southeastern Arizona (J. Witzeman, Audubon Society, pers. comm., 1992). In Texas, up to 130 mountain plovers were reported from Guadalupe, San Patricio, and Williamson Counties (G. Lasley, Regional Editor American Birds, pers. comm., 1992). Mountain plovers also have been sighted throughout the year in Texas in Val Verde, Nueces, Kleburg, Aransas, Tom Green, Concho, and Schleicher Counties (P. Horner, *in litt.*, 1997), and at Laguna Atascosa National Wildlife Refuge (L. Laack, U.S. Fish and Wildlife Service, *in litt.*, 1992). In Nevada, several mountain plovers were collected in the Lahontan Valley in 1940, with a few observed there in the 1990's (Alcorn 1946; F. Knopf, pers. comm., 1995). In January 1992, 148 mountain plovers were counted at the north end of Laguna Figueroa, Baja California, Mexico (L. Stenzel, *in litt.* 1992). About 150 mountain plovers were seen on a prairie dog town in San Luis Potosi, Mexico, in January 1998 (R. Estelle, pers. comm., 1998).

Total Mountain Plover Population Abundance and Trend Estimates

Historically, breeding mountain plovers were reported as locally rare to abundant, and widely distributed in the Great Plains region from Canada south to Texas (Coues 1878, Knight 1902, McCafferty 1930, Bailey and Neidrach 1965). On wintering grounds in California, as many as 10,000 mountain plovers were repeatedly counted in the San Joaquin Valley during the 1960's (J. Engler, U.S. Fish and Wildlife Service, *in litt.*, 1992). In January 1994, 3,346 mountain plovers were counted during a simultaneous survey of 17 sites throughout California (B. Barnes, *in litt.*, 1994). A similar coordinated survey in California in January 1998 counted 2,179 (Hunting, *in litt.*, 1998).

We present the above estimates of mountain plover relative density and abundance rangewide and within each state to give the reader an indication of the variability in information reported in published literature and other references. The estimates of abundance provided for each State or area are usually from different researchers, from different times, and using different techniques. Therefore, the estimates should not be considered comparable to one another, nor necessarily additive. Knopf (1996b) estimated the total 1995 North American population to be between 8,000 and 10,000 birds. He arrived at this estimate beginning with a one day winter count of 3,346 mountain plovers at all known historical sites in California, assuming that at least one-half of all mountain plovers in California were missed by that count, and adding an estimated 1,000—3,000 birds that winter in Texas and Mexico.

Knopf (1994) reported that between 1966 and 1991, continental populations of the mountain plover declined an estimated 63 percent. Breeding Bird Survey trend analysis completed for the period 1966 through 1996 yields an estimated annual rate of decline of 2.7 percent ($P = 0.02$, 95 percent confidence intervals -4.7, -0.6; Sauer et al. 1997). Knopf and Rupert (*in press*) hypothesized that reduced productivity as a result of tillage on cultivated lands used for nesting may explain the annual rate of decline of this species. The mountain plover's decline is considered a major conservation concern (Knopf 1994, 1996b).

Previous Federal Action

On December 30, 1982, we designated the mountain plover as a category 2 candidate species, meaning that more information was necessary to determine whether the species status is declining, stable, or improving (47 FR 58458). In 1990, we prepared a status report on the mountain plover suggesting that Federal listing may have been warranted (Leachman and Osmundson 1990). We elevated the mountain plover to a category 1 candidate species in the November 15, 1994 Animal Candidate Notice of Review (59 FR 58982). At that time, category 1 candidate species were defined as those species for which we had sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list. In 1996, we redefined candidate species and eliminated category 2 and 3 candidate designations (61 FR 64481). Candidate species were defined using the old category 1 definition. The mountain plover retained its candidate species designation as reported in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398). On July 7, 1997, we received a petition to list the mountain plover as threatened from Jasper Carlton of the Biodiversity Legal Foundation. The Service responded by notifying the petitioners that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing may be warranted. Therefore, no 90-day finding was required for Biodiversity Legal Foundation's petition.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the mountain plover (*Charadrius montanus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

As discussed below, mountain plover habitat is threatened by the conversion of grasslands to croplands and urban uses, domestic livestock management, and other land uses (e.g., prairie dog control, mineral development) throughout mountain plover breeding and wintering range.

Historical Conversion of Grassland in Breeding Range

Conversion of grassland to cropland within the breeding range of the mountain plover has been extensive, with about 32 percent of the grasslands in the Great Plains now converted (Laycock 1987, Knopf and Rupert *in press*). Approximately 20 percent of Wyoming's and 80 percent of Texas' shortgrass prairie has been lost (comparable data not available for each State, Samson and Knopf 1994, Knopf and Samson 1997). The demand for agricultural development at the turn of century stimulated grassland conversion to croplands at both breeding and wintering locales. Conversions continued in later years to meet demands during World Wars I and II. In the 1940s, some additional land was plowed to take advantage of favorable precipitation and high wheat prices after World War II (Laycock 1987). Under the Soil Bank Act of 1956, participating farms withdrew cropland from production for 3–10 years. At the peak of the program in 1961, 14.1 million acres (ac) in the Great Plains were planted to grasses. Laycock (1987) suggests that observations show that almost all of this area was plowed again beginning in the early 1970s, along with previously unbroken grassland. Thus, the Soil Bank Program of 1956 was successful as a wildlife habitat conservation measure only in the short term. Later, during the Russian wheat sale of 1972 and authorization and implementation of Federal water projects in California's Central Valley, conversions of grassland continued (see Moore et al. 1990, Williams 1992). During the 1970s and 1980s, an estimated 572,000 ac (228,800 ha) and 15,000 ac (6,000 ha) of previously unbroken grassland were plowed in Colorado and Kansas (Laycock 1987). Simultaneously, domestic livestock replaced native ungulates as the primary grazer at both breeding and wintering locations, and livestock management practices that encouraged vegetative uniformity were adopted (see Knopf 1996c, and Knopf and Rupert *in press*).

Current Conversion of Grassland in Breeding Range

We investigated recent loss of native rangeland within the breeding range of the mountain plover using the National Resources Inventory (NRI) of the U. S. Department of Agriculture Natural Resources Conservation Service (NRCS). The NRI is a comprehensive database of natural resource information on non-federal lands of the United States that focuses on soil, water, and related resources. Although the survey is now repeated every five years, the earliest NRI data is available from 1982 (U.S. Department of Agriculture Soil Conservation Service 1994). The 1992 NRI Summary Report provided estimates of change in rangeland acreage, 1982–1992, for each state. Rangeland was defined as a land cover/use category that includes land on which the climax or potential plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing, and introduced forage species that are managed like rangeland. We believe that this cover type would most likely represent the vegetative elements required by breeding mountain plovers.

Colorado, Montana, and Wyoming are the three States with the majority of breeding mountain plovers; some breed in Kansas, Nebraska, and Oklahoma. Using areas inventoried by Knowles and Knowles (1998) and Shackford and Leslie (1995b), we compared the change in rangeland that has occurred in their inventory areas between 1982 and 1992. With the exception of Phillips and Blaine counties, Knowles and Knowles (1998) report more mountain plovers from Broadwater, Golden Valley, Jefferson, Madison, Valley, and wheatland counties than other locations in Montana. The counties inventoried by Shackford and Leslie (1995b) closely describe the area commonly reported as the mountain plover breeding range in Colorado, Kansas, Nebraska, Oklahoma, and Wyoming. We believe the 30 counties in the six states which we selected for review of NRI data are a good representation of areas either currently or historically occupied by mountain plovers.

Data were not available for all of the selected Montana counties. From 1982 to 1992, the amount of rangeland in the selected counties of Wyoming decreased 25,300 ac, in Colorado 466,200 ac, in Nebraska, 18,400 ac, in Kansas, 30,700 ac, and in Oklahoma 33,000 acres. These decreases occurred because of conversion to a variety of landuses, including cropland, developed land, and other rural lands (U. S. Department of Agriculture Soil Conservation Service 1994). These data suggest that the conversion of grasslands remains a significant threat to the species. Given the fact that mountain plovers are endemic to grasslands, we believe that a similar proportion of mountain plover habitat was likely lost during that time period. In fact, the conversion of grasslands to cropland is reported by many authors as a cause for the decline of mountain plovers and their habitat (e.g., Graul and Webster 1976, Fauna West 1991, Knopf and Rupert *in press*).

Mountain plovers are known to breed on private grasslands near the Little Belt and Big Snowy mountains in Montana, on private lands within the boundary of the Pawnee National Grassland in Colorado, and in other areas that could be converted to croplands (Knowles and Knowles 1993, Knopf and Rupert *in press*). Three mountain plover nest sites on grasslands in central Montana were converted to cropland in 1995 under a farm plan approved by the Natural Resources Conservation Service, and grassland conversion is occurring at other locations in Montana (Knowles and Knowles 1996, 1998).

Cultivated Areas in Breeding Range as Potential Population Sinks

A direct loss of habitat is not the only effect of grassland conversion in the breeding range. Conversion may not only destroy existing mountain plover breeding sites (see Knowles and Knowles 1996b, 1998) and eliminate the opportunity to manage grasslands to provide future nesting sites (e.g., through burning and grazing), it also may create habitats that attract breeding mountain plovers which would then be exposed to the tilling of cultivated fields to control weeds. This tilling can destroy mountain plover nests, eggs, and chicks (Shackford and Leslie 1995a,b; Knopf 1996b; Knopf and Rupert *in press*).

In the last 25 years, Great Plains' farms have become larger and new crops have become economically feasible. Many farmers now plant extensive areas to sunflowers and millet, as well as winter and spring wheat. Fields may remain fallow until early May, after most mountain plovers have started nesting. Many nests are then destroyed by farm equipment when the fields are planted in May. Mountain plovers may renest on these fields, but then likely

abandon nests as the grain crop becomes too tall to allow plovers to scan their surroundings for predators (Knopf 1996b). In other instances, fallow fields may not be planted, but may be tilled periodically to control weeds.

During the nesting season of 1995, Shackford and Leslie (1995b) searched 999 km around cultivated fields in 68 counties of eight States. They observed 54 mountain plovers on a total of 29 cultivated fields in 13 counties in five of the eight States: Colorado, Montana, Nebraska, Oklahoma, and Wyoming. The majority of plovers observed on cultivated fields were in the southern portion of the range (53 of 54 birds): Laramie County, Wyoming (19 birds), southwestern Nebraska (13), and eastern Colorado (17). Shackford and Leslie (1995b) concluded that fewer birds are found nesting in cultivated fields in northern latitudes because upland crops are sparse in Montana and Wyoming, there is a shorter growing season, and spring wheat planted in northern latitudes is disturbed more frequently than the winter wheat planted in the south. The short intervals between disturbances for spring wheat would not normally allow enough time for breeding, nesting, and young rearing.

In 1993 and 1994, 48 percent of nests located on cultivated fields in Colorado, Oklahoma, and Kansas were destroyed by tilling (Shackford and Leslie 1995a). Although the long-term effect of tilling on mountain plover productivity and abundance is not known, cultivated lands may represent a reproductive ''sink'' (Knopf 1996b; Knopf and Rupert *in press*). Pulliam (1988) described a reproductive sink as habitat where reproduction of a species is less than mortality, so that immigration from more productive habitats (i.e., ''sources'') is needed to maintain the species' presence at the sink. Sinks are habitats where breeding efforts are misrepresented as recruitment into the population, but where the mortality actually causes a population decline. We concur with Knopf and Rupert (*in press*) that the source-sink dynamics (as described by Pulliam (1988)) are likely operating on the grassland-cultivated sites used by mountain plovers in Colorado, Kansas, and Oklahoma.

Many grasslands are not suitable breeding habitat, and therefore, are not used by mountain plovers. However, conversion of these grasslands also can be considered detrimental because such conversion may create locally acceptable habitat (Knopf and Rupert *in press*) on which mountain plovers are then exposed to tilling (i.e., creation of sink habitat, see above). Consequently, grassland conversion may be considered a threat to mountain plover conservation whether or not the grasslands are presently suitable breeding habitat, particularly when conversions are proposed within the southern portion of the bird's breeding range.

Grasslands in the breeding range also are being converted to urban uses. Nationwide, between 1982 and 1992, a 14 million ac (5,600,000 ha) increase in developed land came in part from conversion of 2 million ac of rangeland (U.S. Department of Agriculture Soil Conservation Service 1994). In Park County, Colorado, which may support about 1,000 mountain plovers, the number of residential building permits has tripled between 1991 and 1997 in areas of the County known to have breeding habitat (Hanson 1997; G. Nichols, Park County, Colorado, *in litt.* 1998).

Historical Conversion of Grassland in Winter Range

In the early 1900s, a great number of mountain plovers were reported on wintering areas in California on both grasslands and agricultural lands (Grinell et al. 1918). Prior to extensive human development, grasslands occupied about 8,900,000 hectares (ha) (22 million ac) throughout California, with about 20 percent occurring in the San Joaquin Valley (Dasmann 1965 and Burcham 1982 cited in Moore et al. 1990. During agricultural development, extensive conversion of natural habitats occurred and proportionately more grasslands were converted than any other cover type (Ewing et al. 1988, Moore et al. 1990). The amount and variety of mountain plover habitat has been significantly reduced throughout the Central Valley and in southern California. To more fully evaluate the degree of mountain plover habitat conversion that has occurred, we reviewed the habitat inventories completed for other declining terrestrial species in the San Joaquin Valley. While the San Joaquin Valley encompasses only the southern portion of the Central Valley, we believe the trend there is representative of wintering habitat degradation elsewhere.

Grasslands in the San Joaquin Valley have been nearly extirpated, with less than 60,700 ha (150,000 ac) in the San Joaquin Valley floor remaining unaffected by cultivation or urbanization (Service 1997). Consequently, habitats preferred by mountain plovers have been reduced to less than 4 percent of their historical abundance (Knopf and Rupert 1995, Anderson et al. 1991). Research in the San Joaquin Valley documents that wintering mountain plovers prefer Valley sink scrub and grasslands over any of the more common cultivated land (Anderson et al. 1991; Knopf and Rupert 1995). However, the sink scrub and grasslands occupy no more than about 26,400 ha (66,000 ac) of the San Joaquin Valley (Anderson et al. 1991). Mountain plovers in the San Joaquin Valley are dependent on these core areas of uncultivated lands for early winter survival, and further loss of these areas would be detrimental to the species (Knopf and Rupert 1995). Apparently due to the scarcity of uncultivated wintering habitat, mountain plovers use croplands created by annual cultivation as alternate foraging areas (Knopf and Rupert 1995). Such use may give the appearance that conversion to cropland is benign. However, mountain plovers may not benefit in the long term because the cultivated lands are commonly treated with pesticides and may become urbanized (American Farmland Trust 1989, Moore et al. 1990, Knopf 1996b). Most of the remaining undeveloped lands in the San Joaquin Valley are primarily in the foothills of the Valley, and are lands that have less potential for agricultural production (Moore et al. 1990, Service 1997). While the Carrizo Plain Natural Area contiguous to the west side of the Valley is recognized as a regular wintering area, only about 10 percent of its 102,792 ha (254,000 ac) has vegetation and topography suitable for mountain plovers (U.S. BLM 1995, S. Fitton, *in litt.*, 1992).

Effects of Range Management on Mountain Plover Habitat

Historically, mountain plover habitat at both breeding and wintering sites was a byproduct of the nomadic behavior of bison, elk, and pronghorn, and the fossorial (digging) behavior of numerous rodents. Today prairie dogs and kangaroo rat numbers have been reduced on a significant portion of their former range, and the grazing effects of the dominant herbivore (domestic livestock) are usually closely managed by rotating the livestock within fenced pasture allotments. Current range management practices for domestic livestock, together with extensive eradication of prairie dogs and other burrowing rodents, has adversely affected mountain plover habitat, as detailed below.

Some current domestic livestock grazing management emphasizes a uniform grass cover to minimize grassland and soil disturbance (Knopf and Rupert *in press*), whereas the landscape created by the native herbivores was a mosaic of grasses, forbs, and bare ground that could

change frequently in time and location. The shift to livestock grazing strategies that favor uniform cover is believed to be partly responsible for the decline of mountain plovers in Oklahoma and Canada (Flowers 1985, Wershler 1989). Mountain plovers are no longer reported from the Lewis Ranch in central Montana since elimination of grazing there in 1993 (Knowles and Knowles 1998). Mountain plovers on the Pawnee National Grassland are closely associated with heavily-grazed sites. Therefore, in order to prevent deterioration of existing mountain plover breeding habitat, the Forest Service has deferred implementation of new grazing management plans that would have reduced stocking rates (Forest Service 1994b). However, similar attention to the vegetative requirements of mountain plovers is not in place throughout their breeding range. The decline in the cattle and sheep industry has caused additional rangeland to be converted to cropland, which is believed to have eliminated some of the mountain plover habitat in Montana (Fauna west 1991, Knowles and Knowles 1998).

Range management projects to improve forage conditions for domestic livestock are conducted on public and private lands throughout the range of the mountain plover. Examples of these projects include ''pitting'' to increase moisture retention in the soil, introduction of exotic grass species such as crested wheatgrass, watershed improvement projects, and fire suppression (Graul 1980, Fauna west 1991, Knowles and Knowles 1993). These activities enhance the development of taller vegetation and have eliminated suitable mountain plover nesting habitats in Montana and Colorado (Graul and Webster 1976, Knowles and Knowles 1993).

Effects of the Decline of Burrowing Mammals on Mountain Plover Habitat

The decline of the mountain plover is partially due to the decline of prairie dogs in plover breeding range and the decline of small burrowing mammals in plover winter range (Knowles et al. 1982; Fitton, *in litt.*, 1992, Knopf 1994).

Breeding Range

Mountain plovers occur within prairie dog towns in Colorado, Montana, Wyoming, and Oklahoma (Knowles et al. 1982; Flowers 1985; Shackford 1991; Godbey 1992; Nelson 1993; Edwards, *in litt.*, 1994; T. Byer, *in litt.*, 1997; S. Dinsmore, pers. comm., 1998). Active prairie dog towns in Montana have shorter vegetation and more abundant mountain plover food, and therefore are better foraging sites than adjacent sites without prairie dogs (Olson 1985). In Phillips County, Montana, mountain plovers were found to selectively use only those active prairie dog towns that also were grazed by cattle; mountain plovers were not seen on inactive or ungrazed prairie dog towns (Knowles et al. 1982). Most of the mountain plover nests found on survey transects in Phillips County during the past 6 years were located on prairie dog towns (S. Dinsmore, pers. comm., 1998). The largest population of mountain plovers in Montana occurs on prairie dog colonies, and between 1992 and 1996, prairie dog occupation of these colonies was reduced by as much as 80 percent as a result of sylvatic plague (J. Grensten, pers. comm., 1998). Mountain plover numbers along prairie dog transect routes within the area affected by plague declined from 80 in 1991 to 19 in 1997, but increased to 27 in 1998 following some recovery of the prairie dog population (S. Dinsmore pers. comm. 1998). We believe that the best information available indicates that mountain plovers in Phillips County are dependent on the activities of prairie dogs. Because mountain plovers breeding in Montana represent a significant part of the species total population, eradication of prairie dogs in Montana would not only be detrimental to local conservation of plovers (Knowles and Knowles 1998), but also could impact their viability range-wide.

In Wyoming, prairie dogs on the Thunder Basin National Grassland effectively maintain the vegetative characteristics required by mountain plovers. To maintain these characteristics in the absence of prairie dogs, more intensive grazing by domestic livestock or native ungulates, or burning, would have to be conducted (T. Byer, pers. comm., 1998). The importance of prairie dogs to mountain plover habitat on the Pawnee National Grassland in Colorado was recently recognized following a significant reduction in habitat caused by record rainfall there in 1995. Prairie dogs on the Grassland have been effective in maintaining the vegetative structure suitable for nesting mountain plovers, while the vegetation at similar sites without prairie dogs is now too tall or dense to be suitable habitat for mountain plovers.

Prairie dog abundance and distribution has been reduced by up to 98 percent across the species range due to concerted efforts aimed at eradication of prairie dogs, extensive habitat reduction and fragmentation, and sylvatic plague (Marsh 1984, Whicker and Detling 1993, Miller et al. 1994, W. Gill, Service, *in litt.* 1995).

Prairie dog control continues to occur on private and public lands throughout the mountain plover's breeding range. Prairie dog conservation efforts now being implemented at black-footed ferret recovery sites in southeastern Wyoming (56 FR 41473) and north-central Montana (59 FR 42696) will prevent prairie dog control from threatening the success of the ferret recovery efforts. Mountain plovers at these sites will be incidentally protected by these efforts, but similar strategies are not in place throughout the species range. Outbreaks of sylvatic plague continue to occur, and no measures are available to effectively prevent or minimize the negative effect of plague on prairie dog populations.

Prairie dog towns also are threatened by land use conversion (Knowles and Knowles 1993). Further loss of prairie dog towns within the current breeding range of the mountain plover would be detrimental to plover conservation. Conversely, the conservation of the mountain plover can be enhanced by implementing strategies to increase the distribution and abundance of prairie dogs on breeding habitat.

Wintering Range

Some wintering habitat in California continues to be maintained in suitable conditions by the activities of giant kangaroo rats and California ground squirrels (Knopf and Rupert 1995). We estimate that the federally listed giant kangaroo rat occupies less than about 2 percent of its former range due primarily to conversion of grassland habitat to agriculture and urbanization, and secondarily to other incidental human activities and control of California ground squirrels (52 FR 283). Further loss of giant kangaroo rat colonies within the current winter range would be detrimental to plover conservation. Conversely, the conservation of the mountain plover can be enhanced by implementing strategies to increase the distribution and abundance of giant kangaroo rats on wintering habitats.

Oil, Gas, and Mineral Development in Mountain Plover Breeding Habitat

Oil and gas leasing and development commonly occur throughout the breeding range of the mountain plover. Ongoing development of natural gas resources in southwest Wyoming now exceeds the rate of development projected 3 years ago, and the volume of natural gas suspected to occur could make the rate of development the highest in the Nation (R. Amidon, BLM, pers. comm., 1998). Oil and gas

development requires construction of individual well pads, access roads, travel corridors, and pipelines (Brockway 1992). Roads present a direct hazard for a variety of reasons. Mountain plovers nest on nearly level ground (often near roads), adults and chicks often feed on or near roads, and roads may be used as travel corridors by mountain plovers, all of which make plovers susceptible to being killed by vehicles (McCafferty 1930, Laun 1957, Godbey 1992, Knowles and Knowles 1996). Chicks and adults are vulnerable to stress caused by human disturbance, and chicks require shading by adults to avoid heat (Graul 1975). Because adults may abandon chicks during distraction displays (Graul 1975), any human activity that elicits distraction displays is likely to increase the vulnerability of chicks to stress. Thus, development of oil and gas resources could adversely affect mountain plover habitat or cause the death of individuals (Brockway 1992).

Mineral resources found within the range of the mountain plover include coal, uranium-vanadium, bentonite, and hard rock minerals. Many of these resources occur on public lands and are commonly mined using surface mining techniques. Up to 25 percent of the mountain plover habitat at the Antelope Coal Mine in Converse County, Wyoming, has been affected by mining disturbance in the past (K. Edwards, *in litt.*, 1994), but mountain plover sightings at the coal mine have remained fairly stable in recent years, and the habitat impacts may not have affected population levels (B. Postovit, Powder River Eagle Surveys, pers. comm., 1998). However, other surface coal mining is proposed in Wyoming that may impact mountain plovers or their habitat (M. Jennings, U.S. Fish and Wildlife Service, *in litt.*, 1998).

B. Overutilization for Commercial, Recreational, Scientific Educational Purposes

Prior to the passage of the Migratory Bird Treaty Act in 1916, mountain plovers were commercially hunted for food. There is no recent evidence that mountain plovers are overutilized for any purpose.

C. Disease or Predation

Disease-related factors are not known to be a problem to the species. Mountain plovers are most vulnerable to terrestrial and avian predators as eggs and chicks, and are only rarely killed as adults. Potential avian and terrestrial predators include the prairie falcon (*Falco mexicanus*), loggerhead shrike (*Lanjus ludovicianus*), swift fox (*Vulpes velox*), ground squirrels (*Spermophilus* sp.), and coyote (*Canis latrans*) (Graul 1975). Nest predation at the Pawnee National Grassland has ranged between 15 to 74 percent from 1969 to 1994 (Graul 1975, Miller and Knopf 1993, Knopf and Rupert 1996). A high rate of nest predation by swift fox at the Pawnee National Grassland in 1993 and 1994 may have been due to temporarily reduced prey resources, and is not believed to be a factor in the long-term decline of the mountain plover population (Knopf and Rupert 1996).

D. The Inadequacy of Existing Regulatory Mechanisms

Protecting the mountain plover and its habitat is complicated because its breeding and wintering habitats occur over a wide geographic area, which includes private and public land, and numerous State and Federal authorities. Federal laws that provide protection of mountain plovers include the Federal Land Policy and Management Act, Federal Onshore Oil and Gas Leasing Reform Act, Endangered Species Act, Fish and Wildlife Coordination Act, Federal Agriculture Improvement and Reform Act of 1996, and Migratory Bird Treaty Act. To various degrees, these laws address Federal candidate species, migratory birds, or declining species when evaluating potential effects of federally authorized, funded, or permitted actions. Further, some Federal agencies have adopted policies requiring consideration of declining species during project review, to ensure that Federal actions do not cause a trend toward Federal listing. However, the effectiveness of these existing Federal regulations and policies are highly variable and may not be sufficient to reverse the species' decline throughout its range.

The Forest Service has adopted an interim mountain plover management strategy for oil and gas activities on the Pawnee National Grassland because of the potential impact these activities would have on the species (U.S. Forest Service 1994). The BLM has adopted the same strategy for oil and gas activities under its administration at the same location (U.S. BLM 1994). Spatial buffers to protect mountain plovers have also been adopted on Forest Service and Bureau lands in Colorado, Wyoming, and Utah (M. Ball, Forest Service, *in litt.*, 1997; T. Byer, *in litt.*, 1997; T. Dabbs, *in litt.*, 1997). However, many of the mineral resources occur as split estate ownership, where the surface is owned by the Federal government but the subsurface minerals are owned by private parties. Strategies adopted by Federal agencies to protect mountain plovers are not as effective on split estate lands because the Federal Government has less regulatory authority over private surface activities. In southwest Wyoming the ''checkerboard'' pattern of alternating private and public land (Federal and State sections) also reduces the effectiveness of Federal plover conservation measures.

Land exchange or disposal by Federal agencies may also involve mountain plover habitat. For example, land exchanges on the Thunder Basin National Grassland in Wyoming have resulted in transfer of known nesting habitat to private ownership, as well as transfer of nesting habitat on private land to Forest Service ownership (T. Byer, pers. comm., 1998). In Colorado, the BLM has identified numerous parcels of public land that are available for exchange or disposal to the public, including parcels in Park County known to be mountain plover habitat (L. Deike, BLM, *in litt.*, 1997). Disposal of these lands requires review by the BLM, yet the candidate status of the mountain plover may not be effective as a mechanism to retain all breeding sites in public ownership (E. Brekke,BLM, pers. comm., 1998). While federal ownership of mountain plover habitat is not necessary to insure conservation, retaining known habitat in federal ownership reduces the burden of conservation on private landowners.

The mountain plover is now classified as endangered in Canada, threatened in Nebraska, a ''species of special interest or concern'' in Montana, Oklahoma, and California, and designated a ''species in need of conservation'' in Kansas (Wershler and Wallis 1986; Flath 1984; E. Hunt, California Department of Fish and Game, *in litt.*, 1990; Nebraska Game and Parks Commission 1992; Oklahoma Department of Wildlife Conservation 1992; Kansas Department of Wildlife and Parks 1992). The mountain plover is currently believed to be extirpated from North Dakota and South Dakota (Faanes and Stewart 1982). Only California and Nebraska have laws requiring evaluation of State-listed species through a consultation process. States other than those identified above have not given the mountain plover any special designation. In 1995, Colorado, Kansas, Montana, Nebraska, New Mexico, Oklahoma, and Wyoming, designated the mountain plover as a ''species of management concern'' under the Partners in Flight Program (Service, *in litt.*, 1995). It is not known if the bird has any official designation in Mexico.

State listing can encourage State agencies to use existing authorities to achieve recovery, stimulate research,

and allow redirection of priorities within State natural resource departments. However, without measures to protect the species' habitat, such State laws are generally inadequate to ensure conservation of the species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Natural Factors Affecting Nesting

Mountain plover nests are often found grouped in localized areas, which suggests a loose colonialism during the breeding season (Graul 1975). Results of studies conducted in Colorado and Montana suggest a high degree of site fidelity in mountain plovers, with both males and females returning to nest within several hundred meters of the previous year's nest site, and banded chicks returning as adults the following year to nest at their natal areas (Graul 1973, Knopf 1996b).

The mountain plover's narrow range of habitat requirements combined with its site fidelity increases its vulnerability to impacts at traditional breeding locales. Although mountain plovers or their habitat may be affected by localized climatic events (Graul 1973, 1975), we do not believe such events have contributed to the historic decline of the species. However, a declining mountain plover population combined with high site fidelity characteristics may increase their vulnerability to such events in the future. For example, the Pawnee National Grassland received 30 cm (12 in) of rainfall in one month during the spring of 1995 (Ball, *in litt.* 1997) which caused vegetation growth in 1995 that averaged 30 cm (12 in) in height, thereby eliminating mountain plover nest site characteristics. Independent surveys determined that mountain plover abundance on the Pawnee National Grassland has declined by as much as 90 percent compared to the pre-1995 surveys (Ball, *in litt.*, 1997; F. Knopf, *in litt.*, 1997). In 1998, mountain plovers were not observed at their traditional nesting sites on the Pawnee National Grassland, suggesting that the deteriorated habitat conditions have caused mountain plovers to abandon much of this area (F. Knopf, *in litt.*, 1998). Similarly, researchers witnessed the destruction of all nests and chicks in a given area during a single flash flood event in 1997 in central Montana (C. Knowles, pers. comm., 1998). Therefore, climatic events that render areas unsuitable for nesting may mean that birds who return to that area for nesting must expend additional time and energy locating a suitable alternative area. This search may result in a decreased reproductive success for that year. The long-term effect of such naturally occurring catastrophes on mountain plover viability is not known, but populations at low abundance are more vulnerable to extirpation by such events. Naturally occurring events can increase the risk of extirpation at local breeding sites.

Manmade Factors Affecting Nesting

In addition to loss of habitat, human disturbance during the nesting period may directly impact mountain plovers due to their sensitivity to stress (Wershler and Wallis 1986). Mountain plover chicks less than 2 weeks old may die in 15 minutes if shade is not available on days when the temperature exceeds 27° C (81° F) (Graul 1975). Adults have been known to abandon eggs after being disturbed on the nest, and adults also may die from stress (Graul 1975). Consequently, any human activity that significantly modifies behavior by adults will not only increase the exposure of chicks to natural elements, but also will increase the vulnerability of adults to stress-related mortality.

Grasshoppers that occur throughout the breeding range of the mountain plover can reach population levels considered a threat to agriculture, and stimulate grasshopper control measures. Although cooperative grasshopper control programs between the Animal and Plant Health Inspection Service (APHIS) and private land owners have been abandoned, federally-subsidized control can be implemented if a severe grasshopper outbreak occurs and congressional funding is provided (L. McEwen, Colorado State University, pers. comm., 1998). Grasshopper control methods can reduce the abundance of grasshoppers by more than 90 percent, as well as reduce the abundance of nontarget insects (Fair et al. 1995). Although control is designed to reduce rather than eradicate grasshoppers, mountain plover productivity may be influenced by a reduction in prey abundance (Animal and Plant Health Inspection Service 1987, Graul 1973, Knopf 1996b, Knopf and Rupert 1996).

In addition, mountain plovers are at risk from increased metabolism of DDE residues if their foraging behavior is altered to compensate for this reduced insect abundance (U.S. Environmental Protection Agency (EPA) 1975, Fair et al. 1995). Grasshopper control subsidized by APHIS is designed to minimize impacts to wildlife species; however, due to the reduction in Federal programs to control grasshopper infestations, private landowners may choose control methods that increase the contaminant risk to mountain plovers. Therefore, grasshopper control on breeding habitat is considered a potential threat to mountain plovers.

Manmade Factors—Wintering

In California, pesticides are applied to cultivated fields during the 5 months that mountain plovers occupy these wintering habitats (Knopf 1996b). Birds are exposed to pesticides by adsorption through the skin, preening, ingestion, and inhalation (Driver et. al. 1991). To investigate the potential threat of pesticides to mountain plovers, adults were collected from wintering habitats and eggs were collected from breeding habitats (F. Knopf, *in litt.*, 1991). The adults and eggs were analyzed for concentration of organochlorines (hydrocarbon pesticides), selenium, and heavy metals. Forty whole-body samples of adults from the San Joaquin Valley had residues of DDE (a principal environmental metabolite of DDT) ranging from near 1 to 10 parts per million (L. Carlson, Service, *in litt.*, 1992; A. Archuleta, Service, pers. comm.. 1995). Twenty-two of the 54 eggs collected in Colorado and Montana had DDE residues similar to those found in the wintering birds.

Although these DDE residues in eggs do not appear detrimental to mountain plover reproduction, residues found in adults may cause death to some individuals if they are mobilized to the brain (U.S. Environmental Protection Agency 1975). While average selenium concentrations found in samples from winter habitats are below thresholds that would cause concern for population level effects, individual mountain plovers may be at risk in some locations (J. Skorupa, Service, pers. comm., 1993; A. Archuleta, pers. comm., 1995). Heavy metal concentrations were within acceptable thresholds (A. Archuleta, pers. comm., 1995).

We have confirmed that the field application of 27 pesticides is responsible for killing numerous species of birds throughout the Nation (R. Smith, U.S. Fish and Wildlife Service, *in litt.*, 1992). Diazinon, dimethoate, mevinphos, and chlorpyrifos are included on this list of 27 pesticides, and are commonly applied to a variety of agricultural crops in Imperial County and the Central Valley of California from November through February (California Department of Pesticide Regulation, *in litt.*, 1998). Ten other pesticides identified by the Service (R. Smith, *in litt.*, 1992) as toxic to birds also are used in Imperial County and the Central Valley, but primarily during times when mountain plovers are absent. Studies conducted in the San

Joaquin Valley, California, to determine exposure of mountain plovers to organophosphates and carbamates were inconclusive. Cholinesterase activity levels of mountain plovers from the exposed site were consistently higher than those at the reference site, yet significant cholinesterase inhibition was not detected in any mountain plover (W. Iko, USGS-Biological Resources Division, *in litt.*, 1997).

Conclusion

In summary, threats to mountain plovers occur at both breeding and wintering locales. Conversion of rangeland to croplands has been significant on breeding habitat with about 30 percent of rangeland in the Great Plains now converted to crops. The cultivated lands now interspersed with prairie in the southern part of the plover's breeding range are hypothesized to represent a reproductive sink, which may significantly impact maintenance of a viable population. Similarly in the San Joaquin Valley, a significant wintering area, only 60,700 ha (150,000 ac) of the valley bottom remain currently uncultivated, and less than half of that may qualify as preferred habitat. Throughout the breeding range, bison are functionally extinct, prairie dogs have been considerably reduced, and current domestic livestock grazing management does not always promote the vegetative and bare ground structure required by mountain plovers. Similarly, the native herbivores that once maintained wintering habitats in California are either functionally or virtually extirpated. Oil and gas development occurs on core breeding sites on the Pawnee National Grassland, and is presently developing rapidly in southwest Wyoming. Rangeland grasshopper control may impact mountain plover productivity on breeding habitat, and mountain plovers are exposed to pesticide use while on wintering habitat.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the mountain plover in determining to issue this proposed rule. The present distribution and abundance of mountain plovers is at risk given the potential for these impacts to continue. Federal listing under authority of the Act is the only mechanism we can presently identify that ensures protection to the mountain plover throughout its life cycle and throughout its range, on both public and private lands. Therefore, based on this evaluation, the preferred action is to list the mountain plover (*Charadrius montanus*) as a threatened species. While not in immediate danger of extinction, we believe the mountain plover is likely to become an endangered species in the foreseeable future unless measures are taken to reverse the decline resulting from the above described threats.

Critical Habitat

Critical habitat is defined in section 3(5)(a) of the Act as: (I) the specific areas within the geographical 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 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. The term ''conservation'' as defined in section 3(3) of the Act means ''to use and the use of all methods and procedures necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary,'' i.e., the species is recovered and can be removed from the list of endangered and threatened species.

Section 4(a)(3) of the Act, as amended, 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 for the plover is not prudent because there would be no additional benefit to the species beyond that conferred by listing it as threatened. The reasons for this conclusion, including the factors considered in weighing the potential benefits against the risks of designation, are provided below.

Potential benefits of critical habitat designation derive from section 7(a)(2) of the Act, which requires Federal agencies, in consultation with us, to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat of such species. Critical habitat, by definition, applies only to Federal agency actions. The 50 CFR 402.02 defines ''jeopardize the continued existence of'' as meaning to engage in an action that would reasonably be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. ''Destruction or adverse modification'' of critical habitat is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Thus, in the section 7(a)(2) consultation process, the jeopardy analysis focuses on potential effects on the species' populations, whereas the destruction or adverse modification analysis focuses on the value of habitat to the species. However, both jeopardizing the continued existence of a species and adversely modifying critical habitat have similar standards and similar thresholds for violation of section 7 of the Act. Biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but is not likely to jeopardize the continued existence of the species for which critical habitat has been designated are extremely rare historically; none have been issued in recent years.

The mountain plover's distribution and biology are particularly relevant to the not prudent determination, as it relates to the section 7 consultation process discussed above. The mountain plover is a neotropical migratory bird found in 11 different States in the western and southwestern United States and Mexico. It occupies grasslands or sites with grassland characteristics, including manmade landscapes such as sod farms and cultivated fields, and areas heavily grazed by cattle. Mountain plovers commonly occur on public lands at both breeding and wintering locales. The best-documented mountain plover breeding areas include lands managed by either the BLM or Forest Service in Montana and Colorado. Breeding and wintering mountain plovers occur on other Federal lands in each of these States, as well as in Wyoming, Utah, New Mexico, and California. The habitat in the other locations may be managed by the above agencies, or in a few cases by the

Service or the Department of Defense. In addition to their occurrence on Federal lands, mountain plovers also occur on private lands which may be enrolled in Federal programs that support commodity production. Federally sponsored activities on private land will receive the benefit of section 7 consultation, regardless of whether or not critical habitat is designated.

As stated above, the mountain plover is a migratory bird that has a wide distribution throughout its breeding and winter range. While mountain plovers demonstrate a degree of fidelity to breeding locations, specific nest site locations can vary from year to year depending on availability of essential habitat elements. Studies of mountain plovers on winter habitat in California have shown that winter site fidelity is poorly developed, and flocks of birds may travel over 55 km (33 miles (mi)) between alternate foraging sites. Further, the mountain plover demonstrates an affinity for sites with a mosaic of short vegetation and bare ground. These attributes are subject to change annually in proportion and distribution due to either natural (e.g., fire, succession, seasonal precipitation) or human-caused (e.g., grazing intensity, range management) events. It would be impractical to designate specific geographic locations as critical habitat when the essential elements of that habitat may shift temporally and spatially across the landscape.

Designation of critical habitat may provide a minor benefit in that it may assist in securing funding or acquiring land for conservation. In some cases, the designation of critical habitat may provide some benefits to a species by identifying areas important to the species' conservation, including habitat that is not presently occupied and that may require restoration efforts to support recovery. In some cases, the designation of critical habitat serves to notify Federal agencies of the presence of a listed species on land they administer. However, in this case, the Service, the BLM, and the Forest Service are all aware of the presence of the mountain plover on their lands, and in some cases currently perform affirmative management actions for this species.

Listing of the mountain plover as a threatened species also publicizes the present vulnerability of this species. Any designation of critical habitat for this species could reasonably be expected to increase the potential threat of vandalism or intentional destruction of the species habitat. In light of the vulnerability of this species to vandalism, the intentional destruction of its habitat (for example tilling nests, tilling grassland habitat), or disturbance caused by birders, the designation of critical habitat and the publication of maps providing locations and descriptions, as required for the designation of critical habitat, would reasonably be expected to increase the degree of threat to the species and its habitat, increase the difficulties of law enforcement, and further contribute to the decline of the mountain plover.

Therefore, because the mountain plover is widely distributed on Federal lands and also may occur on private lands enrolled in Federal programs, the designation of critical habitat would provide little additional benefit beyond that provided by the jeopardy standard under section 7 regulations. In addition, the mountain plover's affinity for habitat elements that are likely to change frequently at both breeding and wintering locales strongly suggest that the biological value of any critical habitat designation would be short lived. Lastly, designation brings about the potential for an increased risk of intentional destruction of birds or their habitat. Consequently, we have determined that the designation of critical habitat for the United States population of the mountain plover is not prudent.

Available Conservation Measures

Potential conservation measures to reverse the declining trend for this species might include incentives to landowners to leave some cultivated areas unplanted until plover eggs have hatched, grazing plans for native range that encourage high grazing intensity in plover nesting areas, haying and grazing on existing Conservation Reserve Program tracts to manage for the grass height and density required by nesting plovers, and seeding criteria for new Conservation Reserve Program tracts that would encourage establishment of native shortgrass prairie species in preference to taller grasses. The Service is initiating discussions with the Natural Resources Conservation Service to explore ways, such as the Conservation Reserve Enhancement Program, that these measures might be implemented on private land.

Conservation measures provided to a 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 leads to the implementation of conservation actions by Federal, State, County, 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. Such actions are initiated by us following listing. The protection required of Federal agencies and the prohibitions against taking and harm 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 being designated. Regulations implementing this interagency cooperation provision of the Endangered Species Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally 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 subsequently, section 7(a)(1) provides that all Federal agencies shall utilize their authorities in furtherance of the purpose of the Act by carrying out programs for the conservation of species listed pursuant to the Act. Further, section 7(a)(2) of the Act 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 formal consultation with us. Consequently, Federal listing will cause all Federal agencies to consider mountain plover conservation needs during their review of activities they may fund, authorize, or carry out.

Section 10(a)(2)(A) of the Act allows for the incidental taking of federally listed species on private lands, where no Federal agency action exists, provided the applicant adopts a habitat conservation plan (HCP) to minimize the degree of take while furthering the conservation of the species. We anticipate that HCPs will be requested should the mountain plover become a federally listed species. We encourage and will participate in the development of HCPs to ensure that mountain plovers can be conserved throughout their range while authorizing incidental take associated with otherwise lawful activities. We believe that habitat modification techniques shown to be effective for the mountain plover can be incorporated into HCPs that may be implemented at breeding or wintering locales.

A unique Memorandum of Agreement (MOA) was signed in 1995 by the Secretary of the Department of the Interior and the Governor of Colorado. The purpose of the MOA is to address the conservation needs of declining species in Colorado, with a goal of preventing their decline to a point at which Federal listing could be needed. The mountain plover is mentioned specifically in this MOA, and a work group now exists to address its needs. We have participated diligently with the work group to pursue the goals of the MOA and believe that the MOA can be an effective vehicle to promote and implement mountain plover conservation actions in Colorado, and perhaps encourage similar conservation actions in adjoining States.

Mountain plovers occur on lands administered by the Service, Forest Service, BLM, and other agencies. For all public lands where mountain plovers occur, the Act would require the appropriate land management agency to evaluate potential impacts to mountain plovers that may result from activities they fund, authorize, or carry out. The Act requires consultation under section 7 of the Act for activities on private lands, including tribal lands, that may impact the survival and recovery of the mountain plover, if such activities are funded, authorized, or permitted by Federal agencies. The Federal agencies that may be involved as a result of this proposed rule include the Service, BLM, Forest Service, APHIS, Bureau of Indian Affairs, Natural Resources Conservation Service, Farm Services Agency, Department of Defense, Department of Energy, Department of Justice, and the EPA.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraphs include:

(1) Removing, thinning or altering vegetation. Mountain plover nest sites have short vegetation, while taller vegetation may be required by chicks for shade and hiding cover;

(2) Modifying topography and soils at breeding sites. Mountain plover nest sites are on land with less than 5 percent slope, and usually have at least 30 percent bare ground. Any activity that alters one of these characteristics would likely be detrimental;

(3) Domestic livestock grazing management. The current state of knowledge indicates that domestic livestock grazing intensity influences the quality of mountain plover habitat. Review of grazing management proposals would be necessary to determine their compatibility with the mountain plover and its habitat. Those proposals that adversely affect a species or its habitat (e.g., altering vegetative structure or composition that destroys suitable habitat characteristics) would require reasonable and prudent alternatives or reasonable and prudent measures to minimize incidental take;

(4) Controlling burrowing rodents. Prairie dogs, giant kangaroo rats, and California ground squirrels are known to create suitable conditions for mountain plovers;

(5) Conversion of untilled grassland to tilled land. While mountain plovers are found on grasslands, they are attracted to cultivated lands for foraging opportunities and nesting, which makes them vulnerable to effects from tilling and pesticide application. Therefore, cultivated lands are likely a reproductive sink. Therefore, Federal programs that encourage conversion of grasslands to cultivated land could be detrimental to the conservation of the mountain plover;

(6) Human activities near nesting mountain plovers. Federal proposals or permits for activities that would create disturbance during the nesting period could interfere with normal nesting behavior and result in the death of eggs, chicks and/or adults;

(7) Registration of pesticides. We have documented that numerous pesticides are toxic to birds during field application and some of these pesticides are used while mountain plovers occupy breeding and wintering habitats;

(8) Oil, gas, or mineral development on known nesting or wintering habitat.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or 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 such 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 agents of the Service and conservation agencies.

Under certain circumstances, permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, enhancement of propagation or survival of the species, educational purposes, zoological exhibition, incidental take in connection with otherwise lawful activities, and/or other special purposes consistent with the purposes of the Act. Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the Permits Branch, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0207 (telephone 303/275–2370; facsimile 303/275–2371).

We adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable, at the time a species is proposed for listing, those activities that would or would not 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 believe that the actions listed below would probably not result in a violation of section 9:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, range management, rodent control, mineral development, oil and gas development, road construction, human recreation, and pesticide application) when such activity is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act;

(2) Within the breeding range, normal farming practices on cultivated lands, prescribed burns, and construction/maintenance activities (e.g., fences, power lines, pipelines, and utility lines) conducted when mountain plovers are not present on breeding habitat. The period when activities would not impact mountain plovers may vary at specific locations, but would usually fall between August 10 and April 1;

(3) Within the wintering range, normal winter farming practices on sod farms and tilled cropland;

(4) Casual, dispersed human activities on foot or horseback at breeding and wintering habitats (e.g., waterfowl hunting, bird watching, sightseeing, photography, camping, and hiking);

(5) Normal, routine domestic livestock grazing, herding, and inspecting, including maintenance of livestock improvement structures; and

(6) Application of pesticides in accordance with label restrictions or County Bulletins that have resulted from Endangered Species Act consultation.

We believe that the actions listed below might potentially result in a violation of section 9; however, possible

violations are not limited to these actions alone:

(1) Unauthorized collecting or handling of the species;

(2) The unauthorized destruction of mountain plovers including adults, nests, eggs, and/or young by any human activity, or any human activity resulting in actual death or injury to the species by significantly modifying essential behavioral patterns (e.g., breeding, feeding, sheltering). Examples of human activities may include discing or tilling on cultivated land during the breeding season; land leveling, conversion of grassland to cropland, road construction, water development, range management, mineral development, or off-highway vehicle use, in any season on non-cultivated lands that serve as nesting habitat;

(3) Application of pesticides in violation of County Bulletins or label restrictions; and

(4) Interstate or foreign commerce (commerce across State or international boundaries) and import/export (as discussed earlier in this section) without having obtained a threatened species permit. Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Assistant Field Supervisor (see **ADDRESSES** section).

The prohibition against intentional and unintentional ''take'' of listed species applies to all landowners regardless of whether or not their lands are within critical habitat (see 16 U.S.C. 1538(a)(1), 1532(1a), and 50 CFR 17.3). Section 10(a)(1)(B) authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities such as agriculture, surface mining, and urban development. Incidental take permits must be supported by an HCP that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. For example, no-till practices that leave tall stubble may successfully cause plovers to avoid cropland. On fallow ground, the type of farm implement used and the timing of the use may be significant in producing more plovers. These and other techniques to avoid plovers or produce plovers can be examined by producers in the development of an HCP. A key element in our review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. We would approve an HCP, and issue a section 10(a)(1)(B) permit, if the plan would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

We are seeking comments particularly concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the mountain plover;

(2) The location of any additional breeding, wintering, or migration sites, including areas in Mexico and Canada;

(3) Additional information concerning mountain plover distribution, population size and/or population trend;

(4) Information regarding current or planned land uses, and their possible beneficial or negative impact to the mountain plover or its habitat (e.g., agricultural conversions, oil and gas development, land exchanges, range management, habitat conservation plans, conservation easements);

(5) Information regarding mountain plovers on their wintering habitats (e.g., preferential use of natural versus agricultural habitats, habitat distribution and abundance, daily routines, night roosts, site fidelity, population abundance);

(6) Additional biological or physical elements that best describe mountain plover habitat, that could be considered essential for the conservation of the mountain plover (e.g., burrowing rodent colonies, vegetation, food, topography);

(7) Information relative to mountain plover distribution and productivity on cultivated lands, shortgrass prairie, and shrub-steppe habitats;

(8) Alternative farming practices that will reduce or eliminate the take of mountain plovers;

(9) Other management strategies that will conserve the species throughout its range; and

(10) Information regarding the benefits of critical habitat designation.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by us. Such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings 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 Assistant Field Supervisor (see **ADDRESSES** section).

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 questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make 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: Execsec@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 concerning regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

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 threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Assistant Field Supervisor (see **ADDRESSES** section).

Author. The primary author of this proposed rule is Robert Leachman (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend 50 CFR Part 17, 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. 1531–1554; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order 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							
*	*	*	*	*	*	*	
Plover, mountain	*Charadrius montanus.*	U.S.A. (western)	Entire	T		NA	NA
*	*	*	*	*	*	*	

Dated: December 23, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–3628 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981223319-8319-01; I.D. 112598B]

RIN 0648–AJ44

Fisheries of the Northeastern United States; Northeast Multispecies and Monkfish Fisheries; Monkfish Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Monkfish Fishery Management Plan (FMP). The FMP proposes an overfishing definition and a 10-year rebuilding schedule to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and implementation of the following measures: Target total allowable catch levels (TACs) for each of two management areas; limited access; effort limits through days-at-sea (DAS) allocations; trip limits and incidental harvest allowances; minimum size and mesh limits; gear restrictions; spawning season closures; a framework adjustment process; permitting and reporting requirements; and other measures for administration and enforcement. The intended effect of this rule is to stop overfishing and rebuild the monkfish stock.

DATES: Comments on the proposed rule must be received on or before March 26, 1999.

ADDRESSES: Comments should be sent to Jon C. Rittgers, Acting Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Monkfish FMP.''

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Acting Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the FMP, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) contained within the RIR, and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council (NEFMC), Suntaug Office Park, 5 Broadway (US Rte. 1), Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: In its report of March 1997, the 23rd Northeast Regional Stock Assessment Workshop (23rd SAW) concluded that monkfish is overfished. On September 30, 1997, NMFS submitted to the New England and Mid-Atlantic Fishery Management Councils (Councils) the Report on the Status of the Fisheries of the United States, prepared pursuant to section 304 of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) on October 11, 1996. This report identified 76 overfished stocks, including monkfish, as well as 10 stocks that were approaching an overfished condition. Each Council was notified that it is required to develop measures to end overfishing and rebuild stocks that are overfished within its geographical area of authority. The purpose of this proposed action is to initiate management of monkfish (*Lophius americanus*) pursuant to the Magnuson-Stevens Act.

Development of an FMP actually began in 1991, when the NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC) each requested approval to develop a management plan for monkfish. The Administrator, Northeast Region, NMFS (Regional Administrator), suggested that the NEFMC and MAFMC convene a joint committee to evaluate prospects for managing this fishery. That committee found that there were sufficient reasons for concern, including the recent declines in survey indices, the declining size of landed monkfish, the potential for shifts in effort due to management restrictions on other species, evidence of an expanding directed fishery, and a rapidly growing market for monkfish tails and livers.

The Committee also suggested that the Councils jointly develop a management plan for monkfish. Because joint management of a fishery by two or more Fishery Management Councils is permitted only when the entire fishery management plan is jointly prepared, monkfish management measures could not be incorporated into an existing fishery management plan prepared by only one Fishery Management Council. The NEFMC and MAFMC worked together in developing management measures for monkfish and were formally notified by NMFS of their joint responsibility on February 3, 1998.

To achieve efficiency and to link monkfish to the similarly prosecuted multispecies fishery as much as possible, monkfish regulations are proposed to be incorporated in Part 648—Fisheries of the Northeastern United States, Subpart F-Management Measures for the Northeast Multispecies Fishery, and other appropriate sections.

The Councils, working jointly, adopted four management goals for monkfish: (1) to end and prevent overfishing and to rebuild and maintain a healthy spawning stock; (2) to optimize yield and maximize economic benefits to the various fishing sectors; (3) to prevent increased fishing on immature fish; and (4) to allow the traditional incidental catch of monkfish to occur. The measures proposed to achieve these goals are described later in this proposed rule.

Public hearings were held to receive comments on the proposed management measures in early 1997 in Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Maryland, Virginia, and North Carolina. During these public hearings the public raised many issues and NMFS identified additional ones, which resulted in revisions including, among other things, an allocation limit of 40 DAS annually for all qualifying vessels, more stringent qualification criteria for multispecies vessels, and an advancement of the mortality reduction schedule. Changes to the incidental catch allowances and to the gillnet limits were also made.

A second round of public hearings to receive comments on the revised management measures was held in early 1998. The major issues identified by the public at these hearings were issues of equity between qualifiers and non-qualifiers and between residents of various states, of discards caused by the proposed trip limits and by the proposed size limits, and of the complexity of the regulations and enforcement burden. These final public hearings resulted in further refinements to the measures, which are presented in this proposed rule.

The monkfish resource is overfished. The overfishing definition was developed by the NEFMC based on a technical working group recommendation. It is composed of the two reference points now required under the Magnuson-Stevens Act for biomass and fishing mortality. The overfishing definition for monkfish is based on a fishery-independent survey database. According to the FMP, monkfish in the Northern and Southern Fishery Management Areas (NFMA and SFMA)(defined at § 648.9(a) and (b)) are overfished when the 3-year moving average of the survey weight per tow falls below the 33rd percentile of the period 1963–1994 for each area or when the fishing mortality rate in each area exceeds the average rate for the period 1970–1979. The 3-year moving average of survey weight per tow is the biomass component of the overfishing definition, or biomass threshold. A comparison of the current values (1.01 kg per tow in the NFMA and 0.41 kg per tow in the SFMA) to the threshold values (2.29 kg per tow in the NFMA and 1.84 kg per tow in the SFMA) indicates that the fishery is overfished. The fishing mortality rate component also indicates that overfishing is occurring. The estimates of fishing mortality rates of 0.15 in the NFMA and 0.51 in the SFMA reported in the most recent stock assessment are much greater than the average 1970–1979 fishing mortality rates of 0.05 and 0.14, respectively. Due to the limited scientific data regarding the monkfish fishery, scientists consider this overfishing definition to be somewhat risk-prone in a stock-declining situation. The overfishing definition should be reviewed and improved, if necessary, as new information becomes available. This could be accomplished through a framework adjustment procedure contained in the FMP. As the proposed management measures are severe, the Councils decided to propose reductions in catch in the first 3 years as to minimize the social and economic impacts on small entities. Still, the proposed measures are expected to reduce the overall revenues of the monkfish fishery in the first 3 years by approximately 50 to 54 percent. Further, more severe measures would take place in Year 4. At that time zero monkfish DAS would be allocated to monkfish limited access permit holders, unless other action is taken by the Councils and implemented by NMFS. The proposed rebuilding period is 10 years, based on consideration of the status and biology of the stock and on the needs of fishing communities, which are described in the FMP.

The biological, economic, and social impacts of these measures and the cumulative impacts associated with other plans and regulations are discussed in the FMP and FEIS.

To address overfishing and rebuild the stock, the rule would create a permit moratorium on new entrants to the fishery after the control date, which is February 27, 1995. It would require that vessels have a limited access permit and fish during a monkfish DAS when targeting monkfish or exceeding the monkfish incidental catch allowances that are defined for other fisheries. The FMP also establishes an annual review and framework adjustment process that would ensure that management meets the mortality reduction and rebuilding targets. The proposed management measures are necessary to halt overfishing, to rebuild stock biomass to conditions that will produce maximum sustainable yield, and to achieve optimum yield (OY).

Total Allowable Catch

Fishing mortality is above the overfishing threshold and must be reduced to avoid continuing declines in stock biomass. The mortality levels during a period of population stability (1970–1979) were 68 and 78 percent lower than 1990–1995 levels in the NFMA and SFMA, respectively. Without accounting for improved size selectivity, the total allowable landings would need to be reduced to 4,047 mt (8,921,958 lb) and 3,252 mt (7,169,312 lb), respectively, to halt overfishing. The proposed management measures would potentially improve size selectivity, but the magnitude of these improvements is difficult to quantify and depends on changes in fishing behavior. The Councils, therefore, propose reductions and adjustments to the target TAC levels as future conditions change. The FMP establishes a procedure for setting annual target TAC levels for monkfish, with the exception of target TACs for the fishing year beginning May 1, 1999, which would be established by this rule. The target TACs would be based on the best available scientific information and would provide a measure by which to evaluate the effectiveness of the management program and to make annual determinations on the need for adjustments to this program. During the first fishing year beginning May 1, 1999, annual target TACs of 5,673 mt (12,506,614 lb) and 6,024 mt (13,280,423 lb) in the NFMA and the SFMA are proposed. A quantitative analysis of projected harvests under the

limited access, DAS, and trip limit measures estimated that 7,968 mt (17,566,138 lb) and 9,097 mt (20,055,115 lb) would be harvested in the NFMA and SFMA, respectively, exceeding the proposed target TAC specifications. The estimated effects of the preferred alternative, however, do not take into account the impacts of other factors that could not be quantified (e.g., changes in fishing strategies caused by requiring multispecies and scallop vessels to take their monkfish DAS simultaneously with multispecies and scallop DAS, size limits, and area closures), which are intended to make up for the difference. Subsequent target TAC reductions and other restrictions may be necessary to achieve the rebuilding objectives of the FMP. The target TAC levels would be set or adjusted so as to attain a fishing mortality rate of 0.07 in the NFMA and 0.26 in the SFMA for the 1999, 2000, and 2001 fishing years. Beginning with the 2002 fishing year, the target TACs would be set so as to stop overfishing in 2002 and allow rebuilding to the stock biomass targets from fishing years 2002 to 2009.

Qualification Criteria for Limited Access

Vessels would qualify for monkfish limited access based on a vessel's, or a replaced vessel's, historic participation from February 28, 1991, to February 27, 1995 (the monkfish control date). This period was selected because it encompasses the development of the directed monkfish fishery and is sufficiently broad so that it is unlikely that a vessel could not qualify due to unfortunate circumstances such as equipment malfunction, extended maintenance, or illness. Any vessel that targeted monkfish even on a seasonal basis would be likely to qualify for limited access.

Subject to the restrictions defined in the proposed rule, all vessels would qualify for a limited access monkfish permit if the vessel landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,298 kg) whole-weight during the qualification period. Vessels that do not have multispecies or scallop limited access permits and qualify according to this criterion would receive a ''Category A'' monkfish limited access permit. Vessels that have a multispecies or scallop limited access permit and qualify according to this criterion would receive a ''Category C'' monkfish limited access permit. (Note: The fisheries for Atlantic scallops and Northeast multispecies are governed by 50 CFR part 648—Fisheries of the Northeastern United States, Subparts D and F, respectively. The limited access fisheries for scallops and Northeast multispecies are closed to new entrants.)

All vessels not qualifying for a Category A or C permit that are less than 51 gross registered tons (GRT) and vessels of any size that have a multispecies DAS permit would qualify for a limited access monkfish permit if the vessel landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,295 kg) whole-weight during the qualification period. Vessels without a multispecies or scallop limited access permit that qualify according to this criterion would receive a ''Category B'' monkfish limited access permit. Vessels with a multispecies or scallop limited access permit that qualify according to this criterion would receive a ''Category D'' monkfish limited access permit. (See Table 2.)

Permitting and Reporting Requirements

Vessels that catch monkfish would need to have either a limited access monkfish permit (category A, B, C, or D) or a monkfish incidental catch permit to fish for, possess, retain or land monkfish. (See Table 2.) Vessel owners would also be required to submit Vessel Trip Reports. Vessels with a limited access monkfish permit would be required to call in and out of the monkfish DAS program when they are participating in the monkfish fishery. Dealers that land monkfish would need to apply for a Dealers Permit and submit landings reports.

Allocations of Monkfish DAS

The DAS allocations for limited access monkfish permit holders are shown in the following table. Forty (40) DAS would be allocated to limited access permitted vessels on May 1, 1999 (Year 1), and at the beginning of Years 2 and 3. In Year 4 monkfish DAS would be set to zero (0), unless other action is taken by the Councils and implemented by NMFS. (See Table 1.)

Table 1. Monkfish Fishing Year and Maximum Annual DAS Allocations

Fishing year	Maximum Annual DAS allocation
May 1, 1999–April 30, 2000	40
May 1, 2000–April 30, 2001	40
May 1, 2001–April 30, 2002	40
May 1, 2002–April 30, 2003 and subsequent fishing years	0

Any vessel could carry over a maximum of 10 unused monkfish DAS to the following fishing year's allocation (including beyond May 1, 2002). Unused monkfish DAS could not be carried over beyond the year following the one in which they were unused.

While a multispecies and scallop vessel that qualifies for a monkfish limited access permit (Categories C or D) would receive the same number of monkfish DAS as allocated to other permit categories, up to a maximum of 40 DAS, when such a vessel fishes under the monkfish DAS program, the trip would also count against a multispecies or scallop DAS, whichever is applicable. A combination vessel that holds both a multispecies and a scallop permit could fish under a monkfish DAS during either a multispecies or scallop DAS, provided that unused multispecies or scallop DAS are available. Such a vessel must declare whether to count DAS against the multispecies or scallop DAS at the time it calls into the monkfish DAS program. (See Table 2.)

Table 2—Monkfish permit categories, qualification criteria for permit categories, and DAS allocations for vessels on a monkfish DAS.

Permit Category	Qualification Criteria[1] for Permit Categories (landed weight expressed in pounds)	DAS Allocation[2]
A	Category A: Vessels which do not possess a multispecies or scallop limited access permit must have landed > 50,000 lb tail-weight or 166,000 lb whole weight of monkfish during the qualifying period.	Category A: 40 DAS
B	Category B: Vessels less than 51 GRT which do not possess a multispecies or scallop limited access permit and do not qualify for a Category A Permit must have landed monkfish >7,500 lb tail-weight or 24,900 lb whole weight of monkfish during the qualifying period.	Category B: 40 DAS
C	Category C: Vessels which possess a multispecies or scallop limited access permit must meet landing criteria as required for Permit Category A.	Category C: Up to 40 DAS and vessel must also be on a multispecies or scollop DAS
D	Category D: Vessels which possess a multispecies limited access permit and vessels less than 51 GRT which possess a scallop limited access permit that do not qualify for a Category C Permit must meet landing criteria as required for Permit Category B.	Category D: Up to 40 DAS and vessel must also be on a multispecies or scallop DAS

[1] Vessel must have landed monkfish during qualifying period, i.e., February 28, 1991, through February 27, 1995, in the amounts indicated.
[2] DAS allocations indicated are for fishing years 1999, 2000, and 2001. For fishing years 2002 and thereafter, monkfish DAS would be set to zero (0), unless other action is taken by the NEFMC and MAFMC and implemented by NMFS.

Trip Limits During a Monkfish DAS

No monkfish trip limits would apply to vessels fishing during a monkfish DAS prior to May 1, 2000. If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch (for the period May 1, 1999 - April 30, 2000) is less than or equal to the Year 1 SFMA target TAC, a notification would be published in the **Federal Register** specifying that no monkfish trip limit applies to a vessel that is fishing under a monkfish DAS in the SFMA. Otherwise, the following trip limits would apply in the SFMA beginning May 1, 2000, depending on the type of monkfish permit the vessel holds and the type of gear the vessel uses: (1) Category A and C vessels using mobile gear during a monkfish DAS would have a 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight per DAS landing limit; (2) Category B and D vessels using mobile gear during a monkfish DAS would have a 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight per DAS landing limit; and (3) any vessel using fixed gear during a monkfish DAS would have a 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight per DAS landing limit.

Incidental Catch for Vessels Not on a Monkfish DAS

Beginning May 1, 1999 (or the date the final rule implementing the FMP is effective), the following measures would apply:

1. Vessels lawfully using large mesh (5½-inch (14–cm) diamond or 6–inch (15.3–cm)) square mesh throughout the body, extension, and codend) while not on a monkfish, multispecies, or scallop DAS could retain and land whole monkfish up to 5 percent of the total weight of fish on board (or any prorated combination of tail-weight and whole weight percentage based on the conversion factor in § 648.94 of subpart F—Management Measures for the Northeast Multispecies and Monkfish Fisheries).

2. Vessels that are not under any DAS and fishing with small mesh, rod and reel, or handlines could land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight per trip. Small mesh is considered to be any mesh smaller than the large mesh described in paragraph 1. Multispecies vessels that are ≤ 30 ft (9.1 m) and elect not to fish under the multispecies DAS program could also land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip.

3. Multispecies vessels with a monkfish incidental catch permit fishing in the NFMA could land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. If the vessel fishes for any portion of the trip in the SFMA, the vessel could land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS.

Prior to May 1, 2002

1. Vessels with a multispecies permit and a Category C or D limited access monkfish permit - A multispecies vessel that fishes only in the NFMA would have no trip limit when it is on a multispecies DAS. If the vessel fishes for any portion of the trip in the SFMA during a multispecies DAS, it could land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS while using mobile gear or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS while using fixed gear.

2. Vessels with a sea scallop and a Category C or D limited access monkfish permit - A vessel that has a scallop dredge on board or is on a scallop DAS could land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per scallop DAS.

3. Sea scallop vessels with a monkfish incidental catch permit - These vessels would be able to land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS when on a scallop DAS.

After April 30, 2002

1. Vessels with a multispecies and a Category C or D limited access monkfish permit - Multispecies vessels would be able to land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight

of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. Trip limits for vessels using fixed gear in the SFMA would remain at 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS.

2. Vessels with a sea scallop and a Category C or D limited access monkfish permit - Vessels that have a scallop dredge on board or are on a scallop DAS could land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per scallop DAS.

3. Sea scallop vessels with a monkfish incidental catch permit - These vessels would be able to land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per scallop DAS.

Minimum Size Limits

At FMP implementation, possession or landing of monkfish tails measuring less than 11 inches (27.9 cm) in length or whole monkfish less than 17 inches (43.2 cm) total length by any vessel that has a Federal fisheries permit or any vessel fishing in the exclusive economic zone would be prohibited.

Beginning on May 1, 2000, in Year 2 of the FMP, the minimum size limit for vessels fishing or landing in the SFMA, only, would be 21 inches (53.3 cm) total length or 14 inches (35.6 cm) tail length. If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999 through April 30, 2000, is less than or equal to the Year 1 SFMA target TAC, a notification would be published in the **Federal Register** specifying the SFMA size limit at 17 inches (43.2 cm) total length or 11 inches (27.9 cm) tail length.

Gillnet Limits

A vessel issued a monkfish limited access permit or fishing under a monkfish DAS would be able to fish with, haul, possess, or deploy up to 160 gillnets. A vessel issued a multispecies limited access permit and a limited access monkfish permit or fishing under a monkfish DAS could fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets was consistent with the limitations of § 648.82(k)(1)(i) and that the nets were tagged in accordance with the regulations, as specified in § 648.82. Nets could not be longer than 300 ft (91.44 m), or 50 fathoms, in length. Beginning May 1, 1999, all monkfish gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS would be allowed one tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags would be obtained as described in § 648.4.

Time out of the Fishery

Vessels with Category A or B permits (i.e., ''monkfish-only'') would be required to declare out of the monkfish fishery and could not use a monkfish DAS for a continuous 20-day block during the months of April, May, and June. Such vessels could engage in other fisheries in which they may legally participate, but they could not possess any monkfish during this 20-day block. Specified periods to protect groundfish spawning (when multispecies vessels are required to declare out of the fishery) would also apply to multispecies DAS used when targeting monkfish. Multispecies DAS vessels that declare out of the multispecies fishery for any reason, including the fulfillment of their 20-day out periods, would be prohibited from possessing monkfish. Vessels that target species other than groundfish and monkfish would, however, be allowed to participate in exempted fisheries during the mandatory groundfish tie-up periods. Multispecies vessels with a category C or D monkfish permit would not be required to comply with the time-out requirements described here for monkfish-only vessels.

Framework Adjustment Process

Many management measures in the FMP would be adjustable by framework action. The effectiveness of the management program depends on uncertain factors that may change over time. Achieving the FMP's mortality objectives may require at least annual adjustments to the management measures. It is, therefore, necessary to have an administrative mechanism in place that fulfills the Councils' public input and notification requirements while maximizing flexibility and responsiveness.

The framework adjustment process would allow changes to be made in the regulations in a timely manner without going through the plan amendment process. It would provide a formal opportunity for public comment that substitutes for the customary public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP and there were sufficient opportunity for public comment on the framework action, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**.

The framework adjustment process would include annual reviews by a Monkfish Monitoring Committee (MMC), which would evaluate the effectiveness of the FMP to meet the fishing mortality and rebuilding targets. The MMC would develop management options for consideration and approval by the Councils and the Councils would be required to submit a recommendation to the Regional Administrator by February 7 of each year to implement the adjustment at the beginning of the fishing year. The Regional Administrator could select measures recommended by the MMC that had not been rejected by both Councils if the Councils failed to submit a recommendation. Adjustable management measures would include: (1) target TACs, (2) Overfishing Definition reference points, (3) closed seasons or closed areas, (4) minimum size limits, (5) liver to monkfish landings ratios, (6) annual monkfish DAS allocations and monitoring, (7) trip or possession limits, (8) blocks of time out of the fishery, (9) gear restrictions, (10) transferability of permits and permit rights, and (11) other frameworkable measures in 50 CFR 648.90 and 50 CFR 648.55.

Two Management Areas

The FMP proposes two management areas, separated by a line that roughly runs along Georges Bank from Cape Cod, MA to the Hague Line. This line and the rationale for two management areas are explained in greater detail in the FMP. Although tagging and DNA component analysis would provide definitive information about stock separation, monkfish in the northern and southern areas display different growth, maturation, and recruitment characteristics. Scientists believe that monkfish migration between areas is low. These areas are essential because of the predominance of different fisheries that occur in each and to evaluate the FMP's effectiveness in meeting separate mortality reduction targets.

Restrictions on Liver Landings to Prevent High-grading

Landings of monkfish livers would be restricted to 25 percent of the total weight of monkfish tails or 10 percent of the weight of whole monkfish, whichever is applicable. This measure is proposed to prevent high-grading of the more valuable livers while vessels comply with the monkfish trip and size limits.

A ''Running Clock'' Procedure

The ''running clock'' provision would allow vessels called into the monkfish

DAS program to avoid discarding fish if their trips are unexpectedly cut short or they have an unexpectedly high catch at the end of a trip. Vessels would be able to call in a ''hail weight'' to let the monkfish DAS clock run to account for the overage. This measure would begin on May 1, 2000, when the directed fishery trip limits are implemented.

Minimum Mesh and Gear Restrictions

Vessels that fish while they are called into the monkfish DAS program would be required to use large mesh, unless the vessel is also fishing during a multispecies DAS. When called into the monkfish (but not the multispecies) DAS program, large mesh is defined as 10–inches (25.4–cm) square or 12–inches (30.5–cm) diamond for trawls and 12–inches (30.5–cm) diamond for gillnets. This mesh requirement is proposed to reduce the bycatch of groundfish and other species while a vessel is on a monkfish DAS. Vessels that have a category C or D permit and a limited access sea scallop permit would not be able to use a dredge during a monkfish DAS, as most monkfish caught with a scallop dredge are less than the proposed minimum size limit for monkfish.

Measures of Concern

The FMP would establish some measures that differ between two fishery management areas (the NFMA and the SFMA), a factor which contributes to the complexity of the proposed regulations. Although public comments are sought for all measures, NMFS is particularly interested in public comment on the following measures to determine their approvability:

The first measure is the ''running clock'' for vessels fishing under a Monkfish DAS that would allow vessels called into the monkfish DAS program to avoid discarding fish if their trips are unexpectedly cut short or if they have an unexpectedly high catch at the end of a trip. This measure would begin on May 1, 2000, when the directed fishery trip limits are implemented, at which time vessels would be able to call in a ''hail weight'' to let the monkfish DAS clock run to account for the overage. This measure would be both an administrative and enforcement burden and, although it may reduce discards somewhat, it is not expected to provide significant conservation value. In fact, it could encourage vessels to target monkfish. It would also conflict with the running clock for GOM cod if both cod and monkfish are caught on the same trip.

A second measure concerns the allowable monkfish trip limits for vessels fishing during a multispecies DAS after April 30, 2002. Such vessels with a Category C or D monkfish permit would be allowed 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. The 25 percent of total weight of fish-on-board option could be burdensome and time consuming because it would require an enforcement agent to stand by and observe a trip off-loading to determine compliance. NMFS is concerned that this could be an inefficient use of limited enforcement resources and could compromise the ability to monitor and enforce allowable monkfish landings.

A third measure pertains to vessels without a limited access monkfish permit when under a multispecies DAS in the NFMA beginning May 1, 1999, or with the date the final rule implementing the FMP is effective, whichever comes first. Such vessels would also be allowed 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. Again, the 25 percent of total weight of fish-on-board option could compromise the ability to monitor and enforce allowable monkfish landings.

Classification

At this time, NMFS has not determined whether the FMP that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This action has been determined to be significant for the purposes of E.O. 12866.

The Councils prepared an FEIS for the FMP describing the possible impacts on the environment as a result of this rule. This FMP is expected to have a significant impact on the human environment. A notice of availability for the Final Environmental Impact Statement was published on January 15, 1999 (64 FR 2639). A copy of the FEIS may be obtained from NEFMC (see **ADDRESSES**).

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the FSEIS.

In compliance with the Regulatory Flexibility Act, the Council has prepared an IRFA as part of the RIR contained in the FMP that concludes that this proposed rule would have significant economic impacts on a substantial number of small entities. The measures proposed are restrictive, and impacts on the industry are expected to be significant. In the early years of the program, some vessels may be unable to cover their costs in part because of these restrictions and because of the poor condition of the stocks. Such vessels are expected to leave the fishery. Relative to the status quo, however, this proposal produces positive significant effects on a substantial number of small entities after stock abundance of monkfish recovers. The majority of the vessels in the monkfish fishery are considered small entities and, therefore, all alternatives and measures intended to mitigate adverse impacts on the fishing industry necessarily mitigate adverse impacts on small entities.

The proposed action would reduce the overall revenues of the monkfish fishery by approximately 50 to 54 percent in the first 3 years of the program compared to the status quo. Further reductions in catch are necessary in Year 4 to stop overfishing and allow rebuilding. The proposed action would reduce overall revenues by 69 percent compared to the status quo.

The impact of the proposed action would not be uniform for all vessels or all sectors. Instead, the action would have different effects on different gear groups, with vessels using gillnets and vessels fishing in the Mid-Atlantic being relatively more affected than other vessels. Due to the requirement and desirability to minimize regulatory discards, the catch reduction for vessels that would qualify for a limited access monkfish permit are more severe than for vessels that target other species and land their monkfish incidental catch. Fishery sectors that rely more heavily on monkfish would, therefore, experience greater effects than other groups.

The negative effects of the non-selected alternatives would be greater than those of the proposed measures. Projected revenues from fishing would be positive beginning in the year 2009, which would create demand for other goods and services in the area and lead to increased production and employment. The overall impacts would be positive. The proposed action is expected to increase net present value of gross revenues by $20 million over 20 years. Including the estimated cost savings is expected to produce an increase in net benefits to the nation of $38 million over a 20-year period. The recreational sector is not expected to be negatively impacted by this action.

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

This proposed rule contains 19 new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. The public reporting burden for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The new requirements are:

Limited access monkfish permits, including four new permit categories (30 minutes/response). In subsequent years, permit renewal (15 minutes/response). Some applicants need to provide documentation of eligibility (1 hour/response)

Monkfish incidental catch permits (30 minutes/response). In subsequent years, permit renewal (15 minutes/response).

Permit appeals (180 minutes/response).

Vessel replacement (180 minutes/response).

Vessel upgrade (180 minutes/response).

Retention of vessel history (30 minutes/response).

Operator permit (60 minutes/response).

Dealer permit (5 minutes/response).

Dealer landing report (5 minutes/response(trip)).

Dealer employment report (2 minutes/response).

Gillnet designations–declaration into the gillnet fishing category (10 minutes/response).

Call-in, call-out (DAS reporting) (2 minutes/response).

Area declaration for identifying compliance with the differential size limit beginning May 1, 2000 (3 minutes/response).

Notification of transiting (1 minute/response if made with hail, 3 minutes/response if separate call).

Vessel trip reports (5 minutes/response).

Hail weight reports (3 minutes/response).

Net tagging requirements (1 minute to attach 1 tag, 2 minutes to notify of lost tags and request replacement).

Good Samaritan credits (30 minutes/response).

Declarations of blocks of time out of the fishery (3 minutes/response).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 8, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); and the Atlantic bluefish fishery (Atlantic Bluefish FMP). * * *

* * * * *

3. In § 648.2, the definition for ''Out of the multispecies fishery or DAS program''is removed, and the definitions ''Day(s)-at-Sea (DAS)'', ''Fishing year'', ''Monkfish'', ''Prior to leaving port'', ''Sink gillnet or bottom-tending gillnet'', ''Tied up to the dock'', ''Upon returning to port'', and ''Vessel Monitoring System'' are revised, and the definitions for ''Councils'', ''Monkfish gillnets'', ''Monkfish Monitoring Committee'', ''Out of the monkfish fishery'' and ''Out of the multispecies fishery'' are added alphabetically to read as follows:

§ 648.2 Definitions.

* * * * *

Councils, with respect to the monkfish fishery, means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

* * * * *

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries, and Atlantic sea scallop fishery, except as described in § 648.82(k)(1)(iv), means the 24-hour period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses, or lands, regulated species, monkfish, or scallops.

* * * * *

Fishing year means: (1) For the Atlantic sea scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies and monkfish fisheries, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

Monkfish, also known as *anglerfish* or *goosefish*, means *Lophius americanus*.

Monkfish gillnets means gillnet gear with mesh size no smaller than 10–inches (25.4 cm) diamond that is designed and used to fish for and catch monkfish while fishing under a monkfish DAS.

Monkfish Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic States Marine Fisheries

Commission. The Chair will be elected by the Committee from within its ranks, subject to the approval of the chairmen of the NEFMC and MAFMC.

* * * * *

Out of the monkfish fishery means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

Out of the multispecies fishery means the period of time during which a vessel is not fishing for regulated species under the NE multispecies DAS program.

* * * * *

Prior to leaving port, with respect to the call-in notification system for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

* * * * *

Sink gillnet or *bottom-tending gillnet* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near, the bottom in the lower third of the water column.

* * * * *

Tied up to the dock or *tying up at a dock* means tied up at a dock, on a mooring, or elsewhere in a harbor.

* * * * *

Upon returning to port, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, means upon first tying up at a dock at the end of a fishing trip.

* * * * *

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use by Atlantic sea scallop, NE multispecies, and monkfish vessels, as required by this part.

* * * * *

4. In § 648.4, paragraph (a)(9) is added to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(9) *Monkfish vessels.* Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish permit to fish for, possess, or land any monkfish in or from the EEZ.

(i) *Limited access monkfish permits (effective May 1, 1999)*—(A) *Eligibility.* A vessel is eligible to qualify for a limited access monkfish permit if it meets any of the following limited access monkfish permits criteria:

(*1*) *Category A permit (vessels without multispecies or scallop limited access permits).* The vessel must have landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*2*) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without multispecies or scallop limited access permits that do not qualify for a Category A permit).* The vessel must have landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*3*) *Category C permit (vessels with multispecies or scallop limited access permits).* The vessel must have landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(*4*) *Category D permit (all vessels with multispecies limited access permits and vessels less than 51 GRT with scallop limited access permits that do not qualify for a Category C permit).* The vessel must have landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

(B) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restrictions.* (*1*) See paragraph (a)(1)(i)(C) of this section.

(*2*) *Vessels under agreement for construction or under reconstruction.* A vessel is eligible to qualify for a limited access monkfish permit if the vessel was under written agreement for construction or reconstruction between February 28, 1994, and February 27, 1995, and such vessel meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(D) *Change in ownership.* (*1*) See paragraph (a)(1)(i)(D) of this section.

(*2*) A vessel may be eligible to qualify for a limited access monkfish permit if it was under written agreement for purchase as of February 27, 1995, and meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(E) *Replacement vessels.* (*1*) See paragraph (a)(1)(i)(E) of this section.

(*2*) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and [insert the date of publication of the final rule] that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) or (*4*) of this section, may qualify and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel.* (*1*) See paragraph (a)(1)(i)(F) of this section.

(*2*) A vessel ≥51 GRT that upgraded from a vessel size <51 GRT between February 27, 1995, and [insert the date of publication of the final rule], that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) and (*4*) of this section, may qualify and fish under the original permit category. (G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specification.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* A limited access monkfish permit may not be issued to a vessel or to its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Notification of eligibility for 1999.* (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section that they qualify for a limited access monkfish permit. Vessel owners must still apply within 12 months of the effective date of these regulations to complete the qualification requirements.

(*2*) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish permit within

12 months of the effective date of these regulations by submitting evidence that the vessel meets the requirements described in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section. In the event the application is denied, the applicant may appeal in accordance with requirements specified in paragraph (a)(9)(i)(J) of this section.

(N) *Appeal of denial of permit.* (*1*) Any applicant denied a limited access monkfish permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The Regional Administrator's decision on the appeal is the final decision of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* (*i*) A vessel denied a limited access monkfish permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The Regional Administrator will issue such a letter for the pendency of any appeal, which decision is the final administrative action of the Department of Commerce pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial. If the appeal is finally approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(*ii*) *Monkfish incidental catch permits (effective May 1, 1999).* A vessel of the United States that has not been issued a limited access monkfish permit is eligible for and may be issued a monkfish incidental catch permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).

* * * * *

5. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, or black sea bass, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section, and carry on board, a valid operator's permit.

* * *

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, or black sea bass dealers, and surf clam and ocean quahog processors, must have been issued under this section, and have in their possession, a valid permit for these species.

* * * * *

7. In § 648.7, the first sentence of paragraph (a)(1)(i), the first sentence of paragraph (a)(3)(i), and paragraph (b)(1)(i) are revised; and a new paragraph (b)(1)(iii) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, scup, or black sea bass dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for trip from which fish are landed or received; dates of purchases; pounds by all species purchased (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator.

* * *

* * * * *

(3) * * *

(i) All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, scup, or black sea bass dealers must complete the ''Employment Data'' section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(b) * * *

(1) * * *

(i) The owner of any vessel issued a moratorium vessel permit for summer flounder, mackerel, squid, or butterfish, scup, or black sea bass, or a permit for sea scallops, or NE multispecies or monkfish, must maintain on board the vessel and submit an accurate daily fishing log for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. At least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species (or count, if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

* * * * *

(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder or scup permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel and submit an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder or scup, unless such a vessel is also issued a moratorium permit for summer flounder, a permit for sea scallop, or NE multispecies or monkfish, or a permit for mackerel, squid or butterfish, or a moratorium permit for scup, or a permit for black sea bass, in which case a

fishing log report is required for each trip regardless of species retained. If authorized in writing by the Regional Administrator, a vessel owner may submit reports electronically, for example, by using VMS or other media. At least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/ time sailed; date/ time landed; trip type; number of crew; number of anglers; gear fished; quantity and size of gear; chart area fished; average depth; latitude/longitude (or loran station and bearings); average tow time duration; count by species of all species landed or discarded; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

* * * * *

8. In § 648.9, paragraph (d) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(d) *Presumption*. If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish fishery, as applicable, or was not at sea.

* * * * *

9. In § 648.10, the first sentence of paragraph (b) introductory text, and paragraphs (b)(1), (c) introductory text, (c)(2), and (c)(5) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification*. A multispecies vessel issued an Individual DAS or Combination Vessel permit, or scallop vessel issued a full-time or part-time limited access scallop permit, or scallop vessel fishing under the small dredge program specified in § 648.51(e), or a vessel issued a limited access multispecies or monkfish permit, or scallop permit, whose owner elects to fish under the VMS notification of paragraph (b) of this section, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). * * *

(1) Vessels that have crossed the VMS Demarcation Line specified under paragraph (a) of this section are deemed to be fishing under the DAS program, unless the vessel's owner or an authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port.

* * * * *

(c) *Call-in notification*. Owners of vessels issued limited access multispecies or monkfish permits who are participating in a DAS program and who are not required to provide notification using a VMS, scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(H)(*3*) and (a)(9)(i)(J) are subject to the following requirements:

* * * * *

(2) The vessel's confirmation numbers for the current and immediately prior multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, and any vessel issued a limited access monkfish permit subject to the DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(b) and (c) shall be deemed in the DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

10. In § 648.11, the first sentence of paragraph (a) and paragraph (e) introductory text are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for sea scallops, or NE multispecies or monkfish, or mackerel, squid, or butterfish, or scup, or black sea bass, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, if requested by the sea sampler/observer also must:

* * * * *

11. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General Provisions), B (Atlantic Mackerel, Squid, and Butterfish Fisheries), D (Atlantic Sea Scallop Fishery), E (Atlantic Surf Clam and Ocean Quahog Fisheries), F (NE Multispecies and Monkfish Fisheries), G (Summer Flounder Fishery), H (Scup Fishery), or I (Black Sea Bass Fishery) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, and butterfish, summer flounder, scup, and black sea bass fisheries.

* * * * *

12. In § 648.14, paragraphs (a)(49) and (103) are revised, and paragraphs (x)(8) and (y) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(49) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

* * * * *

(103) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than solely for transport, any multispecies or monkfish, unless the dealer or transferee has a dealer permit issued under § 648.6.

* * * * *

(x) * * *

(8) *Monkfish*. All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

(y) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access monkfish permit to do any of the following:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for or were harvested in or from the EEZ by a vessel issued a valid monkfish permit under this part and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The monkfish were harvested by a vessel not issued a monkfish permit that fishes for monkfish exclusively in state waters; or

(iii) The monkfish were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(2) Land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish, unless the vessel has been issued a monkfish permit, or unless the monkfish were harvested by a vessel with no monkfish permit that fishes for monkfish exclusively in state waters.

(4) Fish for, possess, retain, or land monkfish, or operate or act as an operator of a vessel fishing for or possessing monkfish in or from the EEZ without having been issued and possessing a valid operator permit.

(5) Fish with, use, or have on board, while fishing under a monkfish DAS within the Northern Fishery Management Area or Southern Fishery Management Area as described in § 648.91(a) and (b), nets with mesh size smaller than the minimum mesh size specified in § 648.91(c).

(6) Violate any provision of the incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) and 648.94(c).

(7) Possess, land, or fish for monkfish while in possession of dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, except for vessels with no monkfish permit that fish for monkfish exclusively in state waters.

(8) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession limit specified in § 648.94 applicable to a vessel issued a limited access monkfish permit, or in excess of the trip limits specified in § 648.94(b) and (c) applicable to a vessel with a monkfish incidental catch permit.

(9) Fail to comply with the monkfish size limit restrictions of § 648.93.

(10) Fail to comply with the monkfish liver landing restrictions of § 648.94(d).

(11) Fish for, possess or land more than the landing limit of monkfish specified in § 648.94 after using up the vessel's annual monkfish DAS allocation or when not participating in the monkfish DAS program pursuant to § 648.92.

(12) If fishing with a VMS unit under § 648.10:

(i) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage as specified in § 648.10.

(13) Combine, transfer, or consolidate DAS allocations.

(14) Fish for, possess, or land monkfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(15) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(16) Fail to comply with any provision of the DAS notification program as specified in § 648.10.

(17) If the vessel has been issued a limited access monkfish permit and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) If the vessel is fishing under the gillnet category, fail to comply with the applicable restrictions and requirements specified in § 648.92(b)(8).

(19) Fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(20) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or use a false gillnet tag.

(21) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

13. Revise the heading for subpart F to read as follows:

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

* * * * *

14. Revise the heading of § 648.80 to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

15. Revise the heading of § 648.81 to read as follows:

§ 648.81 Multispecies closed areas.

* * * * *

16. Revise the heading of § 648.82 to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

* * * * *

17. Revise the heading of § 648.83 to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

18. In § 648.84, paragraph (a) is revised to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

* * * * *

19. Revise the heading of § 648.86 to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

20. Revise the heading of § 648.88 to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

21. In § 648.90, the section heading and paragraph (c) are revised to read as follows:

§ 648.90 Multispecies framework specifications.

* * * * *

(c) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

22. New §§ 648.91 through 648.94, and § 648.96 are added to subpart F to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

All vessels must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)— Area definition.* The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70°03* W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)— Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200–mile limit, then in a northerly direction along the 200–mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41° N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions*—(1) *Minimum mesh size*—(i) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4 cm) square or 12–inch (30.5 cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The remainder of the trawl net may contain mesh that is no smaller than the regulated mesh specified by § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon the multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and multispecies DAS.* For vessels issued a Category C or D limited access monkfish permit and fishing with trawl gear under both a monkfish *and* multispecies DAS, mesh size may be no smaller than allowed under regulations regarding mesh size for the NE Multispecies FMP at § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i), depending upon the multispecies regulated mesh area being fished.

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10–inches (25.4 cm) diamond.

(iv) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C or D limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

(2) *Other gear restrictions.* (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed as specified in § 648.81(e).

(iii) The mesh restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)).

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) *General.* A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, except as otherwise provided in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *Monkfish DAS program—permit categories and allocations*— (1) *Limited access monkfish permit holders.* For fishing years 1999, 2000, and 2001, all limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year. For fishing years 2002 and thereafter, no monkfish DAS will be allocated to any limited access monkfish permit holder.

(2) *Category C and D limited access monkfish permit holders.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable.

(3) *Accrual of DAS.* Same as § 648.53(e).

(4) *Good Samaritan credit.* Same as § 648.53(f).

(5) *Spawning season restrictions.* A vessel issued a valid Category A or B limited access monkfish permit under § 648.4(a)(9)(i)(A)(*1*) or (a)(9)(i)(A)(*2*) must declare and be out of the monkfish DAS program, as described in paragraph (b) of this section, for a 20-day period between April 1 and June 30 of each calendar year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a 20-day period between April 1 and June 30 of each calendar year on or before June 11 of each year, the vessel is prohibited from fishing for possessing or landing any monkfish during the period June 11 through June 30, inclusive.

(6) *Declaring monkfish DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program and declaration of its 20-day period out of the monkfish DAS program, using the notification requirements specified in § 648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of § 648.96.

(8) *Gillnet restrictions*—(i) *Number and size of nets.* A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. A vessel issued a multispecies limited access permit and a limited access monkfish permit, or fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82(k)(1)(i) and that the nets are tagged in accordance with the regulations, as specified in § 648.82. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 1999, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in § 648.4. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS will accrue 15 hours monkfish DAS for each trip greater than 3 hours but less than or equal to 15 hours. Such vessel will accrue actual monkfish DAS time at sea for trips less than or equal to 3 hours or greater than 15 hours. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided that the vessel complies with the requirements and conditions of paragraphs (b)(8)(i), (ii), (iii), (iv), and (v) of this section.

§ 648.93 Monkfish minimum fish sizes.

(a) *Minimum fish sizes.* (1) All monkfish caught in or from the EEZ or by vessels issued a Federal monkfish permit are subject to the following minimum fish sizes (total length and tail length):

MINIMUM FISH SIZES (TOTAL LENGTH/TAIL LENGTH)

Total Length	*Tail Length*
17 inches (43.2 cm)	11 inches (27.9 cm)

(2) The minimum fish size applies to the whole fish (total length) or to the tail of a fish (tail length) at the time of landing. Fish or parts of fish must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed. Monkfish tails will be measured from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin. Any tissue anterior to the fourth dorsal spine will be ignored. If the fourth dorsal spine or the tail is not intact, the minimum size will be measured between the most anterior vertebra and the most posterior portion of the tail.

(b) *Adjustments*—(1) *Vessels fishing in the SFMA.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(1)(ii), beginning on May 1, 2000, the minimum fish size limit for vessels fishing or landing in the SFMA only is 21 inches (53.3 cm) total length/14 inches (35.6 cm) tail length.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, a notification will be published in the **Federal Register** specifying the SFMA size limit at 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length.

(2) *Vessels fishing in the NFMA.* An adjustment to the minimum size possession limits for vessels catching or landing fish in the SFMA under paragraph (b)(1) of this section will not affect the minimum size possession limits for vessels catching fish only in or from the NFMA, which will remain as described in paragraph (a)(1) of this section. When the size limits specified in paragraph (b)(1) of this section become effective for the SFMA, a vessel intending to fish for and catch monkfish under a monkfish DAS only in the NFMA must declare into that area for a period not less than 30 days when calling in under the DAS program or as otherwise directed by the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. Such restrictions shall apply to the entire trip. A vessel that has declared its intent to fish in the NFMA may transit the SFMA providing that it complies with the transiting provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish in the SFMA.

§ 648.94 Monkfish possession and landing restrictions.

(a) *General.* Monkfish may be possessed or landed either as tails only, or in whole form, or any combination of the two. When both tails and whole fish are possessed or landed, the possession or landing limit for monkfish tails shall be the difference between the whole weight limit minus the landing of whole monkfish, divided by 3.32. A 996 lb (452 kg) whole weight trip limit and a 600 lb (272 kg) landing of whole fish shall, for example, allow for a maximum landing of tails of 101.2 lb (46 kg).

(b) *Vessels issued limited access monkfish permits*—(1) *Vessels fishing under the monkfish DAS program prior to May 1, 2000.* For vessels fishing under the monkfish DAS program prior to May 1, 2000, there is no monkfish trip limit.

(2) *Vessels fishing under the monkfish DAS program May 1, 2000, and thereafter.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(2)(ii), the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section apply to vessels fishing under the monkfish DAS program in the SFMA.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, no monkfish trip limit shall apply to a vessel that is fishing under a monkfish DAS. Such determination shall be published in the **Federal Register**.

(iii) *Category A and C vessels using trawl gear.* Category A and C vessels exclusively using trawl gear during a monkfish DAS may land up to 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iv) *Category B and D vessels using trawl gear.* Category B and D vessels using exclusively trawl gear during a monkfish DAS may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(v) *Vessels using gear other than trawl gear.* Any vessel issued a limited access monkfish permit and using gear other than trawl gear during a monkfish DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(vi) *Administration of landing limits.* The procedures in § 648.86 for administering the trip limit for cod under the NE Multispecies FMP apply to landings of monkfish during a monkfish DAS.

(A) A vessel owner or operator may not exceed the monkfish trip limit based on monkfish DAS accrued at the time of landing unless the vessel has sufficient monkfish DAS to account for such overage and the landing of such overage is consistent with § 648.86. Vessels calling-out of the monkfish DAS program under § 648.10(c)(3) that have utilized only part of a monkfish DAS (less than 24 hours) may land up to an additional full daily trip limit of monkfish as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section for that part of a monkfish DAS; however, such vessels may not end any subsequent trip with monkfish on board within the 24-hour period following the

beginning of the part of the monkfish DAS utilized (e.g., a vessel that has called-in to the monkfish DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m.(accruing a total of 25 hours) may legally land up to twice the trip limit of monkfish as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section, but the vessel may not end any subsequent trip with monkfish on board until after 3 p.m. on the following day (Wednesday)).

(B) *Landing in excess of trip limits.* A vessel subject to the monkfish landing limit restrictions described in paragraphs (b)(2)(iii), (iv) and (v) of this section may come into port with and offload monkfish in excess of the landing limit as determined by the number of monkfish DAS elapsed since the vessel called into the monkfish DAS program, provided that the landing of such overage is consistent with § 648.86, and provided that:

(*1*) The vessel operator does not call-out of the monkfish DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port to engage in fishing, unless transiting as allowed in paragraph (e) of this section, until sufficient time has elapsed to account for and justify the amount of monkfish harvested at the time of offloading, regardless of whether all of the monkfish on board is offloaded (e.g., a vessel with a Category A or Category C permit that has called-in to the monkfish DAS program at 3 p.m. on Monday that fishes and comes back into port at 4 p.m. on Wednesday of that same week with 6,000 lb (2,722 kg) tail-weight or 19,920 lb (9,036 kg) whole weight of monkfish—or a vessel with a Category B or Category D permit that has called-in to the monkfish DAS program at 3 p.m. on Monday that fishes and comes back into port at 4 p.m. on Wednesday of that same week with 4,000 lb (1,814 kg) tail-weight or 13,280 lb (6,024 kg) whole weight of monkfish and offloads some or all of its catch—cannot call out of the monkfish DAS program or leave port until 3:01 p.m. the next day, Thursday (i. e., 3 days plus one minute)); and

(*2*) Upon returning to port and before offloading, the vessel operator notifies the Regional Administrator and provides the following information: Vessel name and permit number, port landed, owner and caller name, monkfish DAS confirmation number, phone number, the hail weight of monkfish or monkfish tails on board, and the amount of monkfish to be offloaded, if any. A vessel that has not exceeded the landing limit and is offloading and ending its trip by calling out of the monkfish DAS program does not have to report under this call-in system. Also, calling out of a fishery's DAS program when fishing under DAS for two fisheries at the same time may be done independently of each fishery. For example, a vessel that has been fishing under a multispecies or scallop DAS *and* a monkfish DAS at the same time and is reporting an overage in its monkfish landing limit does not have to call out of its multispecies or scallop DAS, and vice-versa.

(C) A vessel that has not exceeded the monkfish landing limit restrictions described in paragraphs (b)(2)(iii) and (iv) of this section and that is offloading some or all of its catch without calling out of the monkfish DAS program under § 648.10(c)(3) is subject to the call-in requirement described in paragraph (b)(2)(vi)(B)(*2*) of this section.

(3) *Category C and D vessels fishing during a multispecies DAS prior to May 1, 2002*—(i) *NFMA.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a multispecies DAS exclusively in the NFMA.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS, and not under a monkfish DAS, in the SFMA, the vessel may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

(4) *Category C and D vessels fishing during a multispecies DAS from May 1, 2002, and thereafter*—(i) *NFMA.* Any Category C or D vessel that is fishing under a multispecies DAS in the NFMA may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish on board, whichever is less.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS and not under a monkfish DAS in the SFMA, a vessel issued a Category C or D permit may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish on board, whichever is less, if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(5) *Category C and D vessels fishing under the scallop DAS program prior to May 1, 2002.* A category C or D vessel fishing under a scallop DAS with a dredge on board, or under a net exemption provision as specified at § 648.51(f), may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(6) *Category C and D vessels fishing under the scallop DAS program from May 1, 2002, and thereafter.* A category C or D vessel fishing under a scallop DAS with a dredge on board may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(c) *Vessels issued a monkfish incidental catch permit*—(1) *Vessels fishing under a multispecies DAS*—(i) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor), or 25 percent of the total weight of fish on board, whichever is less.

(ii) *SFMA.* If any portion of the trip is fished by a vessel issued a monkfish incidental catch permit under a multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(2) *Scallop dredge vessels fishing under a scallop DAS*—(i) P*rior to May 1, 2002.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) *From May 1, 2002, and thereafter.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(3) *Vessels not fishing under a monkfish, multispecies or scallop DAS*—(i) *Vessels fishing in the GOM/GB, SNE and MA Regulated Mesh Areas with large mesh.* A vessel issued a valid monkfish incidental catch permit and

fishing in the GOM/GB or SNE RMAs with large mesh as defined in § 648.80(a)(2)(i) and (b)(2)(i), respectively, or fishing in the MA RMA with mesh no smaller than specified at § 648.104(a)(1), while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent of the total weight of fish on board.

(ii) [Reserved]

(4) *Vessels fishing with small mesh.* A vessel issued a valid monkfish incidental catch permit and fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip.

(5) *Small vessels.* A vessel issued a limited access multispecies permit and a valid monkfish incidental catch permit that is ≤ 30 feet (9.1 m) in length and that elects not to fish under the multispecies DAS program may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip, regardless of the weight of other fish on board.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch permit and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip, regardless of the weight of other fish on board.

(d) *Monkfish liver landing restrictions.* (1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio:

(0.10) x [(tail weight x 3.32) + (whole fish x 1)]

NOTE: The value 3.32 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish, or a vessel that is subject to less restrictive measures in the NFMA, may transit the SFMA, provided that the vessel does not harvest or possess monkfish from the SFMA and that the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.81(e). A vessel that has exceeded the monkfish landing limit as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section and is, therefore, subject to remain in port for the period of time described in paragraph (b)(2)(vi)(B) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator either at the time the vessel reports its hailed tail-weight or whole weight of monkfish or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e), and may not have any fish on board the vessel.

(f) *Area declaration.* Should the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section be implemented under paragraph (b)(2) of this section, a vessel, in order to fish for monkfish under a monkfish DAS in the NFMA, must declare into that area for a period of not less than 30 days. A vessel that has not declared into the NFMA under this paragraph will be presumed to have fished in the SFMA under the more restrictive requirements of that area. Such restrictions will apply to the entire trip. A vessel that has declared its intent to fish in the NFMA may transit the SFMA, provided that it complies with the transiting provisions described in paragraph (e) of this section.

(g) *Other landing restrictions.* Vessels are subject to any other applicable landing restrictions of this part.

§ 648.96 Monkfish framework specifications.

(a) *Annual review.* The Monkfish Monitoring Committee (MMC) will meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP goals and objectives.

(1) The MMC will review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(2) Based on this review, the MMC will recommend target TACs and develop options necessary to achieve the Monkfish FMP goals and objectives, which may include a preferred option. The MMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MMC may include any of the management measures in the Monkfish FMP, including, but not limited to: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits (possibly expressed as a daily limit and possibly administered via a running clock); blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures presently included in §§ 648.55 and 648.90.

(3) The Councils will review the recommended target TACs and all of the options developed by the MMC and other relevant information, consider public comment, and develop a recommendation to meet the Monkfish FMP objectives, consistent with other applicable law. The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MMC. The oversight committee would review the options developed by the MMC and any other relevant information, consider public comment, and make a recommendation to the Councils. If the Councils do not submit a recommendation that meets the Monkfish FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MMC unless rejected by either Council, provided such option meets the Monkfish FMP objectives and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(4) Based on this review, the Councils will submit a recommendation to the Regional Administrator of any changes, adjustments, or additions to management measures necessary to achieve the Monkfish FMP's goals and objectives. Included in the Councils' recommendation will be supporting documents, as appropriate, concerning the environmental and economic

impacts of the proposed action and the other options considered by the Councils. Documentation and analyses for the framework adjustment will be available at least 2 weeks before the first of the final two meetings at each Council. Management adjustments or amendments for monkfish will require majority approval of each Council for submission to the Secretary.

(5) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation will be published in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action will provide a 30-day public comment period. The Councils may instead submit their recommendation on or before February 1 if they choose to follow the framework process outlined in paragraph (c) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the *Federal Register* about a month before each fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the Monkfish FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the MMC options reviewed and not rejected by either Council, provided that the option meets the Monkfish FMP objectives and is consistent with other applicable law. If the Councils fail to submit a recommendation that meets the objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MMC, unless it was rejected by either the New England or Mid-Atlantic Council, provided the option meets the objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(b) *Three-year review of biological objectives and reference points.* The MMC will meet on or before November 15, 2001, to evaluate threshold and target biological reference points. If adjustments are required, a framework action will be initiated to replace the existing (''default'') measures scheduled to take effect on May 1, 2002 (Year 4). The framework process would include a comprehensive evaluation, conducted by the MMC during 2001, of the effectiveness of the management measures to reduce mortality below the overfishing threshold and allow rebuilding within (at that time) 6 years. If a change is required, the framework process would follow the procedure described in paragraph (a) of this section, but may also include an adjustment of the overfishing definition.

(c) *Within season management action.* Either Council, or the joint Monkfish Oversight Committee (subject to the approval of the Councils chairmen), may at any time initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP. Framework adjustments will require at least one initial meeting (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. Documentation and analyses for the framework adjustment will be available at least 2 weeks before the first of the final two meetings at each Council. Management adjustments or amendments for monkfish will require majority approval of each Council for submission to the Secretary.

(1) *Adjustment process.* After a management action has been initiated, the Councils will develop and analyze appropriate management actions over the span of at least two Council meetings, one at each Council. The Councils will provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits (possibly expressed as a daily limit and possibly administered via a running clock); blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures presently included in §§ 648.55 and 648.90.

(2) *Adjustment process for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

(3) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils will make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Councils' recommendation includes adjustments or additions to management measures and, after reviewing the Councils' recommendation and supporting information:

(i) If the Regional Administrator concurs with the Councils' recommended management measures

and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Councils' recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(d) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

[FR Doc. 99–3506 Filed 2–9–99; 5:03 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 30

Tuesday, February 16, 1999

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

Office of the Secretary

Privacy Act of 1974: Notice of a Computer Matching Program for Federal Salary Offset

AGENCY: Farm Service Agency (FSA); Risk Management Agency, formerly the Federal Crop Insurance Corporation (FCIC); Farm Service Agency/Commodity Credit Corporation (FSA/CCC); and Office of the Chief Financial Officer (OCFO)/National Finance Center, formerly the Office of Finance and Management/National Finance Center (OFM/NFC). These agencies of the United States Department of Agriculture throughout this notice are referred to collectively as ''USDA''.

ACTION: Notice of computer matching program between United States Department of Agriculture (USDA) and the United States Postal Service (USPS).

SUMMARY: USDA is giving notice that it intends to conduct a computer matching program with the USPS to identify USPS employees who owe certain types of delinquent debts to the United States Government under various programs administered by the above USDA agencies because of loans, fees, overpayments, or entitlements.

DATES: Comments must be received March 18, 1999, to be considered. Unless comments are received which result in a contrary determination, the matching program covered by this Notice will begin no sooner than March 29, 1999.

ADDRESSES: Comments should be addressed to Richard M. Guyer, Director of the Fiscal Policy Division, USDA/OCFO, 1400 Independence Avenue, SW, Room 5411, South Building, Washington, DC 20250, telephone (202) 690–0291.

SUPPLEMENTARY INFORMATION: Pursuant to a subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), USDA and USPS have concluded an agreement to conduct a computer matching program. The purpose of the match is to exchange personal data between the agencies for collection of delinquent debts from defaulters of obligations held by USDA. The match will yield the identity and location of the debtors who are also employees of USPS so that USDA can pursue recoupment of the debts by voluntary payment or by salary offset procedure. Computer matching appears to be the most efficient and effective manner to accomplish this task with the least amount of intrusion into the personal privacy of the individuals concerned.

A copy of the computer matching agreement between USDA and USPS is available to the public upon request. Requests should be submitted to the Debt Collection Coordinator, USDA, 1400 Independence Avenue, SW, Room 5411, South Building, Washington, DC 20250. This notice is being published as required by section (e)(12) of the Privacy Act of 1994 (5 U.S.C. 552a(e)(12)), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503).

The following information is provided as required by paragraph 5b of Appendix I to Office of Management and Budget Circular A–130, revised.

1. *Participating agencies:* The recipient agency is USPS. The source agency is USDA.

2. *Beginning and ending dates:* The matching program will continue in effect no longer than 18 months. If within three months of the expiration date, the Data Integrity Boards of both USDA and the USPS find that the matching program can be conducted without change and both USDA and the USPS certify that the matching program has been conducted in compliance with the matching agreement, the matching program may be extended for one additional year.

3. *Purpose of the match:* The purpose of the match is to identify and locate USPS employees receiving any Federal salary or benefit payments who are delinquent in their repayment of debts owed to the United States government under the programs administered by the USDA, in order to permit the USDA to pursue and collect the debt by voluntary repayments or salary offset procedures.

The names of USPS employees identified through the matching program will be removed from lists of delinquent debts being referred to the Internal Revenue Service (IRS) for collection from Federal income tax refunds. This action is required to conform to an IRS requirement for the Income Tax Refund Offset Program.

4. *Description of the match:* The subject matching program will involve several steps. USDA will provide USPS one or more magnetic computer tapes of claims submitted by USDA agencies. By computer, USPS will compare that information with its payroll file, establishing matched individuals on the basis of Social Security Numbers (SSN's). For each matched individual, USPS will provide to USDA the individual's name, SSN, home address, work location and information concerning the individual's employment status as permanent or temporary. The respective agencies will verify identity and debtor status of the matched individuals by manually comparing the list of matched individuals to their records of the debts, by conducting independent inquiries when necessary to resolve questionable identities, and by verifying that the debt is still delinquent.

Besides verifying debtor identity and the status of the debt, before USDA taking any steps to effect involuntarily offset of USPS employee salaries, USDA agencies will give debtors a 30-day written notice stating the amount of the debt and that the debtor may repay it voluntarily. Debts not repaid voluntarily will be referred to USPS for involuntary salary offset. Individuals verified as owing delinquent debts to USDA will be afforded all applicable due process rights contained in the Debt Collection Act.

5. *Legal authorities:* This matching program will be conducted under the following authorities:

(a) The Debt Collection Act of 1982 (5 U.S.C. 5514), which gives Federal agencies the authority to offset the salaries of Federal and USPS employees who are delinquent on debts owed to the Federal Government;

(b) Office of Personnel Management (OPM) regulations, 5 CFR part 550, subpart K (Collection by Offset from Indebted Government Employees), §§ 550.1101–1108, which set the standards for Federal agency rules implementing the Debt Collection Act; and

(c) USDA regulations at 7 CFR part 3, subpart C, which implement 5 U.S.C. 5514 and OPM regulations, authorizing USDA agencies to issue regulations governing debt collection by salary offset (7 CFR 3.68).

6. *Categories of individuals involved*: Delinquent debtors who have received benefits from USDA program agencies.

7. *Systems of Records and Estimation of Number of Records Involved:* (a) The USPS will provide extracts from its Privacy Act System of Records USPS 050.020, Finance Records-Payroll System, containing payroll records on approximately 800,000 current USPS employees. Disclosure will be made under routine use 24 of that system, a full description of which was last published in 57 FR 57515, dated December 4, 1992.

(b) The USDA will provide extracts from its (1) Applicant/Borrower or Grantee File (USDA/FSA–14), containing records on approximately 762,000 debtors (approximately 88,000 of the 762,000 records will be sent for the match), a full description of which was last published in the **Federal Register** at 62 FR 5568 on February 6, 1997 (routine use number 9); (2) Accounts Receivable (USDA/FCIC–1), containing records on approximately 880 debtors (approximately 880 will be sent for the match), a full description of which was last published in the **Federal Register** at 53 FR 4047 on February 11, 1988 (routine use number 9); (3) Claims Data Base (Automated) (USDA/FSA–13), containing records on approximately 25,000 debtors, (approximately 25,000 will be sent for the match) a full description of which was last published in the **Federal Register** at 62 FR 5568 on February 6, 1997 (routine use number 9); and (4) Administrative Billings and Collections (USDA/OCFO–3), containing records on approximately 45,000 debtors (approximately 6,750 will be sent for the match) a full description of which was last published in the **Federal Register** at 54 FR 47622 on November 10, 1997 (routine use number 6).

8. *Individual notice and opportunity to contest:* USDA will provide to matched individuals due process consisting of USDA's verification of debt; 30-day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy of the USDA's documentation of the debt; provision for debtor to seek USDA's review of the debt and opportunity for the individual to enter into a written agreement satisfactory to USDA for repayment. Prior to use of the salary offset provision, an individual will be afforded the opportunity for a hearing concerning the amount or existence of the debt or the offset repayment schedule. The hearing will be before an individual not under the supervision or control of the Secretary, USDA. Unless the individual notifies USDA otherwise within 30 days from the date of the notice, USDA will conclude that the data provided to the individual is correct and will take the necessary action to recoup the debt.

9. *Inclusive date of the matching program:* This computer matching program is subject to review by the Office of Management and Budget (OMB) and Congress. If no objections are raised by either and the mandatory 30-day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments having been received that would result in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data on the later of 30 days after the date of this published notice or 40 days after notice to OMB and Congress, at a mutually agreeable time. Exchange of data will be repeated on an annual basis, unless OMB or the Treasury Department requests a match twice a year. Under no circumstances will the matching program be implemented before the respective 30- and 40-day notice periods have elapsed, as this time period cannot be waived. By agreement between USDA and USPS, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months. The matching program may be terminated by written notification from either participating agency to the other.

Signed at Washington, DC, on February 4, 1999.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–3638 Filed 2–12–99; 8:45 am]

BILLING CODE 3410–KS–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Office of Outreach and Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the intention of the Office of Outreach and Farm Service Agency to request an extension for and revision to a currently approved information collection for the Small Farmer Outreach Training and Technical Assistance Program and the Outreach for Socially Disadvantaged Farmers and Ranchers Program. The Office of Outreach will use the information collection to determine eligibility of each applicant and to ensure that program requirements are met.

DATES: Comments on this notice must be received on or before April 19, 1999.

ADDITIONAL INFORMATION OR COMMENTS: Contact Geraldine Herring, Department of Agriculture, Office of Outreach, Room 4929–S, STOP 6201, 1400 Independence Avenue, SW, Washington, D.C. 20250–6201; telephone (202) 720–1637 and FAX: (202) 720–4995.

SUPPLEMENTARY INFORMATION:

Title: Small Farmer Outreach, Training, and Technical Assistance

OMB Control Number: 0560–0163

Expiration Date of Approval: December 31, 1998

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990, (7 U.S.C. 2279) established the ''Small Farmer Outreach Training and Technical Assistance Program,'' and the ''Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program.'' This act provides the Office of Outreach with the authority to make grants and enter into contracts, and other agreements with entities to provide outreach, training, and technical assistance. The programs are to encourage and assist small, limited resource and economically/socially disadvantaged farmers and ranchers to own and operate farms and ranches; and to increase their participation and accessibility to agricultural programs.

Grants are awarded to community-based organizations that have demonstrated experience in providing agricultural education or other agriculturally related services to small, limited resource, economically/socially disadvantaged farmers and ranchers. Recipients must have documentary evidence of their past experiences in working with targeted participants during the 2 year period preceding their application for a grant or contract. To be identified as being a responsible grantee or contractor, an applicant must provide documentation of having adequate financial resources, the ability to comply with project completion dates, show that adequate financial management and accounting systems

are in place, and show a satisfactory record of past performance under Federal Government grants and contracts.

Grants are also awarded to Land-Grant Colleges including Tuskegee Institute, Indian tribal community colleges and Alaska native cooperative colleges, Hispanic-serving post-secondary educational institutions, and other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally related services to small, limited resource, economically/socially disadvantaged farmers and ranchers in their region.

When a grant has been awarded, a cooperative agreement is executed. The potential grant period is 5 years. At the conclusion of each year, a decision is made by USDA program staff based on information submitted regarding project performance and management whether to extend the cooperative agreement for another year.

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999, provided $3 million for the continuation of the programs for fiscal year 1999.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.0606 hours per response.

Respondents: Educational Institutions, Community-Based Organizations, State, Local or Tribal Governments and producers.

Estimated Number of Respondents: 150

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 5,888 hours

Copies of this information collection and related instructions can be obtained without charge from Geraldine Herring at the above address.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Samuel E. Thornton, Director, USDA, Office of Outreach, Room 542–A, STOP 6201, 1400 Independence Avenue, SW, Washington, D.C. 20250–6201.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, D.C., on January 20, 1999.

Samuel E. Thornton,

Director, Office of Outreach.

James W. Schroeder,

Acting Under Secretary for Farm and Foreign Agriultural Services.

[FR Doc. 99–3626 Filed 2–12–99; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

Monroe Mountain Ecosystem Restoration Project; Fishlake National Forest, Sevier and Piute Counties, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an Environmental Impact Statement (EIS) to implement proposed actions to maintain or restore the long-term health and productivity of lands within the Monroe Mountain Ecosystem Restoration Project area, on the Richfield Ranger District, Fishlake National Forest. The purpose of these proposals is to initiate actions that would: (1) Reduce the loss of aspen through succession to mixed conifer and sagebrush; (2) restore watershed values that favor increases in water yield to restore riparian conditions; (3) reduce the risk of large intense wildfires and the potential of epidemic level spruce beetle outbreaks and other diseases; (4) recover the value of merchantable trees while performing ecosystem restoration; (5) contribute to the restoration of aspen and grass/forb communities to improve habitat for wildlife and livestock. The proposals include: (1) commercial and noncommercial regeneration treatment of aspen and mixed conifer/aspen forests, and associated road construction, maintenance and closures; (2) commercial salvage, sanitation and density management timber harvest in spruce forests, and associated road construction, maintenance and closures; (3) treatment of aspen and mixed conifer/aspen forests using ignited prescribed fire; (4) treatment of dense sagebrush vegetative types of ignited prescribed fire, disking, or Dixie harrowing. Multiple decisions may be issued upon completion of the analysis; however, the cumulative effects of all the proposed actions will be disclosed in the EIS. The proposed actions would be completed within a five-year period. The project is located approximately twelve miles southeast of Richfield, Utah. The project would be implemented in accordance with direction of the Land and Resource Management Plan (LRMP, 1986) for the Fishlake National Forest.

The agency gives notice that the environmental analysis process is underway. During the analysis process, an issue surfaced that warranted disclosure of effects under an EIS. This issue is the high degree of interest associated with the potential to alter the undeveloped character of portions of the project area due to proposed vegetative treatments within inventoried roadless areas. Public scoping and issue development identified issues involving: biological diversity; land stability; soil erosion and productivity; water and water resources; vegetative vigor and health; fire and fuel loading; wildlife and fisheries; transportation system; range; visual landscape; economics; recreation; cultural resources; and air quality.

DATES: Written comments to be considered in the preparation of the Draft Environmental Impact Statement (DEIS) should be submitted by March 18, 1999, which is at least 30 days following the publication of this Notice in the **Federal Register.** The DEIS is expected to be available for review by April, 1999. The Record of Decision and Final Environmental Impact Statement are expected to be available by June, 1999.

ADDRESSES: Send written comments to District Ranger, Richfield Ranger District, 115 East 900 North, Richfield, Utah 84701.

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS by mail to Don Okerlund, Acting District Ranger, 115 East 900 North, Richfield, Utah 84701; or by phone at (435) 896–9233; or FAX: (435) 896–9347.

SUPPLEMENTARY INFORMATION: The proposed projects are located in an analysis area of about 50,000 acres, including 41,400 acres of National Forest System lands 8,400 acres of private land, and 200 acres of State of Utah land. It is centered within Monroe

Mountain, extending from Magleby Pass southerly about fifteen miles to Langdon Mountain. The project area is located in Townships 25, 26, 27 and 28 South, Ranges 1, 2, and 3 West, Salt Lake Base and Meridian.

The proposed need for action is based upon scientific evidence that vegetation is in an unhealthy condition over much of the project area. Within the project area the size and number of aspen stands have decreased. There are significantly fewer areas occupied by aspen now that 150 years ago. As older aspen trees have died, insufficient regeneration has resulted to maintain the stands. It is believed that lack of fire has contributed to the loss of aspen stands. Conifer and sagebrush are encroaching into the aspen stands. Research has shown that such encroachment causes a significant decrease in the area's water yield, the variety and number of wildlife and vegetative species present, and the forage available for wildlife and livestock. Local timber mills have created a market for merchantable aspen that has benefited the local economy.

In addition, increased numbers of Engelmann spruce are being killed by spruce beetles, which are at epidemic levels. Spruce provides products that benefit local economies and supplies wood needed for a multitude of products. Spruce stands also provide habitat for wildlife and soil protection. One purpose of the project is to salvage the dead and dying Engelmann spruce/subalpine fir to recover wood products that would otherwise be lost, while still meeting the desired future condition. Also, spruce dominated stands that are at risk to spruce beetle infestation would be treated by commercial and noncommercial sanitation treatments to alter the forest conditions that contribute to this risk. Reducing the risk in these stands would provide the best opportunity to maintain a green, forested condition as well as maintain important resource values.

The proposed actions would occur within eight treatment areas totalling 17,325 acres within the 50,000 acre analysis area. The eight treatment areas contain approximately 1,200 acres of Engelmann spruce/fir; 12,500 acres of aspen and aspen/mixed conifer; and 3,600 acres of sagebrush. The proposed action involves recovery of approximately 20–25 million board feet of timber (aspen, spruce and other conifer species) from approximately 5,000 to 6,000 acres. Ignited prescribed fire would be a treatment for aspen regeneration on approximately 3,000 to 4,000 acres. About 14 miles of specified road construction would be required to access treatment areas to recover the wood products. In the spruce treatment areas, the roads would be closed by gates to allow future entry for timber stand improvement activities. Roads needed in the aspen/mixed conifer treatment areas would be rehabilitated and permanently closed at completion of the activity. Approximately 2,000 acres of sagebrush would be treated by ignited prescribed fire, disking, or Dixie harrowing.

The proposed actions would implement management direction, contribute to meeting the goals and objectives identified in the Fishlake National Forest LRMP, and move the analysis area toward the desired future condition.

Tentative alternatives to the proposed faction include: (1) No action, meaning the project would not take place, but current management and natural succession would continue; (2) apply the proposed actions to acres external to inventoried roadless areas; (3) apply the proposed actions to acres external to inventoried roadless areas and selected acres within inventoried roadless areas. No road construction would occur within the inventoried roadless areas.

The analysis area includes both National Forest System lands, State of Utah lands and private lands. Proposed treatments would occur only on National Forest System lands. No federal or local permits, licenses or entitlements would be needed.

As the lead agency, the Forest Service would analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative would include mitigations measures and monitoring requirements.

Rob Mrowka, Forest Supervisor, Fishlake National Forest, is the responsible official. He can be reached by mail at 115 East 900 North, Richfield, Utah 84701.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft 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 Plant* 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 the 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.

Dated: February 9, 1999.

Rob Mrowka,

Forest Supervisor, Fishlake National Forest.

[FR Doc. 99–3609 Filed 2–12–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 5:00 p.m. and adjourn at 7:30 p.m. on March 3, 1999, at the Old Supreme Court Chamber, State Capitol, 400 High Street, Room 216, Jackson, Mississippi 39201. The purpose of the meeting is to receive information on whether there is a need for statewide civil rights legislation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting

and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 8, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–3675 Filed 2–16–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Amended Final Results of Antidumping Duty Administrative Reviews and Determination to Revoke in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Final Results of the Antidumping Duty Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada and Determination to Revoke in Part.

SUMMARY: We are amending our final results of the 1996–97 administrative reviews of the antidumping duty orders on Certain Corrosion Resistant Carbon Steel Products and Certain Cut-to-Length Carbon Steel Plate From Canada and Determination to Revoke in Part, published on January 13, 1999 (64 FR 2173), to reflect the correction of ministerial errors made in the model match and margin calculation in the final results for corrosion resistant carbon flat products, and in the *Final Results of Review* section of the notice for plate. We are publishing this amendment to the final results in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone (202) 482–0197 or (202) 482–3020, respectively.

Applicable Statute

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1998, the Department of Commerce (the Department) published the preliminary results of its 1996–97 administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. We published the final results of review on January 13, 1999 (64 FR 2173). On January 22, 1999, we received a timely allegation from petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company) that the Department made ministerial errors in the final results. On January 27, 1998, respondent, Dofasco, Inc. and Sorevco, Inc. (collectively Dofasco), filed a response to petitioners' comments on ministerial errors.

Scope of Review

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) certain corrosion-resistant carbon steel flat products, and (2) certain cut-to-length carbon steel plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not

painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, and 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum).

With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Amended Final Results

On January 22, 1999, petitioners alleged that the Department made ministerial errors in calculating the final antidumping duty margin with respect to Dofasco, one of the respondents in the review of corrosion-resistant steel. Petitioners alleged that the fields referenced in certain lines of the model match section of the program do not correspond to the fields established earlier in the program to weight the various reduction processes. We agree that we did not use the proper values for the weights for the reduction process, to coincide with the reporting requirements reflected in the Department's letter to respondent of November 7, 1997. We have amended the final results by replacing the incorrect values of the weights with the correct ones.

We also agree with petitioners that we incorrectly calculated the total U.S. direct selling expenses before we calculated a revised U.S. credit expense in the margin calculation program. Dofasco commented that petitioners failed to take into consideration the currency conversion calculation in their proposed language for the credit expense calculation. We have moved the revised credit expense calculation so that the revised credit expenses will be included in the calculation of the U.S. direct selling expenses. We further agree with petitioner that the program did not adjust for missing values in the actual payment days field. We have changed the language in the margin program to include the missing values. We also agree with Dofasco's comment, however, and our credit calculation reflects currency conversion. As a result of these corrections, the margin for corrosion-resistant carbon steel flat products from Canada for Dofasco has changed from 0.98 percent to 1.00 percent. No other margins were affected.

We also note that the Department inadvertently included Stelco Inc. (Stelco) in its language concerning the revocation of the antidumping duty order on certain cut-to-length carbon steel plate from Canada in the *Final Results of the Review* section of the final results notice. As clearly outlined in the section *Determination Not to Revoke in Part: Stelco Cut-to-Length Carbon Steel Plate and Corrosion-Resistant Steel Flat Products, and Determination to Revoke in Part: Algoma Cut-To-Length Carbon Steel Plate*, and our response to petitioners' comment 2, we are not revoking the order in part with respect to Stelco.

Amended Final Results of Review

Upon review of the submitted allegation, the Department has determined that the following margins exist for the period August 1, 1996, through July 31, 1997:

Manufacturer/exporter	Margin (percent)
Corrosion Resistant Steel:	
Dofasco	1.00
CCC	2.26
Stelco	2.73
Cut-to-Length Plate:	
Algoma	*0.23
MRM	0.00
Stelco	0.00
Forsyth	68.70

**De minimis.*

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be the rates stated above (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rates established in the LTFV investigations, which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (*see Amended Final Determination of Sales at Less than Fair Value and Anti-Dumping Orders: Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 60 FR 49582 (September 26, 1995)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

We are revoking the antidumping duty order on certain cut-to-length carbon steel plate from Canada with respect to Algoma, in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2). In accordance with 19 CFR 351.222(f)(3), this revocation applies to all entries of the subject merchandise from Canada entered, or withdrawn from warehouse, for consumption on or after August 1, 1997. This date is a correction from the date stated in our notice of final results. The Department will order the suspension of liquidation ended for all such entries and will instruct the Customs Service to release any bonds and refund with interest any cash deposits on entries made on or after August 1, 1997.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Date: February 4, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–3693 Filed 2–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of the administrative review of the antidumping duty order on manganese metal from the People's Republic of China.

SUMMARY: On March 13, 1998, the Department of Commerce published (62 FR 12440) the final results and partial rescission of the administrative review of the antidumping duty order on manganese metal from the People's Republic of China. The review covered the period June 14, 1995 through January 31, 1997. Subsequent to the publication of the final results, we received comments from both petitioners and respondents alleging various ministerial errors. After analyzing the comments submitted, we are amending our final results to correct certain ministerial errors. This amendment to the final results is published in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Gregory Campbell or Cynthia Thirumalai; Antidumping/Countervailing Duty Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce; 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone numbers (202) 482–2239 or (202) 482–4087, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (''the Act''), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). Additionally, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR 353 (April 1997).

SUPPLEMENTARY INFORMATION:

Background

On March 13, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** the final results and partial rescission of the administrative review of the antidumping duty order covering the period of June 14, 1995 through January 31, 1997 on manganese metal from the People's Republic of China (''PRC''). See Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440 (March 13, 1998) (''Final Results of Review''). Subsequently, the following parties submitted ministerial error allegations: Elkem Metals Company and Kerr-McGee Chemical Corporation (together comprising the ''petitioners''), and China Hunan International Economic Development Corporation (''HIED'') and China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation (''CMIECHN/CNIECHN'') (together comprising the ''respondents'').

On April 9, 1998 the petitioners filed a summons with the Court of International Trade (''CIT''), and in a subsequent complaint dated May 11, 1998 challenged the Department's final results of the administrative review. The Department, therefore, suspended any action on the ministerial error allegations until the CIT issued, on November 4, 1998, an order of dismissal of the petitioners' complaint.

A summary of each allegation along with the Department's response is included below. We are hereby amending our final results, pursuant to 19 CFR 353.28(c), to reflect the correction of those errors which are clerical in nature.

Analysis of Comments Received

Allegation 1: The petitioners argue that the Department erred in its calculation of the value of Factors A and K.[1] In order to adjust the factor prices to a period contemporaneous with the period of review (''POR''), the Department multiplied each surrogate value by the change in world-traded prices between 1993, the period for which the surrogate value is quoted, and the Japanese fiscal year 1995. (As explained in the Final Results of Review, we used as a proxy for world-traded ore prices the annual contract price in Japan of high-grade manganese ore.) The petitioners note that the record contains world-traded ore prices for 1996 as well. The petitioners argue that, because the POR is June 14, 1995 through January 31, 1997, the Department should have used an average of the 1995 and 1996 world-traded prices, as this would be more representative of the prices in effect throughout the duration of the POR.

The respondents counter that the petitioners' argument involves a deliberate choice by the Department about methodology and, therefore, does not properly fall within the definition of ministerial error. The respondents further note that the petitioners themselves in their submission acknowledge that this point is methodological in nature.

Department's Position: We agree with the respondents. The petitioners' argument involves a methodological decision by the Department and, as such, does not constitute a ministerial error. This methodology is clearly identified in the Final Results of Review and in the Calculation Memorandum. Thus, no revision has been made.

Allegation 2: The petitioners argue that the Department's choice of a surrogate ore from ''Producer X'' for valuing Factor B is inferior to the petitioners' proposed surrogate from Sandur Manganese & Iron Ores Ltd. based on a comparison of the manganese-to-iron ratios of the two.

The respondents counter that the petitioners' argument involves a deliberate choice by the Department about methodology and, therefore, does not properly fall within the definition of ministerial error.

Department's Position: We agree with the respondents. The Department's choice of any one surrogate value over alternative values does not represent a ministerial error. The selection of appropriate surrogate values for manganese ore in this case has been a highly contentious issue. During the course of the administrative review, the Department considered all of the arguments presented by the parties, in favor of and opposed to each ore surrogate alternative. Our reasons for choosing the ore from ''Producer X'' to value Factor B have been clearly

[1] A key to the naming convention for business proprietary factors of production is included as Exhibit J of the Memorandum to the File: Calculations for the Final Results of Review (March 9, 1998) (''Calculation Memorandum''). A public version of this document is available in the Department's Central Records Unit, Room B–099.

enunciated in the Final Results of Review. Therefore, no revision to this calculation has been made.

Allegation 3: The petitioners argue that the Department, in its calculation of the surrogate value for Factor K, has assigned to that factor an incorrect average manganese content. According to the petitioners, documents on the file indicate that the correct content is much lower.

The respondents offer no comment.

Department's Position: We agree with the petitioners. The Department misinterpreted the reported manganese dioxide content of Factor K as its manganese content. We have revised this calculation accordingly.

Allegation 4: The petitioners argue that the Department has identified incorrectly the mode of transportation used in one of the shipments of Factor J. According to the petitioners, verified information on the record indicates that the correct mode is by train rather than by truck.

The respondents argue the petitioners are wrong because the Department verified that two modes of transportation are used to supply Factor J.

Department's Position: We agree with the petitioners. In the calculation of the weighted-average freight cost for all of the suppliers of Factor J, the Department inadvertently listed one shipment as being transported by truck rather than by train. The freight calculation has therefore been revised to reflect the correct mode of transportation.

Allegation 5: The petitioners argue that the Department's computed unit consumption value for Factor O is incorrect based on verified information contained in the record.

The respondents agree with the petitioners that the Department erred in its calculation; however, what the respondents argue to be the correct value is different from that of the petitioners. The respondents contend that the value for Factor O should be the value verified by the Department.

Department's Position: We disagree with both the petitioners and the respondents. We have reexamined our calculation for Factor O and have confirmed that it is correct. The value put forward by the respondents is the verified weight of a single unit of Factor O, rather than the amount of Factor O consumed in the production of one metric ton of manganese metal (*i.e.*, Factor O unit consumption). Therefore, the respondents' figure does not represent the unit consumption of Factor O, unit consumption being the goal of the particular calculation in question. The difference between our figure and the petitioners' figure appears to be only the result of rounding numbers in the intermediate calculations to a different decimal place. Consequently, no revision to this calculation has been made.

Allegation 6: The petitioners allege that the Department mistakenly has included a by-product credit in the factors of production of certain manganese metal powder manufacturers even though the record indicates that no by-products are generated in the powder production process.

The respondents counter that, because manganese metal flake is an input into powder production and the Department did not account for the by-product in the flake-production stage, it must therefore take it into account at the powder-producing stage.

Department's Position: We disagree with both the petitioners and the respondents. The record indicates that a by-product is generated during production of flake, but not during the production of manganese metal powder. Accordingly, we have included a by-product credit when calculating the flake cost of production. However, flake is also used as an input into powder production. To value the flake input into powder production, we have used the calculated cost of direct materials, direct labor, and direct electricity of flake manufacture, inclusive of the by-product credit assigned to the flake producer. Therefore, no revision to the calculation is necessary.

Allegation 7: The petitioners note that, in the Department's weighted-average dumping margin calculation for these final results, the Department used the U.S. gross unit price, whereas in past proceedings the Department has used U.S. net unit price.

The respondents counter that the petitioners' point is of a methodological nature and does not represent a clerical error.

Department's Position: The petitioners are correct that the Department erred in this calculation. The Department intended to calculate the dumping margin by dividing the U.S. net total value into the total amount of duty due. The error was the result of misdirected cell references in our calculation spreadsheet. The dumping margin calculation has been revised accordingly.

Allegation 8: The petitioners contend that the Department should have included adjustments for bank charges and inspection fees.

The respondents counter that the petitioners' point is of a methodological nature and does not represent a clerical error.

Department's Position: As explained in Comment 13 in the Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56045, 56052 (November 6, 1995), and in the Calculation Memorandum, the Department's established policy in non-market-economy cases is not to make circumstance-of-sale adjustments. These bank charges and inspection fees are selling expenses. Therefore, this omission was intentional on the part of the Department and, as such, does not represent a ministerial error. Consequently, no revision is necessary.

Allegation 9: The respondents allege that, in its calculation of the value of Factor B, the Department used the lower of the reported range of manganese contents rather than the average for the reported range of the surrogate value.

The petitioners had no comment.

Department's Position: We agree with the respondents. The Department inadvertently used the reported minimum rather than the reported average content. The value for Factor B has therefore been recalculated using the reported average manganese content.

Allegation 10: The respondents argue that the Department erred in its adjustment for the chemical composition of Factor C in that it divided rather than multiplied the factor price by its chemical content.

The petitioners counter that the Department's calculation is correct based on verified information on record.

Department's Position: We agree with the petitioners. We have reviewed our calculation for the chemical composition of Factor C and have confirmed it is correct. No revision is necessary.

Amended Final Results of Review

As a result of our analysis of the ministerial error allegations received, we are amending margins we published in the final results. We hereby determine the following weighted-average margins exist for the period June 14, 1995 through January 31, 1997:

Manufacturer/exporter	Margin (percent)
HIED	3.28
CMIECHN/CNIECHN	1.94
CEIEC*	11.77
Minmetals*	5.88

Manufacturer/exporter	Margin (percent)
PRC-wide	143.32

*CEIEC and Minmetals reported that they had no sales to the United States during the POR. The rate for each of these companies will therefore remain unchanged from that determined in Notice of Amended Final Determination and Antidumping Duty Order: Manganese Metal from the People's Republic of China, 61 FR 4415 (February 6, 1996) (''LTFV Investigation'').

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price (''EP'') and normal value (''NV'') may vary from the percentages stated above. We have calculated exporter/importer-specific duty assessment rates based on the ratio of the total amount of duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. In order to estimate entered value, we subtracted international movement expenses (*e.g.*, international freight and marine insurance) from the gross sales value. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following amended cash deposit requirements will be effective upon publication of this notice of amended final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the companies named above that have separate rates and were reviewed (*i.e.*, HIED and CMIECHN/CNIECHN), the cash deposit rates will be the rates listed above specifically for those firms; (2) for companies which established their eligibility for a separate rate in the LTFV Investigation but were found not to have exported subject merchandise to the United States during the POR (*i.e.*, CEIEC and Minmetals), the cash deposit rates continue to be the currently applicable rates of 11.77% and 5.88%, respectively; (3) for all other PRC exporters, all of which were found not to be entitled to a separate rate, the cash deposit rate will continue to be 143.32%; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review is in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22. This amendment to the final results is published in accordance with 19 CFR 353.28(c).

Dated: February 8, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–3694 Filed 2–12–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Rutgers, The State University of New Jersey; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–059. *Applicant:* Rutgers, The State University of New Jersey, Piscataway, NJ 08854. *Instrument:* Current Meter, Model RCM–9. *Manufacturer:* Aanderaa Instruments A/S, Norway. *Intended Use:* See notice at 63 FR 69263, December 16, 1998. *Comments:* None Received. *Decision:* Denied. *Reasons:* The applicant submitted a memorandum (dated September 9, 1998) to the Procurement and Contracting Office of the University (Rutgers) titled ''Justification for Purchasing RCM 9 Current Meter from Aanderaa Instrument A/S.'' The memorandum states that a search of the market located only two instruments capable of making the measurements required for the intended research on nitrogen flux through an ocean-estuary boundary. One instrument is made by Aanderaa Instruments A/S in Nesttun, Norway (Model RCM 9), and the other by InterOcean Systems Inc. (Model S4) in San Diego, CA.

The memo presents a table itemizing the prices for five sensors quoted by each vendor. The total price listed for the foreign model (RCM 9) is $11,558 and the price for the US model (S4) is $27,660. The applicant notes that ''* * * the S4 has higher accuracy and resolution than RCM 9, which is the major contributor to the high price.'' The applicant states that the admitted performance superiority offered by the domestic product is beyond that required for its work and then indicates that its decision to purchase the foreign article was based on ''cost-efficiency.'' To quote:

> In our study, the accuracy provided by RCM 9 is sufficient. For example, the S4 will be able to measure the current velocity every half second, but the RCM 9 can only measure the current velocity every minute. Our study will focus on the variation over a tidal cycle, which is over 12.4 hours (744 minutes). Measurement of the current velocity every minute is more than sufficient to resolve the tidal variation. Therefore, we decided to purchase the RCM 9 based on accuracy/resolution and cost-efficiency.

Pursuant to 19 CFR p 301.2(s), cost is explicitly disallowed as a consideration for duty exemption of a scientific instrument. Duty-free entry is allowed only ''* * * if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States'' [19 CFR p 301.1(b)(2) and (3)].

Pursuant to 19 CFR p 301.2(s):

> ''Pertinent'' specifications are those specifications necessary for the accomplishment of the specific scientific research and/or science-related educational purposes described by the applicant. Specifications or features (even guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation servicing or maintenance are not pertinent.

Furthermore, 19 CFR p 301.5(e)(7) provides, in part, as follows:

> Information provided in a resubmission that * * * contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, but the applicant shall not introduce new purposes or other material changes in the nature of the original application (emphasis added).

Consequently, in view of the applicant's own admission that the domestic instrument is capable of meeting its requirements, we conclude that a resubmission cannot establish, without introducing impermissible new purposes, that a scientifically equivalent domestic instrument is not available.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–3692 Filed 2–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Maryland, Baltimore; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–051. *Applicant:* University of Maryland, Baltimore, Baltimore, MD 21201. *Instrument:* Data Acquisition and Analysis Workstation, Model ORA 2001. *Manufacturer:* Optical Imaging Europe GmbH. *Intended Use:* See notice at 63 FR 59283, November 3, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides an integrated hardware and software package designed for optical imaging of intrinsic cortical signals based on a cooled CCD frame-transfer camera. The National Institutes of Health advises in its memorandum of December 11, 1998 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–3691 Filed 2–12–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010599B]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Retrofit of the Richmond-San Rafael Bridge, San Francisco Bay, CA

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for renewal of an authorization to take small numbers of Pacific harbor seals and possibly California sea lions by harassment incidental to seismic retrofit construction of the Richmond-San Rafael Bridge, San Francisco Bay, CA (the Bridge). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to reauthorize CALTRANS to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area for a period of 1 year.

DATES: Comments and information must be received no later than March 18, 1999.

ADDRESSES: Comments on the application should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, an Environmental Assessment (EA) and a list of references cited in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Irma Lagomarsino, Southwest Regional Office, NMFS, (562) 980–4016.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' ...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.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 9, 1998, NMFS received an application from CALTRANS, requesting reauthorization of an Incidental Harassment Authorization (IHA) issued on December 16, 1997 (62 FR 6704, December 23, 1997). This authorization would be for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*) incidental to seismic retrofit construction of the Bridge.

The Bridge is being seismically retrofitted to withstand a future severe earthquake. Construction is scheduled to extend through December 2001. A detailed description of the work planned is contained in CALTRANS (1996). Among other things, seismic retrofit work will include excavation around pier bases, hydro-jet cleaning, installation of steel casings around the piers with a crane, installation of micro-piles, and installation of precast concrete jackets. Foundation construction will require approximately 2 months per pier, with construction occurring on more than one pier at a time. In addition to pier retrofit, superstructure construction and tower retrofit work will also be carried out. The construction duration for the seismic retrofit of foundation and towers on piers 52 through 57 will be approximately 7 to 8 months.

Although the seismic retrofit construction between piers 52 and 57 did not take place during 1998, because this work may potentially result in disturbance of pinnipeds at Castro Rocks, reauthorization of the IHA is warranted.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the San Francisco Bay ecosystem and its associated marine mammals can be found in the CALTRANS application (CALTRANS 1997) and CALTRANS (1996).

Castro Rocks are a small chain of rocky islands located next to the Bridge and approximately 1500 ft (460 m) north of the Chevron Long Wharf. They extend in a southwesterly direction for approximately 800 ft (240 m) from pier 55. The rocks start at about 55 ft (17 m) from pier 55 and end at approximately 250 ft (76 m) from pier 53. The chain of rocks is exposed during low tides and inundated during high tide.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Barlow *et al.* (1995). The marine mammals likely to be found in the Bridge area are limited to the California sea lion and harbor seal.

The California sea lion primarily uses the Central San Francisco Bay area to feed. California sea lions are periodically observed at Castro Rocks. No pupping or regular haulouts occur in the project area.

The harbor seal is the only marine mammal species found in the Bridge area in significant numbers. A detailed description of harbor seals was provided in the 1997 notice of proposed authorization (62 FR 46480, September 3, 1997) and is not repeated here. Corrections and clarifications to the proposed authorization were provided in the notice of IHA issuance (62 FR 67045, December 23, 1997).

Potential Effects on Marine Mammals

The impact to the harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. Disturbance from these activities is expected to have a short-term negligible impact to a small number of harbor seals and sea lions. These disturbances will be reduced by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

During the work period, harbor seal and, on rare occasions, California sea lion incidental harassment is expected to occur on a daily basis upon initiation of the retrofit work. If harbor seals no longer perceive construction noise and activity as being threatening, they are likely to resume their regular hauling out behavior. The number of seals disturbed will vary daily depending upon tidal elevations. It is expected that disturbance to harbor seals during peak periods of abundance will not occur since construction activities will not take place within the restricted work area during the peak period (see Mitigation).

Whether California sea lions will react to construction noise and move away from the rocks during construction activities is unknown. Sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, likely to be less affected.

Potential Effect on Habitat

Short-term impacts of the activities are expected to result in a temporary reduction in utilization of the Castro Rocks haul out site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at Castro Rocks. The abandonment of Castro Rocks as a harbor seal haul out and rookery is not anticipated since existing traffic noise from the Bridge, commercial activities at the Chevron Long Wharf used for off-loading crude oil, and considerable recreational boating and commercial shipping that currently occur within the area have not caused long-term abandonment. In addition, mitigation measures and proposed work restrictions are designed to preclude abandonment.

Therefore, as described in detail in CALTRANS (1996), other than the potential short-term abandonment by harbor seals of part or all of Castro Rocks during retrofit construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Mitigation

Several mitigation measures to reduce the potential for general noise will be implemented by CALTRANS as part of their proposed activity. General restrictions include: No piles will be driven (i.e., no repetitive pounding of piles) on the Bridge between 9 p.m. and 7 a.m., an imposition of a construction noise limit of 86 dBA at 50 ft (15 m) between 9 p.m. and 7 a.m., and a limitation on construction noise levels for 24 hrs/day in the vicinity of Castro Rocks during the pupping/molting restriction period.

To minimize potential harassment of marine mammals, NMFS proposes to require CALTRANS to comply with the following mitigation measures: (1) A February 15 through July 31 restriction on work in the water south of the Bridge center line and retrofit work on the Bridge substructure, towers, superstructure, piers, and pilings from piers 52 through 57; (2) no watercraft will be deployed during the year within the exclusion zone located between piers 52 and 57, except for when construction equipment is required for seismic retrofitting of piers 52 through 57; and (3) minimize vessel traffic in the exclusion zone when conducting construction activities between piers 52 and 57. The boundary of the exclusion zone is rectangular in shape (1700 ft (518 m) by 800 ft (244 m)) and completely encloses Castro Rocks and piers 52 through 57, inclusive. The northern boundary of the exclusion zone will be located 250 ft (76 m) from the most northern tip of Castro Rocks, and the southern boundary will be located 250 ft (76 m) from the most southern tip of Castro Rocks. The eastern boundary will be located 300 ft (91 m) from the most eastern tip of Castro Rocks, and the western boundary

will be located 300 ft (91 m) from the most western tip of Castro Rocks. This exclusion zone will be restricted as a controlled access area and will be marked off with buoys and warning signs for the entire year.

Monitoring

NMFS will require CALTRANS to monitor the impact of seismic retrofit construction activities on harbor seals at Castro Rocks. Monitoring will be conducted by one or more NMFS-approved monitors. CALTRANS is to monitor at least one additional harbor seal haulout within San Francisco Bay to evaluate whether harbor seals use alternative hauling-out areas as a result of seismic retrofit disturbance at Castro Rocks.

The monitoring protocol will be divided into the Work Period Phase (August 1 through February 14) and the Closure Period Phase (February 15 through July 31). During the Work Period Phase and Closure Period Phase, the monitor(s) will conduct observations of seal behavior at least 3 days/week for approximately one tidal cycle each day at Castro Rocks. The following data will be recorded: (1) Number of seals on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of individuals with red pelage; (7) number of females and males; (8) number of molting seals; and (9) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. At least 2 nights/week, the monitor will conduct a harbor seal census after midnight at Castro Rocks. In addition, during the Work Period Phase and prior to any construction between piers 52 and 57, inclusive, the monitor(s) will conduct baseline observations of seal behavior once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. During the Work Period and Closure Period Phases, the monitor(s) will conduct observations of seal behavior at the alternative San Francisco Bay harbor seal haulout at least 3 days/week (Work Period) and 2 days/week (Closure Period), during a low tide.

In addition, NMFS proposes to require that, immediately following the completion of the seismic retrofit construction of the Bridge, the monitor(s) will conduct observations of seal behavior at least 5 days/week for approximately 1 tidal cycle (high tide to high tide) each day, for one week/month during the months of April, July, October, and January. At least 2 nights/week, the monitor will conduct an additional harbor seal census after midnight.

Reporting

NMFS proposes to require CALTRANS to provide weekly reports to the Southwest Regional Administer, NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of harbor seals that may have been disturbed as a result of seismic retrofit construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults and sub-adults, number of females/males, number of redcoats, and any observed disturbances. A description of retrofit activities at the time of observation and any sound pressure levels measurements made at the haulout will also be provided.

A draft final report must be submitted to the Southwest Regional Administrator no less than 90 days before the expiration of the CALTRANS IHA. A final report must be submitted to the Southwest Regional Administrator within 30 days after receiving comments from the Regional Administrator on the draft final report.

CALTRANS will provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haul-out patterns are similar to the pre-retrofit haul-out patterns at Castro Rocks.

National Environmental Policy Act

NMFS prepared an EA in 1997 that concluded that the impacts of CALTRANS' seismic retrofit construction of the Bridge will not have a significant impact on the human environment. A copy of that EA is available upon request (see **ADDRESSES**).

Conclusions

NMFS has preliminarily determined that the short-term impact of a seismic retrofit construction of the Bridge will result, at worst, in a temporary modification in behavior by harbor seals and possibly by some California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant noise, this action is expected to have a negligible impact on the animals. In addition, no take by injury and/or death is anticipated, and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned earlier in this document.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to CALTRANS for the possible harassment of small numbers of harbor seals and California sea lions incidental to seismic retrofit construction of the Bridge, provided the above mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: February 9, 1999.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–3681 Filed 2–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020999C]

Caribbean Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's Advisory Panel (AP) and Scientific and Statistical Committee (SSC) will hold meetings.

DATES: The AP meeting will be held on March 2, 1999, and the SSC meeting will be held on March 3, 1999.

ADDRESSES: The AP meeting will be held at the Colony Hotel in Isla Verde, Carolina, PR. The SSC meeting will be held at the Villa Parguera Hotel, 304 St., Km. 3.3, La Parguera, Lajas, PR.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The AP and the SSC will meet to discuss the items contained in the following agenda:

Conflict of Interest Presentation

Essential Fish Habitat

Habitat Mapping Efforts

Sustainable Fisheries Act Fishery Management Plan (FMP)

Reef Fish FMP

Overfishing Definition based on Maximum Sustainable Yield (MSY)
Stock Assessment Needs

Queen Conch FMP Update

Monitoring Efforts

Coral FMP Update

Marine Conservation District Monitoring Effots
Report of SSC Meeting

Reef Fish FMP

Update
Overfishing Definition based on MSY

Other Issues

Trap Reduction Program
Seasonal Closure for Spiny Lobster
Banning SCUBA (Reef fish)

The AP will convene on Tuesday March 2, 1999, from 10:00 a.m. to 3:00 p.m. The SSC will convene on March 3, 1999, from 10:00 a.m. until 4:00 p.m.

The meetings are open to the public, and will be conducted in English. However, simultaneous interpretation (Spanish-English) will be available during the AP meeting (March 2, 1999). Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–3683 Filed 2–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020899D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold meetings of its Advisory Panel (AP) Selection, Scientific and Statistical Committee (SSC) Selection, Administrative Policy, Personnel, Reef Fish Management, Marine Reserves, and Vessel Monitoring Committees; and a Council Session.

DATES: The meetings will be held from March 1–4, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Baton Rouge Hilton, 5500 Hilton Avenue, Baton Rouge, LA; telephone: 225–924–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council Meeting Dates

March 3, 1999, 1:00 p.m.—Council will convene.

March 3, 1999, 1:15 p.m. to 3:00 p.m.—Receive public testimony on the Draft Gag Regulatory Amendment Options Paper. The Gag Amendment includes alternatives for specification of a total allowable catch (TAC) for gag; minimum size limit increase for gag and black grouper from 20 to 24 inches total length; a two-fish recreational bag limit for gag as part of the existing five aggregate grouper bag limit; a zero bag limit of gag for the captain and crew of for-hire vessels; a commercial trip limit for gag; a closed season during peak gag spawning; and area closures at gag spawning aggregation locations.

March 3, 1999, 3:00 p.m. to 5:00 p.m.—Receive a report from the Reef Fish Management Committee.

March 4, 1999, 8:30 a.m. to 10:00 a.m.—(closed sessions)—Receive reports from the AP Selection, SSC Selection, and the Personnel Committees.

March 4, 1999, 10:00 a.m. to 10:30 a.m.—Receive a Council Report for the AP Selection, SSC Selection, and the Personnel Committees.

March 4, 1999, 10:30 a.m. - 11:00 a.m.—Receive a report from the Vessel Monitoring Committee.

March 4, 1999, 1:00 a.m. - 11:15 a.m.—Receive a report from the Administrative Policy Committee.

March 4, 1999, 11:15 a.m. - 11:40 a.m.—Receive a report from the Marine Reserves Committee.

March 4, 1999, 11:30 a.m. - 11:50 a.m.—Receive the NMFS/Council policy meeting report.

11:50 a.m. - 12:00 noon—Receive the NOAA Strategic Planning Workshop report.

March 4, 1999, 2:00 noon - 12:15 p.m.—Receive a report on the NMFS/ Highly Migratory Species and Billfish AP meetings.

March 4, 1999, 12:15 p.m. - 12:30 p.m.—Receive enforcement reports.

March 4, 1999, 12:30 p.m. - 1:00 p.m.—Receive Director's reports.

March 4, 1999, 1:00 p.m.—Other Business: The Council may discuss a letter from the NMFS partially disapproving the Essential Fish Habitat plan amendment.

Committee Meeting Dates

March 1, 1999, 8:00 a.m. to 12:00 noon—(closed session)—Convene the AP Selection Committee to appoint AP members.

March 1, 1999, 1:00 p.m. to 4:00 p.m.—(closed session)—Convene the SSC Selection Committee to appoint SSC members.

March 1, 1999, 4:00 p.m. to 5:30 p.m.—Convene the Administrative Policy Committee to approve the revised Statement of Organization Practices and Procedures (SOPPS).

March 2, 1999, 8:00 a.m. to 11:30 a.m.—Convene the Reef Fish Management Committee to review the draft Gag Regulatory Amendment Options Paper and develop recommendations to the Council for final action. The recommendations will be considered by the Council on Wednesday, March 3, 1999. The Committee will also hear a status report on the red snapper regulatory amendment and may take action.

March 2, 1999, 12:30 p.m. to 2:30 p.m.—Convene the Marine Reserves Committee to review a draft scoping document on marine reserves.

March 2, 1999, 2:30 p.m. to 5:00 p.m.—(closed session)—Convene the Personnel Committee to discuss selection of a fishery biologist.

March 3, 1999, 8:00 a.m. to 11:30 a.m.—Convene the Vessel Monitoring

Committee to receive a NFMS progress report, and Gulf and South Atlantic Fisheries Development Foundation (G&SAFDF) proposals.

Although other issues not contained in this agenda may come before the Council and its Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council and Committee action during this meeting. Actions will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 22, 1999.

Dated: February 10, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–3680 Filed 2–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020899E]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Law Enforcement Advisory Panel (AP), its Law Enforcement, Marine Reserves, Dolphin/Wahoo, Snapper- Grouper and AP Selection Committees; and a Council Session.

DATES: The meetings will be held from March 1-5, 1999. See **SUPPLEMENTARY INFORMATION**: The meetings will be held at the Sea Palms Resort, 5445 Frederica Road, St. Simons Island, GA; telephone: (912) 638-3351.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: susan.buchanan@noaa.gov.

SUPPLEMENTARY INFORMATION:

Meeting Dates

March 1, 1999, 1:30 p.m. to 5:30 p.m.—Joint Law Enforcement Committee and Law Enforcement AP:

The Law Enforcement Committee and Law Enforcement AP will hear a report on the South Carolina/NMFS cooperative law enforcement grant, develop recommendations on the use of tailing permits in the spiny lobster fishery, develop criteria for establishing marine reserves from a law enforcement perspective, discuss development of law enforcement threat analysis for marine reserves, review a request from Georgia to establish new special management zones, receive an update on the use of the forward looking infrared radar (FLIR) system by law enforcement, and hear a status report of vessel monitoring systems in the Southeast.

March 2, 1999, 8:30 a.m. to 12:00 noon—Marine Reserves Committee:

The Marine Reserves Committee will review a proposal for the use of artificial reefs in the South Atlantic, as well as review a document outlining the Council's intent concerning the use of marine reserves as a management tool in the South Atlantic.

March 2, 1999, 1:30 p.m. to 5:00 p.m.; March 3, 1999, 8:30 a.m. to 12:00 noon—Dolphin/Wahoo Committee:

The Dolphin/Wahoo Committee will hear the status of the Council's request to be lead in management of the Dolphin/Wahoo Fishery Management Plan (FMP), hear the status of the Council's request for publication of a control date for the dolphin fishery, and hear a report on dolphin and wahoo data analysis. The Committee also will discuss the structure of the Dolphin Wahoo FMP, as well as review and revise FMP management options.

March 3, 1999, 1:30 p.m. to 5:00 p.m.—Snapper-Grouper Committee:

The Snapper-Grouper Committee will review the wreckfish assessment report and develop recommendations for establishing the annual wreckfish quota, as well as other framework measures, review the red porgy stock assessment report, and the Snapper-Grouper Assessment Group report.

March 4, 1999, 8:30 a.m. to 10:30 a.m.—AP Selection Committee (closed session):

The AP Selection Committee will review AP membership applications and develop appointment recommendations.

March 4, 1999, 11:00 a.m. to 6:00 p.m.—Council Session:

The Council will hear reports from the AP Selection Committee (closed session), as well as the Executive and Snapper-Grouper Committees.

At 11:15 a.m., the Council will be briefed on conflict-of-interest and recusal regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

At 1:30 p.m. (closed session), the Council will appoint AP members.

At 2:00 p.m., the Council will discuss the outcome of the appeals process regarding Snapper-Grouper Amendment 8, as well as review the proposed format for stock assessment and fishery evaluation (SAFE) reports.

At 4:30 p.m., the Council will take public comment on the Gulf Council's Sustainable Fisheries Act (SFA) Amendment before considering amendment approval.

At 5:00 p.m., the Council will take public comment on the proposed 1999-2000 wreckfish quota and any proposed framework measures, as well as on resubmission of the rejected measure establishing an amberjack trip limit in Snapper-Grouper Amendment 9. The Council also willtake action to establish the annual wreckfish quota, approve other wreckfish framework measures, and address the Snapper-Grouper Amendment 9 rejected measure concerning the greater amberjack trip limit.

March 5, 1999, 8:30 a.m. to 12:00 noon—Council Session;

The Council will hear reports from the Marine Reserves, Dolphin/Wahoo and Law Enforcement Committees.

At 10:00 a.m., the Council also will hear status reports on from the NMFS on the Snapper-Grouper Amendment 9 emergency rule, the 1999 mackerel framework, as well as Mackerel Amendment 9 quotas for Atlantic king mackerel, Gulf king mackerel in the Eastern Zone, Atlantic Spanish mackerel, snowy grouper and golden tilefish, South Atlantic octocorals and greater amberjack.

At 10:30 a.m. the Council will hear reports on the Council/NMFS policy meeting, the Atlantic Coastal Cooperative Statistics Program, the Council operations plan, and the status of the Savannah Harbor Project before hearing agency and liaison reports.

Although other issues not contained in this agenda may come before the Council, its APs, and Committees for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal Council, Committee and AP action during this meeting. Actions will be restricted to those issues specifically

identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 22, 1999.

Dated: February 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–3682 Filed 2–12–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 10:00 a.m., Wednesday, February 24, 1999.

LOCATION: Room 410 B/C, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: February 11, 1999.

Todd A. Stevenson,

Deputy Director Office of the Secretary.

[FR Doc. 99–3828 Filed 2–11–99; 2:59 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Office of the Secretary, Department of Defense Acquisition University, DoD.

ACTION: Board of Visitors meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday March 3, 1999 from 0900 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest. The agenda will also include a presentation on the recently signed policy on Continous Learning within the DoD Acquisition and Technology Workforce.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–845–6756.

Dated: February 10, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–3623 Filed 2–12–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on March 2, 1999, March 9, 1999, March 16, 1999, March 23, 1999, and March 29, 1999 at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Pub. L. 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: February 10, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 99–3622 Filed 2–12–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Inspector General

Privacy Act of 1974; System of Records

AGENCY: Inspector General, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Inspector General, DoD, proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on March 18, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Chief, FOIA/PA Office, Assistant Inspector General for Administration, Information Management, 400 Army Navy Drive, Room 405, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley J. Landes at telephone (703) 604-9777.

SUPPLEMENTARY INFORMATION: The Inspector General notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on January 29, 1999, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 10, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG 18

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Records are maintained by the personnel office of the Office of the Inspector General, DoD, Personnel and Security Directorate, Employee Relations Division, 400 Army Navy Drive, Suite 512, Arlington, VA 22202–2884.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Inspector General, Department of Defense employees who have submitted grievances in accordance with 5 CFR part 771, DoD Directive 1400.25-M Subchapter 771 and DoD Inspector General Instruction 1400.5.

CATEGORIES OF RECORDS IN THE SYSTEM:

The case files contain all documents related to grievances including reports of interviews and hearings, examiner's findings and recommendations, copy of the original and final decision, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2302 and 5 U.S.C. 7121; 10 U.S.C. 141, Inspector General, DoD; 5 CFR part 771, DoD Directive 1400.25-M Subchapter 771 and DoD Inspector General Instruction 1400.5; and E.O. 9397 (SSN).

PURPOSE(S):

The information will be used by the Inspector General, Department of Defense to control and process grievances; to investigate the allegations; conduct interviews; and render the final decision.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(a)(b)(3) as follows:

To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

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.

To provide information to officials of labor organization reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matter affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper form.

RETRIEVABILITY:

Records are retrieved by names of the individuals on whom the records are maintained.

SAFEGUARDS:

Records are maintained in locked metal file cabinets, to which only OIG, DoD authorized personnel have access.

RETENTION AND DISPOSAL:

Records are destroyed four years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Employee Relations Division, Personnel and Security Directorate, 400 Army Navy Drive, Suite 512, Arlington, VA 22202–2884.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Branch, 400 Army Navy Drive, Room 405, Arlington, VA 22202–2884.

Written requests for information should include the full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Privacy Act Officer, Freedom of Information Act/ Privacy Act Branch, 400 Army Navy Drive, Room 405, Arlington, VA 22202–2884.

Written requests for information should include the full name.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 and may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual on whom the record is maintained; by testimony of witnesses; by Agency officials; or from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–3624 Filed 2–12–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: United States Military Academy.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 3 March 1999.

Place of Meeting: Russell Senate Office Building, Room 418, Washington, DC.

Start Time of Meeting: Approximately 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: For further information, contact Lieutenant Colonel Joseph A. Dubyel, United States Military Academy, West Point, NY 10996–5000, phone: (914) 938–4200.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Annual Review of the Academic, Military and Physical Programs at USMA. All proceedings are open.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–3676 Filed 2–12–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting 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 February 19, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 19, 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. Comments regarding the regular clearance and requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland 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 Acting 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: February 10, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian Serving Institutions Program.

Abstract: This information is required of institutions of higher education that apply for grants under the Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program, and the Alaska Native and Native Hawaiian Serving Institutions Program, authorized under Title II, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine which applicants should receive grant funds.

Additional Information: This new booklet requests additional information as required by the 1998 amendments. This will not add burden to applicants.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 500.

Burden Hours: 37,320.

[FR Doc. 99–3678 Filed 2–12–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the 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 March 18, 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, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 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 Acting Leader, Information Management Group, Office of the 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: February 10, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extension.

Title: Application for Participation in the Bilingual Education Graduate Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 45.

Burden Hours: 1,500.

Abstract: This form is used by institutions of higher education to request approval of their graduate programs of study so that they may nominate students for fellowships. The student nomination form becomes part of the award document and is used by institutions to report annually on the amount of funds spent per fellowship.

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.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extension.

Title: Demonstration of Compliance with Terms and Conditions of the Bilingual Education Graduate Fellowship Program Contract.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden:

Responses: 700.

Burden Hours: 366.

Abstract: Regulations (34 CFR 535.50) require Fellowship Recipients to demonstrate compliance with Terms and Conditions of Assistance awarded under the Bilingual Education Graduate Fellowship Program. Recipients must either work in an approved activity or repay the financial assistance.

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. 99–3679 Filed 2–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on May 18, 1998, an arbitration panel rendered a decision in the matter of *Georgia Middendorf* v. *Washington State Department of Services for the Blind (Docket No. R–S/96–8).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Georgia Middendorf.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Maryland Avenue, S.W., Room 3230, Mary E. Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access To This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper termination of Georgia Middendorf's operator license by the Washington State Department of Services for the Blind, the State licensing agency (SLA). In 1981, following training with the SLA's Business Enterprise Program, complainant operated a dry stand in Seattle, Washington. Later that year, Ms. Middendorf began operating a cafeteria in the county courthouse in Everett, Washington. Complainant operated this facility for four years before resigning due to personal problems.

Subsequently, complainant operated a snack bar vending facility in a State building in Olympia, Washington for four years. In 1989, Ms. Middendorf resigned as the result of friction between the building management and some members of her staff. In 1991, Ms. Middendorf was licensed to operate a snack bar and espresso cart in the County-City Building located in Tacoma, Washington. Difficulties and concerns in the management of the operation were identified by the building management and the SLA, but these issues improved late in 1991. At the close of 1991, complainant's husband was diagnosed with a terminal illness and subsequently died in 1992. During this period of time, the quality of service and cleanliness declined dramatically at the snack bar and espresso cart operation, and the SLA counseled Ms. Middendorf concerning the need to improve the quality of service. Complainant was not receptive. In 1993, Ms. Middendorf resigned.

In August 1995, complainant was the sole bidder for a cafeteria vending facility at the Social Security Administration (SSA) in Auburn, Washington. The SLA awarded the contract to Ms. Middendorf pursuant to its rules and regulations as she was the only eligible bidder.

The SLA, SSA, and General Services Administration (GSA), the property managing agency, made a concerted effort to assist Ms. Middendorf in succeeding in the operation of the SSA cafeteria. However, increasing complaints from the patrons concerning both the food and cleanliness prompted both GSA and SSA to complain to the SLA.

The SLA responded by devising a corrective action plan with the goal of

assisting the complainant in addressing such issues as better food preparation and improved appearance, demeanor, and attitude of complainant and her staff. Complainant agreed to the corrective action plan, but it was never implemented.

In November 1995, GSA and SSA demanded that Ms. Middendorf be removed from the operation of the cafeteria based upon her unsatisfactory performance. On November 30, GSA and SSA met with the SLA and the complainant. GSA and SSA requested the immediate resignation of complainant. Ms. Middendorf refused, and GSA cancelled the SLA's permit to operate the cafeteria.

The SLA protested the cancellation of its permit and indicated to GSA its plan to request arbitration of the matter. Subsequently, GSA withdrew cancellation of the SLA's permit. The SLA resumed operation of the cafeteria. However, under the settlement agreement, complainant was not allowed to return.

On January 23, 1996, the Director of the SLA met with complainant. She was advised in writing of the deficiencies in her operation and complainant was informed that unless she would undertake a six-month training program, the SLA would cancel her license. Complainant rejected the SLA's proposal. The SLA then cancelled Ms. Middendorf's license.

Ms. Middendorf requested and received a State evidentiary fair hearing on April 18, 1996. On April 30, the Administrative Law Judge (ALJ) sustained the cancellation of complainant's license. It was this final agency action that Ms. Middendorf sought to have reviewed by a Federal arbitration panel. A Federal arbitration of this matter was held on June 19 and 20, 1997.

Arbitration Panel Decision

The issue before the arbitration panel was whether the Washington State Department of Services for the Blind acted properly and within the scope of its authority under the Randolph-Sheppard Act and implementing regulations in revoking Georgia Middendorf's operator license.

A majority of the panel concluded that, while the SLA needs to be proactive in assisting vendors under the program to avoid the kind of complaints about service and sanitation that existed at the SSA cafeteria, the SLA acted within the scope of its authority in terminating complainant's license.

One panel member dissented from the majority opinion.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: November 17, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–3627 Filed 2–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Floodplain and Wetlands Involvement Notification for the Pond B Dam Repair Project at the Savannah River Site (SSR)

AGENCY: Department of Energy (DOE).

ACTION: Notification of floodplain and wetlands involvement.

SUMMARY: DOE proposes to repair the earthen dam impounding Pond B, one of the former reactor cooling reservoirs located on SSR. The results of recent inspections have indicated that seepage conditions and erosion threaten the structural stability of the dam. Due to former reactor operation, Pond B contains low levels of radionuclide contamination. The proposed action is needed to increase the stability of the structure and reduce the risk of failure. The proposed action entails the placement of a soil blanket over the downstream slope and toe of the Pond B dam. Some areas encompassed by this repair are located in both 100–year floodplain and jurisdictional wetlands. In accordance with 10 CFR 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain or wetlands.

DATES: Comments on the proposed action are due on or before March 3, 1999.

ADDRESSES: Comments regarding this assessment should be addressed to Andrew R. Grainer, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Building 742–A, Room 183, Aiken, South Carolina 29808. The fax/phone number is (800) 881–7292. The e-mail address is nepa@srs.gov.

FOR FURTHER INFORMATION ON GENERAL FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586–4600 or (800) 472–2756.

A location map showing SRS and further information can be obtained from the Savannah River Operations Office (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION: Pond B is one of the former production reactor cooling ponds on SRS, located near Aiken, South Carolina. Due to releases during the period of reactor operation, Pond B contains low levels of radionuclide contamination within the lakebed sediments and waters of the impoundment. The dam is an earthen embankment constructed in 1959–1960. Recent inspections of this structure by SRS engineers and the Federal Energy Regulatory Commission have found seepage conditions and erosion which threaten the stability of the dam.

The DOE Savannah River Operations Office (SR) proposes to make repairs to the downstream slope and toe of the Pond B dam. These repairs would entail the following: (1) stripping of topsoil and vegetation on the face of the dam and at least a 50 to 100 foot area along the toe of the dam; (2) construction of a rock core underdrain system on the face of the dam and along the entire toe of the dam; (3) installation of weir boxes, piezometers, and lateral movement monitors; (4) and placement of an additional 30,000–50,000 cubic yards of previous material in the form of a soil blanket on the downstream face of the dam. The purpose of the proposed action is to increase the stability of the dam and reduce the risk of failure.

The area of the floodplain and wetlands is dominated by an overstory of tulip tree (*Lireodendron tulipifera*) and red maple (*Acer rubrum*). A number of species are present in the understory, including tulip tree, red maple, red bay (*Persea borbonia*), and sweetgum (*Liquidambar styraciflua*). The herbaceous layer is dominated by maidencane (*Panicum Hemitomon*), sensitive fern (*Onoclea sensibilis*), and rush (*Juncus* spp.). Soils in this area are mapped as Fluvaquents and are listed for SRS as hydric soils.

The wetland area below the dam is believed to have been natural wetlands prior to the construction of Pond B dam, although soil saturation is likely to have increased as a result of the man-made impoundment. Approximately 3 to 4 acres of wetlands would be impacted by the extension of the toe of the dam with the proposed placement of a soil blanket.

During implementation of the proposed action, project activities that could take place in floodplain and wetland areas would include grading,

clearing of vegetation, and placement of fill materials. Some of these activities would require temporary construction access. A number of mitigation activities would be implemented to minimize potential impacts to the floodplain and wetland areas. Operation of construction equipment in the floodplain and wetland areas would be minimized. Depending upon the type of mechanized construction equipment to be employed, the use of platform support mats may be required to minimize the impacts to the wetland soils in the project area. Silt fences and other erosion control structures as needed would be installed to ensure there is no deposition in the downslope wetland areas. Best management practices would be employed during construction and maintenance activities associated with this proposed action.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR 1022), DOE–SR will prepare a floodplain and wetlands assessment for this proposed DOE action. The assessment will be included in the environmental assessment (EA) being prepared for the proposed action in accordance with the requirements (EA) being prepared for the proposed action in accordance with the requirements of NEPA. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or may be issued separately.

Issued in Aiken, SC, on February 3, 1999.

Lowell E. Tripp,

Director, Engineering and Analysis Division, Savannah River Operations Office.

[FR Doc. 99–3653 Filed 2–12–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1134–000]

Central Vermont Public Service Corporation; Notice of Filing

February 9, 1999.

Take notice that on January 27, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing in the above-referenced docket a Service Agreement with Select Energy, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective December 3, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3636 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–188–000]

El Paso Offshore Gathering and Transmission Company; Notice of Petition for Declaratory Order

February 9, 1999.

Take notice that on February 1, 1999, El Paso Offshore Gathering and Transmission Company (El Paso), P.O. Box 2511, Houston, Texas 77252–2511, filed in the above docket a petition seeking a declaratory order from the Commission requesting the Commission to declare that certain facilities being acquired by El Paso from Northern Natural Gas Company (Northern) will be gathering facilities as defined by section 1(b) of the Natural Gas Act (NGA), and as such, will exempt from the Commission's NGA jurisdiction. Northern has filed for abandonment of these facilities in Docket No. CP98–744–000.

The facilities that El Paso seeks to have declared non-jurisdictional upon purchase from Northern are certain non-contiguous pipeline facilities, with appurtenances, located in Matagorda Island, Offshore Texas known as the Seagull Shoreline Laterals (SSL facilities). Specifically these facilities include:

(1) MATAGORDA ISLAND 623 A: (TOS–84071) approximately 2 miles of 16-inch pipeline and appurtenant facilities, extending from the platform in MAT 623 ''A'' to an underwater connection in MAT 623 ''B''.

(2) MATAGORDA ISLAND 623 B & 624: (TOS–83431 & TOS 83421) approximately 4 miles of 24-inch pipeline with associated metering and appurtenant facilities from the ''B'' platform in MAT 623 to El Paso's facilities in MAT 624, and approximately 0.4 miles of 10-inch pipeline from MAT 624 to a subsea tap on the 24-inch line in MAT 623.

(3) MATAGORDA ISLAND 622 C: (TOS–84961) approximately 3 miles of 24-inch pipeline with associated metering and appurtenant facilities from MAT 622 ''C'' to the ''B'' platform in MAT 623, and

(4) MATAGORDA ISLAND 628: (TOS–85411) approximately 7 miles of 16-inch pipeline associated metering and appurtenant facilities, extending from the platform in MAT 638 ''B'' to an underwater connection in MAT 622 ''C''.

Any person desiring to be heard or to make any protest with reference to said petition should on or before March 1, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. The petition may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein or if the Commission on its own review of the matter, finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If the Commission believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3594 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–37–000]

FPL Energy Wyman LLC; Notice of Amendment To Application for Commission Determination of Exempt Wholesale Generator Status

February 9, 1999.

Take notice that on February 8, 1999, FPL Energy Wyman LLC tendered for filing with the Federal Energy Regulatory Commission an amendment to their application for determination of exempt wholesale generator status for the W.F. Wyman Station in Yarmouth, Maine. The supplement provided an additional explanation regarding the leasing of four incidental facilities (a house, cottage, camp site and Coast Guard Light), which FPL Wyman proposed to acquire along with the Wyman generating units.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before February 16, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3595 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–218–000]

Kern River Gas Transmission Company; Notice of Petition for Grant of Expedited Limited Waivers of Tariff

February 9, 1999.

Take notice that on February 3, 1999, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), Kern River Gas Transmission Company (Kern River) tendered for filing a petition for grant of expedited limited waivers of Section 17.1(b) (Gas Research Institute Surcharge) and Section 19 (Discounting Policy for Rates and Charges) of the General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1. Kern River seeks waiver of these tariff terms relating to the way certain discounts are accounted for with respect to the GRI reservation surcharge.

Kern River states that a copy of this filing has been served upon its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–3601 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–11–000]

Alf M. Landon; Notice of Petition for Adjustment

February 9, 1999.

Take notice that on January 12, 1999, Frank M. Rice (Rice), the attorney for Alf M. Landon, a/k/a/ Alfred Mossman Landon (Landon), filed a petition for staff adjustment in Docket No. SA99–11–000, pursuant to section 502(c) of the Natural Gas Policy Act of 1978. Rice, on behalf of Landon and the Kansas University Endowment Association (KUEA), contends that neither Landon nor the KUEA owe the gas purchaser—Panhandle Eastern Pipe Line Company (Panhandle)—a refund under the Commission's September 10, 1997 order in docket No. RP97–369–000 *et al.*,[1] because the price that Panhandle paid to Landon and the KUEA, inclusive of the ad valorem tax reimbursements, was not in excess of the applicable maximum lawful price (MLP). The subject petition is on file with the Commission and open to public inspection.

The petition indicates: (1) that Panhandle served Landon with a $32,944.63 refund claim; (2) that Panhandle purchased the gas produced from the Davis Unit, in Stevens County, Kansas, under a January 27, 1961 gas purchase contract (Contract No. 0538); (3) that Landon and D.E. Ackers were the co-owners of that unit, each with a 50% working interest in the unit; (4) that the KUEA became the successor-in-interest to D.E. Ackers' 50% working interest in the unit; (5) that Landon is deceased;[2] (6) that the price that Panhandle paid Landon and the KUEA, from 1983 through 1988, inclusive of the ad valorem tax reimbursements, was not in excess of the applicable MLP; and (7) that neither Landon, successor-in-interest to Landon, nor the KUEA owe a refund to Panhandle.

Rice adds that Panhandle terminated the subject gas purchase contract in January of 1991, and that one of the signers of the termination agreement, as a Seller, was the KUEA. Rice further asserts that K.S.A. 55–708(7) [a/k/a House Bill No. 2419] prohibits First Sellers such as Landon or the KUEA from taking action against royalty owners, or obtaining the ad valorem tax royalty refunds ordered by the FERC. Therefore, Rice contends that it would be inequitable to require Landon, Landon's successor(s) or the KUEA to make such refunds, when Kansas law prohibits them from attempting to obtain the refunds from the royalty owners.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the

[1] See: 80 FERC ¶ 61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] The subject petition includes a copy of the death certificate for Alfred Mossman Landon [a/k/a Alf M. Landon], showing that he died on October 12, 1987.

Federal Register of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3602 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–003]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 9, 1999.

Take notice that on February 4, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Original Sheet No. 26A, to be effective February 1, 1999.

Natural states that the purpose of the filing is to implement a Negotiated Rate Formula transaction with NorAm Energy Services, Inc. pursuant to Section 49 of the General Terms and Conditions (GT&C) of Natural's Tariff. Natural states that this filing revises the Negotiated Rate Formula transaction previously submitted on February 2, 1999, at Docket No. RP99–176–002 to provide the clarity, accuracy and completeness of the Negotiated Rate Formula information required by Commission Policy.

Natural requested waiver of the Commission's Regulations and Section 49.1(e) of the GT&C of its Tariff to the extent necessary to permit the tendered tariff sheet to become effective February 1, 1999.

Natural states that copies of the filing are being mailed its customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP99–176.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3600 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–996–000]

PP&L, Inc.; Notice of Filing

February 9, 1999.

Take notice that on January 26, 1999, PP&L, Inc. (PP&L), tendered for filing a fully executed Service Agreement between PP&L and Central Vermont Public Service Corporation in above-referenced docket. This agreement replaces the partially executed Service Agreement filed with the Commission on December 24, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3635 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–8–000]

Providence Gas Company; Notice of Petition for Approval of Displacement Rate

February 9, 1999.

Take notice that on January 19, 1999, Providence Gas Company (Providence), located at 1000 Weybosset Street, Providence, Rhode Island 02903, a natural gas distribution utility, organized and existing under the laws of the State of Rhode Island, submitted a request for approval of displacement rate to provide firm displacement service to certain customers of Algonquin LNG, Inc. (ALNG). The request was made pursuant to its blanket certificate in Docket No. CP92–166 which authorizes Providence to engage in the sale, transportation, or assignment of natural gas subject to the Commission's jurisdiction under the Natural Gas Act to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C, D, and E of Part 284 of the Commission's regulations.

Providence proposes to provide displacement service under its existing limited jurisdiction blanket certificate in conjunction with ALNG's application in Docket No. CP99–113–000. Providence proposes to implement a monthly reservation charge of approximately $1.20 per dekatherm. Providence states that under its blanket certificate it is now authorized to charge a 100% load factor rate of $1.4926 per dekatherm, which would equate to a reservation charge of $45.375 for firm service on a monthly basis.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed with the Secretary of the Commission on or before February 1999. This petition for rate approval is on file with the Commission and is available for public inspection at the Commission's Public Reference Office.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3599 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES96–40–001]

UtiliCorp United Inc.; Notice of Application

February 9, 1999.

Take notice that on February 3, 1999, UtiliCorp United, Inc. tendered for filing an amendment to its original application in this proceeding, under Section 204 of the Federal Power Act. The amendment seeks to notify the Commission of a change in UtiliCorp United Inc.'s Amended and Restated 1986 Stock Incentive Plan (the Plan) filed as Appendix 1 to the original application. The amended Plan changes the definition of ''Eligible Employee'' to include ''consultants or advisors to the Company or any Subsidiary''.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 16, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3596 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–185–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

February 9, 1999.

Take notice that on January 29, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–185–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon three sales taps in Wibaux and Fallon Counties, Montana, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Williston Basin proposes to abandon the Shell-Pine Unit sales tap at Station No. 488+84 in Wibaux County, Montana; an unnamed sales tap at Station No. 319+58 in Fallon County, Montana; and the Shell sales tap at Station No. 285+87 in Fallon County, Montana.

Williston Basin states that the Shell-Pine Unit sales tap is no longer being used and Williston Basin does not foresee any use for this tap in the future. Montana-Dakota Utilities Co., a local distribution company, which received service from Williston Basin through this tap, consents to the proposed abandonment. The unnamed sales tap and the Shell sales tap have never been connected to provide service to any customer. Williston Basin states that the facilities to be abandoned are located entirely on existing right-of-way.

Williston Basin states that this proposal is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. There will be no effect on Williston Basin's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3593 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments Motions To Intervene, and Protests

February 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection

a. *Application Type:* Amendment to License.

b. *Project No:* 2100–097.

c. *Date Filed:* November 2, 1998.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Project.

f. *Location:* This project is on the Feather River in Butte County, California. The Project containing lands within the Lassen and Plumas National Forests and the Enterprise Band of the Maidu Indian Tribe.

g. *Filed Pursuant to:* 18 CFR § 4.200.

h. *Applicant Contact:* Dale Martfield, California Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236, (916) 653–7092.

i. *FERC Contact:* Any questions on this notice should be addressed to Join Cofrancesco at Jon.Cofrancesco@ferc.fed.us or telephone 202–219–0079.

j. *Deadline for filing comments and or motions:* March 22, 1999.

Please include the project number (2100–097) on any comments or motions filed.

k. *Description of Amendment:* The California Department of Water Resources (project licensee) proposes to modified camping facilities at the Lime Saddle Recreation Area, required under the project's approved revised recreation plan. The approved plan required the licensee to install 25 tent/RV camping sites and permanent restroom facilities at the project's Lime Saddle Recreation Area, located on the west branch of the Feather River. During the initial planning stages for the facilities, the licensee encountered siting, design, and construction problems and subsequently considered alternative sites in consultation with the Oroville Recreation Advisory

Committee (ORAC). ORAC consists of representatives from various state and local agencies, including the licensee and local groups interested in recreation opportunities at the project. Based largely on its work with ORAC, the licensee proposes to provide a 50-unit campground on licensee-owned lands located on a peninsula across the cove from the Lime Saddle Marina. In general, the facilities would include a kiosk, two comfort stations, and a combination of 50 tent and RV campsites. The licensee's proposal also includes provisions for future expansion of the campground facilities.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3597 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 9, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2651–006.

c. *Date filed:* May 19, 1998.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Elkhart Hydroelectric Project.

f. *Location:* In the City of Elkhart, Concord Township, Elkhart County, Indiana, on the St. Joseph River, 77 miles upstream from confluence with Lake Michigan. No part of the project is within federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* J.R. Jones, Fossil and Hydro Production, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–1801.

i. *FERC Contact:* Questions on this notice should be addressed to E.R. Meyer, E–mail address edward.meyer@ferc.fed.us, or telephone 202–208–7998.

j. *Deadline for filing comments,* recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Project Description:* The project consists of: (1) a 300–foot–long by 14–foot–high concrete spillway, the crest of which bears 11, 25–foot–wide by 10.5–foot–high Tainter gates separated by 2.5–foot–wide piers; (2) an approximately 100–foot–long by 80–foot–wide brick powerhouse attached to the spillway on the south bank of the St. Joseph river having 3 horizontal shaft 4–Francis turbines (2 camelback pairs) with a 3.44–megawatt installed capacity; (3) 6, 9–foot–6–inch diameter concrete draft tube tunnels transitioning to 10–foot–high 6–foot–wide openings; and (4) other appurtenances.

m. *Locations of the Application:* The application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, D.C. 20426. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. The application is also available for inspection and reproduction at the address in item h.

n. This notice also consists of the following standard paragraph: D10.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed Project No. 2651–006 with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–3598 Filed 2–12–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6234–1]

Long Term 1 Enhanced Surface Water Treatment Rule and Filter Backwash Recycling Rule; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on March 3–4, 1999 at the Wilson World Hotel & Suites, 4600 W. Airport Freeway, Irving, Texas 75062, phone: (972) 513–0800, for the purpose of information exchange with stakeholders on issues related to development of regulatory provisions for the Long Term 1 Enhanced Surface Water Treatment Rule (LT1) and the Filter Backwash Recycling Rule (FBR).

The meeting will provide: (1) a description and summary of potential regulatory options for the LT1 and FBR; and (2) an opportunity for stakeholders to provide input and information on the options.

EPA is inviting all interested members of the public to participate in the meeting. As with all previous meetings in this process, to the extent that is available, EPA is instituting an open door policy to allow any member of the public to attend any of the meetings for any length of time. Approximately 150 seats will be available for the public. Seats will be available on a first-come, first served basis.

DATES: The meeting will start at 8:30 AM on March 3 and will adjourn on March 4 at 4:00 PM.

ADDRESSES: For additional information about the meeting, please contact Ephraim King, Steve Potts (LT1) or William Hamele, P.E. (FBR) of EPA's Office of Ground Water and Drinking Water at (202) 260–7575 or by e-mail at *potts.steve@epamail.epa.gov.*, or *hamele.william@epamail.epa.gov.* Questions may also be sent to Steve Potts, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Steve Potts (LT1) Office of Ground Water and Drinking Water, telephone 202–260–5015 or William Hamele (FBR), U.S. EPA, Office of Ground Water and Drinking Water, telephone 202–260–2584.

Dated: February 10, 1999.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–3798 Filed 2–12–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

February 5, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0866.

Title: Year 2000 Assessments.

Form No.: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 2,000 total respondents.

Estimated Time Per Response: 20–40 hours.

Frequency of Response: One time and occasional reporting requirements.

Total Annual Burden: 99,000 total hours for all respondents.

Total Annual Cost: N/A.

Needs and Uses: Many computer software programs used throughout the world were not designed to take into account the date change that will occur when we enter the year 2000. Computer and technology experts are uncertain as to the likely total effect of the disruptions this may cause. Because all sectors of the global economy rely on telecommunications networks, it is critical that the telecommunications industry take comprehensive and effective action to address Year 2000

issues. Government and industry must work together to ensure that whatever disruptions occur do not lead to outages and failures throughout the nation's networks.

The information will be used to better inform the FCC as to the progress that telecommunications providers, broadcasters, cable operators, and major telecommunications equipment manufacturers are making to correct problems posed by the Year 2000 issues, and to determine if the remedial measures taken by industry are sufficient to avert significant network outages. The public must be assured that the telecommunications industry is taking sufficient steps to meet the challenges presented by the Year 2000. In addition, the Commission may choose to share some or all of the information with the Network Reliability and Ineroperability Council for the purpose of developing an assessment of industry preparedness, in a format that will not identify individual respondents.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3572 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 5, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0686.

Title: Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 18.

Estimated Time Per Response: 2 to 20 hours.

Frequency of Response: Annually; Semi-annually; Quarterly; and On Occasion reporting requirements; Third Party disclosure.

Total Annual Burden: 90 hours.

Total Annual Costs: $9,000.

Needs and Uses: Under § 63.19, carriers will be required to notify their customers and provide the Commission with a copy of the notification, at least 60 days prior to discontinuation of international telecommunications service. The information will enable the Commission to confirm that international service providers wishing to discontinue service give sufficient notice to allow consumers to obtain alternative service. We estimate that 15 respondents will submit this information to their customers and the Commission, and it should take two hours per response, for a total of 30 burden hours for this rule section.

Under § 63.53(c), applicants filing information or documents in a foreign language in a § 214 proceeding are required to submit a certified English translation of the information. The translation will eliminate the time and resources needed to translate documents, and enable the Commission to make documents readily available for the public. We estimate that three respondents will submit this information, and it should take 20 hours per response, for a total of 60 burden hours for this rule section.

(**Note:** The Commission adopted a report and order in this proceeding, Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118 (61 FR 15724, April 9, 1996). The report and order contained new and modified paperwork burdens. The Commission sought and received approval from the Office of Management and Budget (OMB) for all but two of the information collections contained in the order (62 FR 51377, October 1, 1997). Through a clerical error, §§ 63.19 and 63.53(c) were inadvertently omitted from the Commission's information collection submission to OMB.)

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3573 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

February 5, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 1 A–804, 445 12th St., SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0688.

Title: Abbreviated Cost-of-Service Filing for Cable Network Upgrades.

Form Number: FCC Form 1235.

Type of Review: Extension of a currently approved collection.

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

Number of Respondents: 100.

Estimated Time Per Response: 10–20 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Costs: $200.

Needs and Uses: FCC Form 1235 is an abbreviated cost of service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-regulated cable services. FCC Form 1235 is reviewed by the cable operator's respective local franchise authority.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3577 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 5, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0682.

Title: Section 63.16, Construction of Stand-Alone Cable System by a Carrier in its Exchange Telephone Service Area (CC Docket No. 87–266).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50 respondents.

Estimated Time Per Response: 1 hour (avg.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 50 hours.

Total Annual Costs: $0.

Needs and Uses: The Commission finds that the public interest would be served by providing for reduced ''streamlined'' Section 214 authorization to local exchange telephone companies (LECs) against whom it is not enforcing the cable television/telephone company cross-ownership ban, who propose to construct a cable system in their service area if the LEC is willing to certify to three facts pursuant to 47 CFR Section 63.16. The Commission believes that if these conditions are met, more detailed individual scrutiny of Section 214 applications would not be in the public interest.

OMB Control Number: 3060–0876.

Title: USAC Board of Directors Nomination Process (47 CFR Section 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719–54.725).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 22 respondents.

Estimated Time Per Response: 25.4 hours (avg.).

Frequency of Response: Annually and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 560 hours.

Total Annual Costs: $0.

Needs and Uses: Pursuant to 47 CFR Section 54.703 industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors. 47 CFR Sections 54.719–54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which parties must file requests for review. An affected party would be permitted to file a petition for Commission review with the Bureau within thirty days of an action taken by USAC. The appellant must state specifically its interest in the matter presented for review. The appellant also must provide the Commission with a full statement of relevant, material facts with supporting affidavits and documentation. In addition, the appellant must state concisely the question presented for review, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision. The appellant also must state the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought. If an appellant alleges prohibited conduct by a third party, the appellant shall serve a copy of the appeal on such third party, who shall have an opportunity to file an opposition. Similarly, appellants shall serve on USAC a copy of the appeal of a USAC decision filed with the Commission. See 47 CFR Sections 54.719–54.725. The information will be used by the

Commission to select USAC's Board of Directors and to ensure that requests for review are filed properly with the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3578 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

February 4, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0484.

Expiration Date: 01/31/2001.

Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification of Common Carriers of Service Disruptions—Section 63.100.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 52 respondents (reporting approximately 4 times a year); 5 hours per response (avg.); 1040 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 63.100 of the Commission's rules requires that ''any local exchange or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service that experiences an outage on any facilities which it owns or operates must notify the Commission if such service outage continues for 30 or more minutes. Satellite carriers and cellular carriers were exempt from this reporting requirement.'' An initial and a final report is required for each outage. The reports enable us to monitor developments affecting telecommunications reliability; to serve as a source of information for the public; to encourage and, where appropriate, assist in dissemination of information to those affected; and to take immediate steps, as needed, and after analyzing the information submitted, to determine what, if any, other action is required. The Commission's Office of Engineering and Technology (OET) receives the initial outage and incident reports through the Commission's Watch Officers to whom the carriers report within 120 minutes or, in the case of outages affecting 50,000 customers, within 3 days of the carrier's knowledge that the outage is reportable. If OET did not receive the information in the reports for analysis and further investigation, the Commission would have considerable difficulty determining the state of network reliability. It would depend on delayed, incomplete and second hand analysis as a basis for recommending any future Commission action that might be needed to encourage carriers to enhance their reliability efforts. It would have difficulty determining the implementation and efficacy of its own and industry's present and future recommendations for enhancing reliability. It would be less able to spot reliability weaknesses as they begin to appear in the rapidly changing networks. The reporting requirement will facilitate FCC monitoring of the reliability of service being provided and enable it to take swift remedial action as required. The reporting requirement is essential to the FCC's mission of ensuring that the public is protected from major disruptions to telephone services. Information required in the initial reports includes identification of the carrier and a carrier contact person, date and time of commencement of the outage, geographical area affected, estimated number of customers affected, duration of the outage, estimated number of blocked calls during the outage, apparent or known cause of the incident, including the name and type of equipment involved and the specific part of the network affected, methods used to restore service and the steps taken to prevent recurrence of the outage. Not later than thirty days after an outage or incident, the carrier must file with the Chief, Office of Engineering and Technology (OET) a final service disruption report providing all available information on the service outage, including any information not contained in its initial report. Information collected has been used by the Commission staff to determine weaknesses to reliability and to formulate new tasks for the Network Reliability and Interoperability Counsel (NRIC), a Federal Advisory Committee formed by the Commission to advise it on matters of network reliability. Obligation to respond: Mandatory.

OMB Control No.: 3060–0876.

Expiration Date: 06/30/99.

Title: USAC Board of Directors Nomination Process (47 CFR 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719–54.725).

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 22 respondents; 25.4 hours per response (avg.); 560 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually; third party disclosure.

Description: The Telecommunications Act of 1996 (1996 Act) directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. To fulfill that mandate, based on the recommendations of the Federal-State Joint Board on Universal Service, the Commission adopted a Report and Order in CC Docket No. 96–45 on May 7, 1997 to implement the congressional directives set out in section 254 of the Communications Act of 1934, as amended by the 1996 Act. In a Report and Order (released July 18, 1997), the Commission appointed the National Exchange Carrier Association, Inc. (NECA) the temporary administrator of the universal service support mechanisms, subject to its creating a separate subsidiary, the Universal Service Administrative Company (USAC), to administer the support programs. The Commission also directed NECA, as a condition of its appointment as temporary administrator, to create two unaffiliated corporations to administer portions of the schools and libraries and rural health care programs. NECA established the Schools and Libraries Corporation (SLC) and the Rural Health Care Corporation (RHCC).

In connection with supplemental appropriations legislation enacted on May 1, 1998, Congress directed the Commission to establish a single entity to administer federal universal service. In a May 8, 1998 Report to Congress, the Commission proposed that, by January 1, 1999, USAC would serve as the single entity responsible for administering all of the universal service support mechanisms including the schools and libraries and rural health care support mechanisms.

On November 20, 1998, the Commission released an Order directing the merger of SLC and RHCC into USAC as the single entity responsible for administering the universal service support mechanisms as of January 1, 1999. The Order adopts rules that will govern USAC following the required merger. Certain portions of these rules contain collections of information. First, the Order instructs industry and non-industry groups to submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors. (No. of respondents: 12 respondents; hours per response: 20 hours; total annual burden: 240 hours). Second, the Order adopts procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which parties must file requests for review. An affected party would be permitted to file a petition for Commission review with the Bureau within thirty days of an action taken by USAC. The appellant must state specifically its interest in the matter presented for review. The appellant also must provide the Commission with a full statement of relevant, material facts with supporting affidavits and documentation. In addition, the appellant must state concisely the question presented for review, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision. The appellant also must state the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought. If an appellant alleges prohibited conduct by a third party, the appellant shall serve a copy of the appeal on such third party, who shall have an opportunity to file an opposition. Similarly, appellants shall serve on USAC a copy of the appeal of a USAC decision filed with the Commission. See 47 CFR Sections 54.719–54.725. (No. of respondents: 10; hours per response: 32 hours; total annual burden: 320 hours). The information will be used by the Commission to select USAC's Board of Directors and to ensure that requests for review are filed properly with the Commission. The information requested is not otherwise available. Without such information, the Commission could not appoint a representative body to USAC's Board of Directors nor resolve requests for review and, therefore, could not fulfill its statutory responsibility in accordance with the Communications Act of 1934, as amended. Obligation to respond: required to obtain or retain benefits.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas

Secretary

[FR Doc. 99–3579 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

February 5, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 18, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0169.

Title: Sections 43.51 and 43.53—Reports and Records of Communications Common Carriers and Affiliates.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 71.

Estimated Time Per Response: 84.91 hours per response (avg.).

Frequency of Response: On occasion and annual reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 6,029 hours.

Total Annual Cost: N/A.

Needs and Uses: Sections 211 and 215 of the Communications Act of 1934, as amended, require that the FCC examine transactions of any common carriers relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. The reports required by Sections 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. Section 43.51 also requires carriers to maintain copies of certain contracts, to have them readily accessible to Commission staff and members of the public upon request and to forward individual contracts to the Commission as requested.

The information contained in these reports is used by the FCC to determine whether the activities reported have affected or are likely to affect adversely the carrier's service to the public or whether these activities result in undue or unreasonable increases in charges. If this information were not reported, the FCC would not be able to ascertain the impact of these activities on the just and reasonable rates as required by the Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3575 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3133–EM]

Alabama; Amendment No. 3 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Alabama (FEMA–3133–EM), dated September 28, 1998, and related determinations.

EFFECTIVE DATE: October 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 6, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–3644 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

(Arkansas); Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 1, 1999, the President amended his previous declaration to amend the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms, tornadoes, and high winds on January 21, 1999, and continuing, is of sufficient severity and magnitude that the provision of additional Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act'').

Therefore, I amend my declaration of January 23, 1999 to authorize 100 percent Federal funding of all eligible costs associated with debris removal (Category A) under the Public Assistance Program. This assistance may be provided to those areas that you deem appropriate. I further amend my declaration to include the provision of temporary schools for the City of Beebe in White County. This assistance under Section 403 of the Stafford Act is authorized at 100 percent Federal funding for eligible costs. Please inform the Federal Coordinating Officer and the Governor of this amendment.

Sincerely,

FEMA intends to provide the following assistance:

Counties of Saline and White for debris removal (Category A) under the Public Assistance program at 100 percent Federal funding for eligible costs (already designated for Individual Assistance and Public Assistance).

Provision of temporary schools under Section 403 of the Stafford Act for the City of Beebe, White County, at 100 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–3641 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266DR]

Arkansas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: this notice amends the notice of a major disaster for the State of Arkansas (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: January 31, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 31, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 93.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–3642 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

Arkansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include Public Assistance Categories C through G in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1999:

Independence, Pulaski, Saline, and White Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

Clay and Greene Counties for Public Assistance (already designated for Individual Assistance).

Jackson, Monroe, and Randolph Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–3643 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1262–DR]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1262–DR), dated January 19, 1999, and related determinations.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 1, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–3640 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Project Impact: Building Disaster Resistant Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of funds and grant availability.

SUMMARY: FEMA gives notice of the availability of $25 million of appropriated grant funds to pre-determined Project Impact communities (see list in **SUPPLEMENTARY INFORMATION**) and States with Project Impact communities.

DATES: Grant funds are available as of February 16, 1999.

ADDRESSES: Approved communities have received grant application packages. States with approved Project Impact communities that have not already received grant application materials should contact their FEMA regional office.

FOR POINT OF CONTACT INFORMATION CONTACT: Carol Transou, Federal Emergency Management Agency, 500 C Street SW., room 402, Washington, DC 20472, (202) 646–3701, (telefax) (301) 646–3231, or (email) carol.transou@fema.gov.

SUPPLEMENTARY INFORMATION: Under Public Law 105–276, 112 Stat. 2461, Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, 1999, we are issuing today a Request for Application (RFA) to implement a $25 million grant program that is limited to Project Impact communities and to States with Project Impact communities.

Community grants. The community grant is available to designated Project Impact communities to facilitate the development and implementation of a comprehensive, long-term mitigation strategy through collaboration with private sector and non-profit organizations, and with local, State and Federal government partners. Within this framework, the community grant is to fund prevention projects that result in long-term reductions in property damage as well as contribute to the sustainability of the partnership.

State grants. The State grant is available to States with a Project Impact community through the FEMA Performance Partnership Agreement/ Cooperative Agreement process for activities that directly support Project Impact communities.

Who is eligible for grants? The community that a State has designated, with FEMA concurrence, as a Project Impact community is eligible for a community grant. Each State with a Project Impact community is eligible for a state grant.

What are mitigation measures? Mitigation measures generally are those projects and actions that reduce the potential losses to life and property from natural hazard events in a permanent or long-term manner. Communities will categorize mitigation projects as: (1) Mitigation for existing structures; (2) Mitigation of existing infrastructure, utility facilities, and transportation systems that are publicly owned and operated on a non-profit basis; (3) Adoption of policies or practices for mitigation in existing structures, development or redevelopment; (4) Activities that lead to building or sustaining public/private partnerships, or that support public awareness of mitigation; (5) Hazard identification and risk assessment; (6) Mitigation of new construction; and (7) Personnel support.

What is the process for applying? For designated community assistance, communities must submit a grant application package to FEMA. FEMA regions will work with the communities to complete this application package. The community must submit the application to the FEMA Regional Director on or before March 15, 1999.

For State funding assistance, the State with a Project Impact community must submit a letter or memorandum to the Regional Director indicating its desire for funds to support the Project Impact community by convening an inclusive forum of State agencies for the purpose of developing an implementation strategy and commitment documents. This document will delineate comprehensive integration of mitigation in State agencies' daily operations. Additionally, the State should agree to coordinate and communicate with FEMA regions on Project Impact activities, meetings, etc.

What criteria will FEMA apply to grant applications? For a designated

community, we will review and negotiate with the local jurisdiction to determine whether the proposed activities would: (1) Reduce the likelihood of future disaster costs under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and (2) help sustain the community's momentum in broad-based mitigation efforts. We describe activities that the community may pursue in the previous section entitled ''What are mitigation measures.''

A State with a Project Impact community must agree to use the funds in direct support of the Project Impact community and to convene statewide support for comprehensive hazard mitigation. For example, a State may use the FEMA funding to support Project Impact communities:

- To fund State activities in direct support of Project Impact communities such as travel, costs associated with logistics and meetings, and staff support;
- To fund State travel costs to FEMA Project Impact meetings;
- To fund training of State officials supporting Project Impact;
- To provide mini-grants to Project Impact communities to augment or expedite Project Impact activities;
- To fund travel of local community officials to other communities, state meetings or national conferences at State request to share Project Impact information;
- To fund State costs in information development and dissemination in support of Project Impact;
- To fund development of training packages for State and local officials;
- To fund expert, short-term technical assistance support to Project Impact communities.

Dated: February 4, 1999.

Michael J. Armstrong,

Associate Director, Mitigation Directorate.

[FR Doc. 99–3639 Filed 2–12–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reasons why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Choiceone Logistics, Inc., 7227 NW., 32 Street, Miami, FL 33122, Officer: Trina M. Gomez, President

Sanyo Logistics Corporation, 1411 W. 190th Street, Suite 800, Gardena, CA 90248, Officers: Misao Okusada, President; Koshiro Masui, Vice President

Baron Worldwide, Inc., 3108 W. Hampden Ave., Unite C, Sheridan, CO 80110, Officers: James R. Stewart, President; David M. DeFrees, Vice President

Select Transport International, Inc., RR 1 Box 61C, Newark, TX 76071, Officers: Marshall David Morgan, President; Wayne B. Morgan, Vice President

Dated: February 9, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–3592 Filed 2–12–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 a.m.—February 18, 1999.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 98–28—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries—Consideration of Comments.

2. Docket No. 98–29—Carrier Automated Tariff Systems—Consideration of Comments.

3. Docket No. 98–30—Service Contracts Subject to the Shipping Act of 1984—Consideration of Comments.

4. Docket No. 98–26—Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–3749 Filed 2–11–99; 9:56 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 1, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. Esther Hamann Brabec, Rapid City, South Dakota; to acquire additional voting shares of Decatur Corporation, Leon, Iowa, and thereby indirectly acquire additional voting shares of Citizens Bank, Leon, Iowa, and Citizens Bank of Princeton, Princeton, Missouri.

Board of Governors of the Federal Reserve System, February 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3566 Filed 2–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Thursday, February 18, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

Matters to be Considered

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 11, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3752 Filed 2–11–99; 11:20 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Entitled Center of Excellence for Information Technology (CEIT)

AGENCY: Office of Information Technology, GSA.

ACTION: Notice of request for approval of a new information collection entitled Center of Excellence for Information Technology (CEIT).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Center of Excellence for Information Technology (CEIT).

DATES: Comment Due Date: April 19, 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: Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Pat Smith, Office of Information Technology, (202) 501–0837.

SUPPLEMENTARY INFORMATION:

A. Purpose.

The GSA is requesting the Office of Management and Budget to approve a new information collection concerning Center of Excellence for Information Technology (CEIT). The Center of Excellence in Information Technology (CEIT) will serve as a clearinghouse for best practices in information technology applications in both the public and private sectors. Current plans are to partner with leading Information Technology (IT) industry companies to establish a Center that provides innovative demonstrations of technology at work. Initial IT applications featured in the CEIT will focus on the use of web-enabled technologies to perform administrative functions and to deliver interagency transaction-based services through an Access America Seniors website.

B. Annual Reporting Burden

Respondents: 400; annual responses: 400; average hours per response: .15; burden hours: 60

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: February 5, 1999.

Edward C. Loeb,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–3570 Filed 2–12–99; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Entitled Access Certificates for Electronic Services (ACES) Program

AGENCY: Federal Technology Service, GSA.

ACTION: Notice of request for approval of a new information collection entitled Access Certificates for Electronic Services (ACES) Program.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Technology Service (FTS) is publishing a summary of a proposed new information collection activity for public and agency comment. The proposed information collection activity is designed to support a new FTS program entitled Access Certificates for Electronic Services (ACES). The ACES Program is intended to facilitate and promote secure electronic communications between on-line automated information technology application systems authorized by law to participate in the ACES Program and users who elect to participate in the program, through the implementation and operation of digital signature certificate technologies. Individual digital signature certificates will be issued at no cost to individuals based upon their presentation of verifiable proof of identity to an authorized ACES Registration Authority. Business Representative digital signature certificates will be issued to individuals based upon their presentation of verifiable proof of identity and verifiable proof of authority from the claimed entity to an authorized ACES Registration Authority. If authorized by law, a fee may be charged for issuance of a Business Representative certificate. The information collection was previously published in the **Federal Register** on December 7, 1999 at 63 FR 67484, allowing for a 60-day comment period. No comments were received.

DATES: Submit comments on or before March 18, 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: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and may also be addressed to Stanley Choffrey, General Services Administration, Federal Technology Service, Office of Information Security, Room 5060, 7th and D Streets, SW, Washington, DC 20407.

FOR FURTHER INFORMATION CONTACT: Stanley Choffrey, General Services Administration, Federal Technology Service, Office of Information Security at (202) 708–7943, or by e-mail to stanley.choffrey@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this Notice is to consult with and solicit comments from the public and affected agencies concerning the proposed collection of information under the ACES Program in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of GSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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 response.

Comments relating to any additional aspects and features of the ACES Program are also welcomed, and will be carefully considered.

B. Annual Reporting Burden

Respondents: 1,000,000; annual responses: 1,000,000; average hours per response: .15; burden hours: 250,000.

Copy of Proposal

A copy of this proposal may be obtained by contacting Stanley Choffrey at the above address.

Dated: February 9, 1999.

Edward C. Loeb,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–3571 Filed 2–12–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) research involving human embryonic stem cells and (2) the use of human biological materials in research. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on March 2, 1999 from 11:30 am to 12 noon.

Dates/times	Location
March 2, 1999, 8:00 am–5:30 pm	Junior Ballroom, Sheraton Premiere at Tyson's Corner, Virginia, 8661 Leesburg Pike, Vienna, Virginia 22182.
March 3, 1999, 8:00 am–12 noon	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 9, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–3606 Filed 2–12–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of the following special emphasis panel scheduled to meet during the month of March 1999:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: March 19, 1999, 2:00 p.m.

Place: Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, MD 20852.

Open March 19, 1999, 2:00 p.m. to 2:15 p.m.

Closed for remainder of meeting.

Purpose: to review and evaluate grant applications.

Agenda: the open session of the meeting will be devoted to a business meeting covering administrative matters. During the closed session, the panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research (AHCPR), has made a formal determination that this latter session will be closed because the discussions are likely to reveal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Jenny Griffith, Committee Management Officer, Office of Research Review, Education, and Policy, AHCPR, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 8, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–3633 Filed 2–12–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–09]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the

proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. An Evaluation Study of an HIV/STD Prevention Curriculum for Youth Attending Alternative Schools to be Conducted From 1999 to 2002—New

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Division of Adolescent and School Health—The purpose of this request is to obtain OMB clearance to conduct a randomized trial of a curriculum to reduce behaviors related to HIV/STD transmission among 14 to 18 year old students in 30 court and community schools in Northern California. Participants will respond to surveys of attitudes, knowledge, and behavior related to HIV/STD transmission and prevention at baseline and at 6, 12, and 18 month post-tests. Reduction of behaviors among adolescents related to HIV and STD transmission, and reduction of the prevalence of STDs is the focus of at least seven objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions*. There have been few studies assessing the effectiveness of curricula to reduce HIV/STD related risk behaviors in this high-risk adolescent population. Data gathered from this study will provide information about how HIV/STD risk behavior may be effectively reduced among alternative school students.

The total estimated cost to respondents is $50,400 assuming a minimum wage for students of $5.25 in the study period.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden hours (in hrs.)
Alternative school students	2400	4	1.0	9600
Total				9600

2. Evaluative Research for the National Bone Health Education Campaign (NBHEC)—New

National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Nutrition and Physical Activity Communications Team, in cooperation with the Office on Women's Health, is developing a national osteoporosis prevention campaign targeting girls ages 9–18—the National Bone Health Campaign (NBHC). The 5-year campaign will begin by targeting girls ages 9–12 and their parents and then expand to girls 13–18 and their parents. Funding for the campaign has been approved for the first two years of the program, so the research presented here is only that to be conducted in the those two years.

The research will consist of:

- Message tests with representative samples of 200 girls ages 9-12, 200 girls ages 13–18 and 200 parents of girls ages 9–12;
- Baseline telephone surveys of representative samples of 1000 girls 9–12 and 1000 girls 13–18;
- Follow-up survey of representative sample of 1000 girls ages 9–12; and
- Annual surveys of 400 girls 9–12 and annual surveys of 200 parents of girls 9–12 in five ''sentinel'' sites.

Specifically, the purpose of the research is to

- Pre-test campaign messages to ensure that they are attention-getting, understandable, personally relevant, and credible for the target audiences;
- Provide ongoing assessment of campaign events and their effects in five ''sentinel'' sites; and
- Provide an overall measure of the campaign's effectiveness over time.

The results of the proposed research will be used to identify and develop effective campaign messages and strategies to promote bone healthy attitudes, knowledge and behaviors among the primary and secondary audiences, and to assist program planners in assessing and refining program tactics. The research will also provide a measure of the success of the program in increasing awareness of bone healthy activities and improving knowledge and attitudes related to those activities among the primary target audience (girls 9–18). The research will also be shared with NBHEC partners (various public and private agencies or organizations) for use in designing and implementing collaborative programs and messages at the national and local levels. The total cost to respondents is estimated at $10,050.

Activity	No. of respondents	Responses per respondent	Hours per response	Total hours
Message test with girls ages 9–12	200	1	.3	60
Message test with parents of girls ages 9–12	200	1	.3	60
Message test with girls ages 13–18	200	1	.3	60
National baseline survey of 1000 girls ages 9–18	1000 (9–12)	1	.3	300
	1000 (13–18)	1	.3	300
Follow-up survey to baseline	1000 (9–12)	1	.3	300
Ten school surveys of 400 girls ages 9–12	4,000	1	*.5	2,000
Ten phone surveys with 200 parents of girls ages 9–12	2,000	1	.3	600

Activity	No. of respondents	Responses per respondent	Hours per response	Total hours
TOTAL				3,680

*Although these questionnaires will be of roughly the same length as the others, we have included time for getting children organized in the classrooms.

Dated: February 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–3612 Filed 2–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review: Comment Request

Title: ACF–696T Child Care Development Fund Financial Reporting Form.

OMB No.: New.

Description: The form provides specific data regarding claims and provides a mechanism. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

Respondents: State, Local and Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T	236	1	8	1,888

Estimated Total Annual Burden Hours: 1,888.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Service, 370 L'Enfant Promenade, S.W., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, DC 20503, Attn: Lori Schack.

Dated: February 9, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–3567 Filed 2–12–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Privacy Act; Notification of New System of Records in Conjunction With the Healthcare Integrity and Protection Data Bank

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of the Inspector General (OIG) is setting forth a notice of a proposed new system of records in order to implement the requirements of the Healthcare Integrity and Protection Data Bank (HIPDB). The new HIPDB is being established in accordance with section 1128E of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act of 1996. Section 1128E of the Act specifically directs the Secretary, acting through the OIG, to create a national health care fraud and abuse data collection program for the reporting and disclosure of certain final adverse actions (excluding settlements in which no findings of liability have been made) taken against health care providers, suppliers, or practitioners, and maintain a data base of final adverse actions taken against health care providers, suppliers, or practitioners.

Groups that have access to this new data bank system include Federal and State government agencies; health plans; and self queries from health care suppliers, providers and practitioners. Reporting is limited to the same groups that have access to the information. We invite comments from interested parties on the proposed internal and routine use of information in this system of records.

DATES: The OIG has sent a Report of a New System of Records to the Congress and to the Office of Management and Budget (OMB) on February 16, 1999. This new system of records will be effective 40 days from the date submitted to OMB unless the OIG receives public comments that would result in a contrary determination. To assure consideration, public comments must be delivered to the address provided below by no later than 4 p.m. on March 18, 1999.

ADDRESSEES: Please mail or deliver your written comments on the new system of records to: Office of Inspector General, Department of Health and Human Services, Attention: OIG–61–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–61–N.

FOR FURTHER INFORMATION CONTACT: Rick Burguieres, Investigative Policy and

Information Management Staff, Office of Investigations, Office of Inspector General, (202) 205–5200.

SUPPLEMENTARY INFORMATION:

1. Establishment of the Healthcare Integrity and Protection Data Bank

Section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Pub. L. 104–191, requires the Department of Justice and the Secretary, acting through the OIG, to establish a new health care fraud and abuse control program to combat health care fraud and abuse (section 1128C of the Act). Among the major steps in this program is the establishment of a national data bank to receive and disclose certain final adverse actions against health care providers, suppliers, or practitioners, as required by section 1128E of the Act, in accordance with section 221(a) of HIPAA. The Act specifically directs the Secretary, acting through the OIG, to maintain a data base of such final adverse actions. The data bank, known as the Healthcare Integrity and Protection Data Bank (HIPDB), will contain the following types of information: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) final adverse actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or practitioners; (4) exclusion of a health care provider, supplier or practitioner from participation in Federal or State health care programs; and (5) any other adjudicated actions or decisions that the Secretary establishes by regulation. Settlements in which no findings or admissions of liability have been made would be excluded from reporting. However, any final adverse action that emanates from such settlements, and that would otherwise be reportable under the statute, would be reportable to the data bank. Final adverse actions would be reported, regardless of whether such actions are being appealed by the subject of the report.

Proposed regulations setting forth the policy and procedures for implementing the new HIPDB were published in the **Federal Register** on October 30, 1998 (63 FR 58341).

2. Privacy Act Number

No. 09–90–0103.

3. Categories of Eligible Users of the System

Groups that have access to this new data bank system include Federal and State government agencies; health plans; and self queries from health care suppliers, providers and practitioners. For purposes of the HIPDB:

A *government agency* includes, but is not limited to: (1) The Department of Justice; (2) the Department of Health and Human Services; (3) any other Federal agency that either administers or provides payment for the delivery of health care services (including, but not limited to, the Department of Defense and the Department of Veterans Affairs); (4) State law enforcement agencies; (5) State Medicaid Fraud Control Units; and (6) other Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or licensed health care practitioners.

Health plan means a plan, program or organization that provides health benefits, whether directly or through insurance, reimbursement or otherwise, and includes, but is not limited to:

(1) A policy of health insurance; (2) a contract of a service benefit organization; (3) a membership agreement with a health maintenance organization or other prepaid health plan; (4) a plan, program or agreement established, maintained or made available by an employer or group of employers, a practitioner, provider or supplier group, third-party administrator, integrated health care delivery system, employee welfare association, public service group or organization, or professional association; and (5) an insurance company, insurance service, self-insured employer or insurance organization which is licensed to engage in the business of selling health care insurance in a State and which is subject to State law which regulates health insurance.

4. Routine Uses of Records in the System of Records

Information in this system of records is considered confidential and disclosed only for the purpose for which it was provided. Appropriate uses of the information would include the prevention of fraud and abuse activities, decisions about hiring or retaining employees who may be reported to the system of records, and improving the quality of patient care. For example, a record from this system of records may be disclosed to a Federal or State law enforcement agency during a criminal, civil or administrative investigation of a health care practitioner, provider or supplier. A record from this system of records also may be disclosed to a Federal agency, in response to its request, concerning (1) the hiring or retention of a health care practitioner, provider or supplier, (2) the reporting of an investigation of a health care practitioner, provider, or supplier or (3) the letting of a contract, or the issuance of a license or certification to a health care practitioner, provider or supplier, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

5. Public Inspection of Comments

Comments will be available for public inspection March 2, 1999, in Room 5518, Office of counsel to the Inspector General, at 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week between the hours of 9 a.m. and 4 p.m., (202) 619–0089.

Dated: January 7, 1999.

June Gibbs Brown,

Inspector General.

09–90–0103

SYSTEM NAME:

Healthcare Integrity and Protection Data Bank (HIPDB), HHS/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The HIPDB will always be operated and maintained by a contractor. The SRA Corporation (the Contractor) currently operates and maintains the HIPDB under contract with the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA) who, under a memorandum of understanding with the Office of Inspector General (OIG), will operate the system. Records are found at the following address: Healthcare Integrity and Protection Data Bank, 4350 Fairs Lakes Court North, Suite 400, Fairfax, Virginia 22033. The program will publish any changes in the location of the system in the **Federal Register**.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will cover the following categories of individuals:

- *Health care practitioners,* including physicians, dentists, and all other health care practitioners (such as nurses, optometrists, pharmacists, and podiatrists), licensed or otherwise authorized by a State to provide health care services.
- *Health care suppliers* who furnish or provide access to health care services,

supplies, items or ancillary services (including, but not limited to, individuals who deliver health care services and are not required to obtain State licensure or authorization, durable medical equipment suppliers and manufacturers; pharmaceutical suppliers and manufacturers; health record services which prepare and store medical, dental and other patient records; health data suppliers; and billing and transportation service suppliers), and any individual under contract to provide health care supplies, items or ancillary services, and any individual providing health benefits whether directly, or indirectly through insurance, reimbursements or otherwise (including insurance producers, such as agents, brokers, and solicitors).

These individuals must be the subject of the following final adverse actions: (1) Civil judgments in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions related to the delivery of a health care item or service; (3) actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) exclusion from participation in Federal or State health care programs; and (5) other adjudicated actions or decisions, such as the removal of a physician from a health plan network via an adjudicated action.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will contain the following types of records:

1. Information on an individual who is the subject of a civil judgment or criminal conviction related to the delivery of a health care item or service includes—

- Full name; other name(s) used, if known; Social Security number; date of birth; gender; home address; occupation; organization name and type, if known; work address, if known; National Provider Identifier (NPI) (when issued by HCFA); Unique Physician Identification number(s), if known; Drug Enforcement Administration (DEA) registration number(s), if known; name of each professional school attended and the year of graduation, if known; for each professional license, certification or registration: the license, certification, or registration number, the field of licensure, certification, or registration, and the name of the State or Territory in which the license, certification or registration is held, if known;
- With respect to the judgment/sentence: The court or judicial venue in which action was taken; docket or court file number; name of the primary prosecuting agency or Civil Plaintiff; prosecuting agency's case number; statutory offense and counts; date of judgment/sentence; length of the sentence; amount of judgment, restitution or other orders; nature of offense upon which the action was based; description of acts or omissions and injuries upon which the action was based; investigative agencies involved, if known, and investigative agencies' case/file number, if known; whether such action is on appeal; and
- With respect to the reporting entity: Name; title; address, and telephone number of the reporting entity.

2. Information on an individual who is the subject of a licensure action taken by Federal or State licensing and certification agencies, an adjudicated action or decision, or an individual excluded from participation in a Federal or State health care program. This information includes—

- Full name; other name(s) used, if known; Social Security number or Federal Employer Identification number; date of birth; date of death, if deceased; gender; home address; occupation; organization name and type, if known; work address, if known; physician specialty, if applicable; NPI (when issued by HCFA); Unique Physician Identification number(s), if known; DEA registration number(s), if known; name of each professional school attended and the year of graduation, if known; for each professional license, certification or registration: The license, certification, or registration number, the field of licensure, certification, or registration, and the name of the State or Territory in which the license, certification or registration is held, if known;
- With respect to final adverse action: A description of the acts or omissions or other reason for the action; date the action was taken, its effective date and duration; classification of the action in accordance with a reporting code adopted by the Secretary; amount of monetary penalty, assessment or restitution, and name of the office or program that took the adverse action; and
- With respect to the reporting entity: Name; title; address, and telephone number of the reporting entity.

3. Inquiry file includes copies of all inquiries received by the HIPDB.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1128E(b)(5) of the Social Security Act (the Act) authorizes the collection and maintenance of records of civil judgments against a health care provider, supplier or practitioner in Federal or State court related to the delivery of a health care item or service; Federal or State criminal convictions against a health care provider, supplier or practitioner related to the delivery of a health care item or service; actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers or practitioners; exclusion of a health care provider, supplier or practitioner from participation in Federal or State health care programs; and any other adjudicated actions or decisions established by the Secretary in regulation (45 CFR part 61).

PURPOSE(S):

The purposes of the system are to:

1. Receive from Government agencies and health plans information on certain final adverse actions (excluding settlements in which no findings of liability have been made) taken against health care providers, suppliers, or practitioners; and

2. Disseminate such data to Government agencies and health plans, as authorized by the Act.

A *government agency* includes, but is not limited to (1) the Department of Justice; (2) the Department of Health and Human Services; (3) any other Federal agency that either administers or provides payment for the delivery of health care services (including, but not limited to, the Department of Defense and the Department of Veterans Affairs); (4) State law enforcement agencies; (5) State Medicaid Fraud Control Units; and (6) other Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or licensed health care practitioners.

Health plan means a plan, program or organization that provides health benefits, whether directly or through insurance, reimbursement or otherwise, and includes, but is not limited to (1) a policy of health insurance; (2) a contract of a service benefit organization; (3) a membership agreement with a health maintenance organization or other prepaid health plan; (4) a plan, program or agreement established, maintained or made available by an employer or group of employers, a practitioner, provider or supplier group, third-party administrator, integrated health care delivery system, employee welfare association, public service group or organization, or professional association; and (5) an insurance company, insurance service, self-insured employer or insurance organization which is licensed to engage in the business of selling health care insurance in a State and which is

subject to State law that regulates health insurance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be disclosed to:

1. A health plan requesting data concerning a health care provider, supplier, or practitioner for the purposes of preventing fraud and abuse activities and/or improving the quality of patient care, and in the context of hiring or retaining providers, suppliers and practitioners that are the subjects of reports.

2. Government agencies, as defined in 45 CFR 61.3, requesting data concerning a health care provider, supplier or practitioner for the purposes of preventing fraud and abuse activities and/or improving the quality of patient care, and in the context of hiring or retaining the providers, suppliers and practitioners that are the subject of reports to the system. This would include law enforcement investigations and other law enforcement activities.

STORAGE:

Records are maintained in electronic folders, on magnetic tape, and/or disks.

RETRIEVABILITY:

Retrieval will be by use of personal identifiers, including a unique identifier assigned by the HIPDB.

SAFEGUARDS:

1. *Authorized Users:* Access to records is limited to designated employees of the Contractor and to designated HRSA and the OIG staff. The Contracting Officer's Technical Representative (COTR) and AIS Security Officers are among the HRSA staff who are authorized users. Both HRSA and the contractor maintain lists of authorized users. Other Departmental employees will have access to the records on an official ''need to know'' basis.

2. *Physical Safeguards:* Magnetic tapes, disks, computer equipment and hard copy files are stored in areas where fire and environmental safety codes are strictly enforced. All automated and non-automated documents are protected on a 24-hour basis. Perimeter security includes intrusion alarms, random guard patrols, monitors, key/passcard/combination controls, receptionist controlled area and reception alarm button.

3. *Procedural and Technical Safeguards:* A password is required to access the system, and additional identification numbers and passwords to limit access to data to only authorized users. All users of personal information, in connection with the performance of their jobs, protect information from public view and from unauthorized personnel entering an unsupervised area. All authorized users will sign a nondisclosure statement. To protect the confidentiality of information contained in the system, when a person leaves or no longer has authorized duties, the Security Officer deletes his or her identification number and password, retrieves all-electronic access cards, and changes all combinations to which the departing employee had access. The system automatically logs all access to data resources.

Access to records is limited to those authorized personnel trained in accordance with the Privacy Act and automatic data processing (ADP) security procedures. The Contractor is required to assure the confidentiality safeguards of these records and to comply with all provisions of the Privacy Act. All individuals who have access to these records must have the appropriate ADP security clearances. Privacy Act and ADP system security requirements are included in the contract for the operations and maintenance of the system. In addition, the HIPDB Project Officer and the System Manager oversee compliance with these requirements. HRSA staff who are authorized users will make site visits to the Contractor's facilities to assure compliance with security and Privacy Act requirements.

The safeguards described above were established in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS hf: 45–13 of the General Administration Manual, and the DHHS Information Resources Management Manual, Part 6. ''ADP Systems Security.''

RETENTION AND DISPOSAL:

All records in this system are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Tony Marziani, Director, Information Systems and Investigative Support Staff, Office of Investigations, OIG, Room 5046, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 205–5200.

NOTIFICATION PROCEDURES:

Exempt from certain requirements of the Act. However, an individual is informed when a record concerning himself or herself is entered into the Healthcare Integrity and Protection Data Bank.

Requests by mail: Practitioners, providers or suppliers may submit a ''Request for Information Disclosure'' to the address under system location for any report on themselves. The request must contain the following: Name, address, date of birth, gender, Social Security Number, professional schools and years of graduation, and the professional license(s). For license, include: The license number, the field of licensure, the name of the State or Territory in which the license is held, and Drug Enforcement Administration registration number(s). Practitioners must sign and have notarized their requests. Submitting a request under false pretenses is a criminal offense subject to, at a minimum, a $5,000 fine under provisions of the Privacy Act.

Requests in person: Due to security considerations, the HIPDB cannot accept requests in person.

Request by telephone: Individuals may provide all of the identifying information stated above to the HIPDB Helpline operator. Before the data request is fulfilled, the operator will return a paper copy of this information for verification, signature and notarization.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters also should reasonably specify the record contents being sought.

CONTESTING RECORDS PROCEDURES:

The HIPDB routinely mails a copy of any report filed in it to the subject. The subject may contest the accuracy of information in the HIPDB concerning himself, herself, or itself and file a dispute. To dispute the accuracy of the information, the individual must notify the HIPDB by:

(1) Identifying the record involved; (2) specifying the information being contested; (3) stating the corrective action sought and reason for requesting the correction; and (4) submitting supporting justification and/or documentation to show how the record is inaccurate. At the same time, the individual must attempt to enter into discussion with the reporting entity to resolve the dispute. Additional detail on the process of dispute resolution can be found at 45 CFR 61.15 of the HIPDB regulations.

RECORD SOURCE CATEGORIES:

Entities that have submitted records on individuals and organizations contained in the system; State Licensing Boards, including State Medical and Dental Boards, Federal and State Agencies as defined in the Act, and health plans as defined in the Act who take a final adverse action (not including settlements in which no findings of liability have been made)

taken against a health care provider, supplier, or practitioner. (See PURPOSE section above)

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Secretary has exempted this system from certain provisions of the Act. In accordance with 5 U.S.C. 552a(k)(2) and 45 CFR 5b.11(b)(ii)(F), this system is exempt from subsections (c)(3), (d)(1)–(4), and (e)(4)(G) and (H) of the Privacy Act.

[FR Doc. 99–3568 Filed 2–12–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish notices about information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Validity of Self-Reported Drug Use in Population Surveys—New

—During the period July 1999 through June 2001, SAMHSA and the National Institute on Drug Abuse (NIDA) will conduct a field study to test the validity of obtaining drug use data through a combination of computer assisted personal interviewing and audio computer-assisted self interviewing. A random sample of approximately 14,000 households (from households listed, but not used, in the National Household Survey on Drug Abuse (NHSDA) sample segments) will be selected for screening.

Approximately 5,333 persons from the civilian, non-institutionalized population of the United States ages 12–25 will be selected to be interviewed. First, a questionnaire (using a subset of the 1999 NHSDA questions, with a special set of questions for the validity study) will be administered to determine: (1) The reported prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs, and (2) recent environmental exposures to tobacco and marijuana smoke. Then, permission will be sought to obtain hair and urine samples from respondents. Under a NIDA grant, these samples will be chemically analyzed to validate respondents' self-reports of drug use (about 4,000 respondents are expected to provide biological specimens). Respondents will be paid an incentive upon receipt of the hair/urine samples. The results will be used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to estimate the extent of under-reporting on drug use surveys such as the NHSDA conducted by SAMHSA.

The estimated annualized burden for this project over a three-year approval period is summarized in the table that follows.

	Number of respondents	Number of responses/respondent	Average burden/response	Total burden hours
Household screener	4,667	1	.05	233
Questionnaire and verification form	1,767	1	.67	1,184
Obtain biological specimens	1,333	1	.42	560
Screening verification	140	1	.067	9
Interview verification	265	1	.067	18
Total				2,004

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 3, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–3611 Filed 2–12–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–14]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 18, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total

number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 8, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Statement of Taxes.

Office: Housing.

OMB Approval Number: 2502–0418.

Description of the Need for the Information and Its Proposed Use: The data on this form is provided by the mortgagee in support of Real Estate Tax Payments claimed on mortgagee's application for insurance benefits. HUD uses the form to establish tax records, verify last taxes paid and continue tax payments.

Form Number: HUD–434.

Respondents: Federal Government, State, Local, or Tribal Government.

Frequency of Submission: On Occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	250		1		.50		125

Total Estimated Burden Hours: 125.

Status: Reinstatement without changes:

Contact: Betty Belin, HUD, (202) 401–2168; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 8, 1999.

[FR Doc. 99–3689 Filed 2–12–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4411–N–15]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 18, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 8, 1999.

David S. Cristy,

Director, IRM Policy, and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Modernization of Public Housing Under the Comprehensive Grant Program Reporting Requirements.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0157.

Description of the Need For the Information and Its Proposed Use: PHAs submit applicable CGP forms for modernization assistance for 250 or more units owned or operated by the PHA. PHAs must identify all of the physical and management improvements needed for all of its developments (Comprehensive Plan) for CGP funds and submit the information to HUD. PHAs report to HUD annually on the CGP.

Form Number: HUD–52831, 52832, 52833, 52834, 52835, 52836, 52837, 52839, and 52840.

Respondents: State, Local or Tribal Governments and the Federal Government.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	832		1		65		54,320

Total Estimated Burden Hours: 54,320.

Status: Reinstatement with changes.

Contact: Gwendolyn A. Watson, HUD, (202) 708–1640 x 4195; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 8, 1999.

[FR Doc. 99–3690 Filed 2–12–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 1999, is 6 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 1999, is 5½ percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, SW, Room 6164, Washington, DC 20410. Telephone (202) 708–3944 extension 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 1999, is 5½ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5½ percent for the 6-month period beginning January 1, 1999. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first 6 months of 1999.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' of interest in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 1999, is 6 percent.

HUD expects to publish its next notice of change in debenture interest rates in June 1999.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Sec. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: February 4, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–3688 Filed 2–12–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before April 19, 1999.

ADDRESSES: Send your comments on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222-ARLSQ, 1849 C Street NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the Mourning Dove Call-Count Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0010.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The Mourning Dove Call-Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between us and State wildlife agencies. It is conducted each spring by State and Service biologists to provide the necessary data to determine the population status of the mourning dove. The survey results are then used to help guide us and the States in the annual promulgation of regulations for hunting mourning doves. Survey data are also used to plan and evaluate dove management programs and provide specific information necessary for dove research. If this survey were not used, there would be no way to determine the population status of mourning doves prior to setting regulations.

Title: Mourning Dove Call-Count Survey.

Approval Number: 1018–0010.

Service Form Number: 3–159.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 2.5 hours per respondent. The Total Annual Burden hours is 2,655 hours.

Total Annual Responses: About 1,062 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: February 9, 1999.

Paul R. Schmidt,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 99–3654 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before April 19, 1999.

ADDRESSES: Send your comments and suggestions on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the North American Woodcock Singing Ground Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0019.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise

management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The North American Woodcock Singing-Ground Survey is an essential part of the migratory bird management program. This survey is conducted annually by State and Federal conservation agencies to provide the necessary data to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. The information is used primarily by us to develop recommendations for hunting regulations. It is also used by us, State conservation agencies, University associates and other interested parties for various research and management projects. Without information on the population's status, we might promulgate hunting regulations that were too liberal thus causing harm to the woodcock population, or too conservative, thus unduly restricting recreational opportunities afforded by woodcock hunting.

Title: North American Woodcock Singing Ground Survey.

Approval Number: 1018–0019.

Service Form Number: 3–156.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 0.67 hours per respondent. The Total Annual Burden hours is 500 hours.

Total Annual Responses: About 750 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: February 9, 1999.

Paul R. Schmidt,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 99–3655 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Request Submitted to the Office of Management and Budget (OMB) for Renewal Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service or we) will submit the collection of information described below to OMB for renewal under the provisions of the Paperwork Reduction Act of 1995. You may obtain copies of specific information collection requirements, related forms and explanatory material by contacting the Service Information Collection Clearance Officer at the address and/or phone numbers listed below.

DATES: Submit comments on or before April 19, 1999.

ADDRESSES: Send comments and suggestions on specific requirements to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Doug Staller, Chief, Branch of Visitor Services, Division in Refuges, 703/358–2029 or Dr. Jonathan G. Taylor, Research Social Scientist, U.S. Geological Survey, Fort Collins, CO 970/226–9438.

SUPPLEMENTARY INFORMATION: We propose to submit the following information collection clearance requirements to OMB for renewal under the Paperwork Reduction Act of 1995, Public Law 104–13. We invite comments on: (1) 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; (2) the accuracy of our estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Congress authorized a recreation fee demonstration program in Pub. L. 104–134. We were one of the four agencies mandated to implement the program and evaluate its impact on the visiting public. This study will scientifically evaluate visitor reactions and impact of the fees on visitation to the National Wildlife Refuge System (NWRS). The U.S. Geological Survey, Biological Resources Division, Social Economic and Institutional Analysis Section in Fort Collins, Colorado will conduct the study under a cooperative agreement with the U.S. Fish and Wildlife Service.

Although we planned to end this survey on December 15, 1998 with a joint report issued on March 31, 1999, a November, 1998 GAO report (GAO–RCED–99–7) recommended that only one year of data collection for the recreation fee demonstration program was insufficient. GAO concluded that this collection should continue for further evaluation. Section 328 of H.R. 4193 (subsequently in FY 1999 Interior appropriations) authorized extension of the program through FY 2001.

To represent the various types of fee changes, as well as fee demonstration refuges, six distinct fee programs and nine refuges were selected for inclusion in the study. These include: (1) New entrance fees (Sacramento NWR, CA and Aransas NWR, TX); (2) increased entrance fees (Dungeness NWR, WA); (3) new annual passes (Chincoteague NWR, VA and Crab Orchard NWR, IL); (4) new hunt fees (St. Catherine's Creek NWR, MS and Balcones Canyonlands NWR, TX); (5) non-hunt use permits (Buenos Aires NWR, AZ) and (6) non-fee adjustments (Piedmont NWR, GA). We will survey random samples of individuals using these refuges. We plan to use as part of the evaluation process a survey questionnaire to assess the different fee programs. We will distribute an on-site questionnaire during the peak season to a random sample of the visiting public and obtain a minimum of 400 completed surveys for each fee type. We will obtain additional information from Sacramento NWR to allow for examination of credit card entrances as well as new entrance fees in general. We will ask no questions of the participants, simply note payment by credit card. Overall, this will result in a total sample of 2,400 respondents. The margin of error for each fee type is ±5% at the 95% confidence level. the information gained from this survey will provide a viability of the fee program among the visiting public. The lead project officer is Dr. Jonathan G. Taylor,

Research Social Scientist, phone 970/226/9438, 4512 McMurry Avenue, Fort Collins, CO 80525–3400.

Title: Evaluation of visitor responses to recreation fee demonstration program.

Bureau for number: None.

Frequency of collection: On occasion.

Description of the respondents: Individuals and households.

Number of respondents: 2,400.

Estimated completion time: 10 minutes.

Burden estimate: 400 hours.

Dated: February 10, 1999.

Paul R. Schmidt,

Acting Assistant Director for Refuges and Wildlife.

[FR Doc. 99–3656 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife

Environmental Statements; Notice of Intent Eastern Shore of Virginia/Wallkill River National Wildlife Refugees; New Jersey and New York

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to prepare Comprehensive Conservation Plans and Associated Environmental Documents for the Eastern Shore of Virginia and Wallkill River National Wildlife Refuges.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare two Comprehensive Conservation Plans (CCP) and environmental documents pursuant to the National Environmental Policy Act and its implementing regulations. One CCP will be prepared for Eastern Shore of Virginia National Wildlife Refuge, in Northampton County, Virginia. The second CCP will be prepared for the Wallkill River National Wildlife Refuge, located in Sussex County, New Jersey, and Orange County, New York. The Service if furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*).

(1) To advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Inquire at the address below for dates of planning activity and due dates for comments regarding specific projects.

ADDRESSES: Address comments, questions and requests for more information to the following:

Refuge Manager, Eastern Shore of Virginia National Wildlife Refuge, 5003 Hallett Circle, Cape Charles, VA 23310, (757) 331–2760

Refuge Manager, Wallkill River National Wildlife Refuge, 1547 County Route 565, Sussex, NJ 07461, (973) 702–7266

SUPPLEMENTARY INFORMATION: By federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. 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 will solicit public input via open houses, public meetings, workshops, and written comments. Special mailings, newspaper articles, and announcements will inform people of the time and place of such opportunities for public input to the CCP.

The Eastern Shore of Virginia National Wildlife Refuge (NWR) includes 745 acres of wetland, forest, and grassland habitat. The 1,850 acre Fisherman Island NWR will be included with the Eastern Shore of Virginia CCP, since both Refuges are managed by the staff of the Eastern Shore of Virginia NWR. Comments on the protection of threatened and endangered species and migratory birds and the protection and management of their habitats will be solicited as part of the planning process. A draft CCP is planned for public review in April 2000.

The Wallkill River NWR currently consists of 3,851 acres of wetland and upland habitats. An additional 621 acres of uplands habitat, the former Army Training facility in Shawangunk, NY, Ulster County, will be transferred in whole or part by June 1999 and administered from the Wallkill NWR office. Comments on the protection of threatened and endangered species and migratory birds and the restoration and management of wetland and grassland habitats will be solicited as part of the CCP process. Additional land protection may also be considered in support of these resources. A draft CCP is planned for public review in April 2000.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR Parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Dated: February 4, 1999.

Ronald E. Lambertson,

Regional Director, U.S., Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 99–3617 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application To Amend the Incidental Take Permit for the San Bruno Mountain Habitat Conservation Plan, San Mateo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that the County of San Mateo and the cities of South San Francisco, Daly City, and Brisbane, California (Applicants), have applied to the Fish and Wildlife Service (Service) for an amendment to the San Bruno Mountain incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed amendment would add the callippe silverspot butterfly (*Speyeria callippe callippe*), listed as endangered under the Act on December 5, 1997, to the Applicants' existing incidental take permit (PRT 2–9818), and would authorize take of the callippe silverspot butterfly incidental to development activities on San Bruno Mountain, San Mateo County, California as described in the San Bruno Mountain Habitat Conservation Plan (Plan). This permit was originally issued by the Service on March 4, 1983, and authorized incidental take of the federally endangered mission blue butterfly (*Icaricia icarioides missionensis*), federally endangered San Bruno elfin butterfly (*Callophyrs mossii bayensis*), and federally threatened San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) on San Bruno Mountain, California. This notice announces receipt of this permit amendment application and the availability of

associated documents, which include the original Plan, Environmental Assessment, and Implementing Agreement, and summary information provided by the Applicants regarding the current amendment request. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before March 18, 1999.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments may be sent by facsimile to (916) 979–2744.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek or Mr. William Lehman, Fish and Wildlife Biologists, at the above address or call (916) 979–2129.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the documents mentioned above should immediately contact the Service's Sacramento Fish and Wildlife Office at the above referenced address or by telephone at (916) 979–2710. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

Section 9 of the Act and Federal regulation prohibit the ''take'' of species listed as endangered or threatened, respectively. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may, under limited circumstances, issue permits to authorize ''incidental take'' of listed species. Incidental take is defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for endangered species are found in 50 CFR 17.31. Regulations governing permits for threatened species are found in 50 CFR 17.32.

On March 4, 1983, the Service issued the County of San Mateo and the cities of South San Francisco, Daly City, and Brisbane a permit (PRT 2–9818) for incidental take of the mission blue butterfly, San Bruno elfin butterfly, and San Francisco garter snake during development activities on San Bruno Mountain, San Mateo County, California. The Plan, on which issuance of PRT 2–9818 was based, listed the callippe silverspot butterfly as a ''Species of Concern,'' since it was then not listed and afforded protection under the Act, but nevertheless treated the callippe silverspot butterfly as if the species was listed under the Act. At the time of issuance of the permit in 1983, the Service did not identify species not listed under the Act on the face of an incidental take permit, even when such a species was treated in a habitat conservation plan as if listed and protected under the Act.

The Plan was developed to implement a long-term strategy to conserve the three butterflies stated above, their host and larval plants, and the San Francisco garter snake on San Bruno Mountain and to minimize and mitigate the impact that development on San Bruno Mountain would have on these species. Conservation measures established by the Plan include: (1) Permanent preservation of butterfly habitat and ecological diversity through transfer of private lands on San Bruno Mountain to the public (the Plan protects 87 percent of the habitat of the mission blue butterfly, 93 percent of the habitat of the callippe silverspot butterfly and 100 percent of the habitat of the San Bruno elfin butterfly); (2) providing funding for the Plan through the assessment of development fees on the limited development allowed by the Plan on San Bruno Mountain; (3) protection and improvement of butterfly habitat through fencing, control of exotic plant species, and other measures; (4) regulation of construction activities to avoid unnecessary impacts to butterfly habitat; (5) ongoing monitoring and research of San Bruno Mountain's ecology and its associated Species of Concern; and (6) establishment of a manager to implement the Plan's conservation program. All of these measures applied to the callippe silverspot butterfly, which was then not listed under the Act, as well as to the federally listed species.

The callippe silverspot butterfly was listed by the Service as endangered on December 5, 1997 (62 FR 64306). One of the primary reasons cited by the Service for listing the butterfly was over-collection by insect collectors. Other factors cited include the threats of road and residential development, trampling of host plants by hikers and off-road vehicles, and application of herbicides and other chemical agents. Listing of the callippe silverspot butterfly under the Act provides the butterfly with regulatory protections against collecting and other threats.

As a result of this listing, incidental take of the callippe silverspot butterfly is prohibited under the Act unless such take is otherwise authorized. As explained above, the Plan addressed the callippe silverspot butterfly as if it was listed under the Act; however, the species was not included in the list of species named on the incidental take permit. As a result, any taking of callippe silverspot butterflies on San Bruno Mountain Plan as a result of development activities would not be authorized under the Applicants' current permit. Consequently, the Applicants request this permit amendment to add the callippe silverspot butterfly to their incidental take permit. The Applicants also state in their permit application that the callippe silverspot butterfly was adequately addressed in the original Plan and that, consequently, amendments of the Plan and its supporting documents are unnecessary. In support of this, the Applicants cite statements from the Plan and Implementing Agreement that: (1) The Plan provides for the long-term reconciliation of the concerns of the parties regarding protection and enhancement of all the Plan's Species of Concern; (2) the Plan minimizes and mitigates the impacts of development on San Bruno Mountain's Species of Concern to the maximum extent practicable; and (3) no further mitigation or compensation will be required to provide for the conservation, protection, or enhancement of the San Bruno Mountain ecological community, including but not limited to its Species of Concern.

However, the original Plan did not address the problem of butterfly collecting on San Bruno Mountain. In light of this and the fact that collecting of callippe silverspot butterflies was a primary reason cited by the Service for listing the species, the Applicants have agreed to a new condition to protect the callippe silverspot butterfly and other federally listed butterflies inhabiting San Bruno Mountain. The Applicants will post signs at all major trailheads and other public access points to San Bruno Mountain stating that: (1) Federal law prohibits the collection of the mission blue butterfly, San Bruno elfin butterfly, and callippe silverspot butterfly; (2) San Bruno Mountain provides habitat for these species; and (3) collecting or harming endangered butterflies could result in civil or criminal penalties under the Act. Placement of the signs will be made a condition of the amended permit and their design will be developed by the Applicants in consultation with the Service.

In light of the above, the Service proposes to amend the Applicants' incidental take permit to add the callippe silverspot butterfly to the list of

covered species identified in the permit, and to authorize any take of the callippe silverspot butterfly that is incidental to development activities carried out in accordance with the Plan.

This notice is provided pursuant to section 10(c) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of these laws. If the Service determines that the requirements are met, the existing permit (PRT 2–9818) will be amended for the incidental take of the callippe silverspot butterfly. A final decision on amending the permit will be made no sooner than 30 days from the date of this notice.

Dated: February 9, 1999.

Elizabeth H. Stevens,

Manager, California/Nevada Operations Office, Fish and Wildlife Service, Region 1, Sacramento, California.

[FR Doc. 99–3616 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–1430–01; WYW–122540]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; direct sale of public lands in Uinta County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian

T. 16 N., R. 115 W.,
Section 11, SW¼SE¼.
The above lands aggregate 40 acres.

FOR FURTHER INFORMATION CONTACT: Becky Heick, Realty Specialist, Bureau of Land Management, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101, 307–828–4506.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above land to Mr. Gino Foianini, an adjacent landowner, by direct sale, at fair market value. The disposal of this land will resolve an inadvertent trespass.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no significant public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Field Office, Kemmerer, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. Existing rights of record including a right-of-way, WYE–02679, to Austin Reservoir and Canal for irrigation facilities; a right-of-way, WYE–016891, to Questar Gas Pipeline Company for an oil and gas pipeline; a right-of-way, WYC–063968, to Amoco Pipeline Company for an oil and gas pipeline; right-of-way, WYW–017230, to Pioneer Pipeline Company for an oil and gas pipeline; a right-of-way, WYW–77832, to Frontier Pipeline Company for an oil and gas pipeline; a right-of-way, WYW–88849, to Union Telephone Company for a telephone line; and a right-of-way, WYW–96321, to WorldComm, Inc. for a fiber optic line.

Pursuant to the authority contained in Section 4 of Executive Order 11990 dated May 24, 1977 (42 FR 26961), and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1718, 1719, this sale will be subject to a permanent restriction which constitutes a covenant running with the land for the purpose of protecting and preserving a wetland area. The land may not be used for the construction or placement of any buildings, structures, facilities, or other improvements, including fences, and that ''new construction'' on the land as defined in Section 7(b) of Executive Order 11990 is prohibited. The restriction applies to 1.4 acres, located in the S½SE¼SW¼SE¼ of section 11, T. 16 N., R. 115 W.

There will be a decrease of 40 federal acres within the Upper Ranch Allotment. The four AUMs associated with the 40 acre parcel will be transferred from federal ownership to private ownership. Mr. Gino Foianini has signed a waiver allowing for cancellation of the four federal AUMs from his grazing permit.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days after issuance of this notice, interested parties may submit comments to the Field Manager, Kemmerer Field Office, Bureau of Land Management, 312 Hwy. 189 North, Kemmerer, WY 83101. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: February 5, 1999.

Jeff Rawson,

Field Manager.

[FR Doc. 99–3580 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–010; COC–62718]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

February 5, 1999.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw approximately 22,000 acres of National Forest System lands for 10 years to allow the Forest Service administrative alternatives in managing these lands. This notice closes the lands to location and entry under the mining laws only, for up to two years. The lands remain open to mineral leasing, and to such forms of disposition as may by law be made of National Forest System lands.

DATES: Comments on this proposed withdrawal must be received on or before May 17, 1999.

ADDRESSES: Comments should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On January 29, 1999, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2):

Sixth Principal Meridian

White River National Forest

T. 5 S.,R. T. 75 W.,
Sec. 19, Lots 3, 4, 5, 6, 9 and 10, and E½SW¼.
T. 4 S., R. 76 W.,
Sec, 32, NE¼;
Sec. 33, S½ and S½N½;
Sec. 34, S½S½ and NE¼SE¼.
T. 5 S., R. 76 W.,
Sec. 1, lots 3 and 4, SW¼ and S½NW¼;
Sec. 2, lots 1 thru 4, inclusive;
Sec. 3, lots 1 thru 4, inclusive, S½N½, SW¼, and W½SE¼;
Sec. 4, lots 1 thru 4, inclusive, S½N½ and S½;
Sec. 9, all;
Sec. 10, W½ and W½E½;
Sec. 12, W½;
Sec. 13, W½;
Sec. 14, lots 1 thru 4, inclusive, E½, N½NW¼, SE¼NW¼, and SE¼SW¼;
Sec. 15, lots 1 and 2, N½NE¼, SW¼NE¼, W½, NW¼SE¼ and S½SE¼;
Sec. 16, all;
Sec. 21, N½N½;
Sec. 22, N½;
Sec. 23, lots 1 and 2, N½, N½SW½, and S½SE¼;
Sec. 24, all.
T. 7 S., R. 77 W.,
Sec. 6, lot 25.
T. 6 S., R 78 W.,
Sec. 14, lots 1, 2, and 3, and S½N½, NW¼SW¼, and SE¼.
Sec. 15, S½N½ and S½;
Sec. 16, SE¼SW¼ and S½SE¼;
Sec. 21, E½ and E½W½;
Sec. 22, All;
Sec. 23, lots 1 thru 4, inclusive, and S½ and NE¼;
Sec. 24, lots 4 thru 7, inclusive;
Sec. 25, lots 11 thru 16, inclusive;
Sec. 26, lots 3 thru 12, inclusive, and NW¼;
Sec. 27, all;
Sec. 28, E½ and E½E½W½;
Sec. 29, E½NW¼SE¼;
Sec. 33, E½.
T. 7 S., R. 78 W.,
Sec. 3, S½SW¼ and S½N½SW¼;
Sec. 4, E½E½;
Sec. 5, E½NW¼SE¼, SW¼SE¼, and SE¼SE¼SW¼;
Sec. 7, S½N½S½, S½S½, and NE¼NE¼SE¼;
Sec. 8, S½NE¼NW¼, NE¼SW¼NW¼, NE¼NE¼NW¼, S½SW¼NW¼. SE¼NW¼, and NW¼SW¼;
Sec. 9, E½E½;
Sec. 10, S½, NW¼, and S½NE¼;
Sec. 11, S½SW¼ and NW¼SW¼;
Sec. 12, N½SE¼ and SW¼SE¼;
Sec. 13, W½NE¼ and NW¼;
Sec. 14, N½;
Sec. 15, N½;
Sec. 16, E½NE¼.
T. 6 S., R. 79 W.,
Sec. 27, W½NE¼NE¼, W½NE¼, N½SE¼NE¼, SW¼SE¼NE¼, E½NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, N½NW¼SE¼, SW¼NW¼SE¼, and NW¼NE¼SE¼;
Sec. 28, S½SE¼;
Sec. 32, E½SE¼;
Sec. 33, E½, SW¼, and S½NW¼;
Sec. 34, SW¼, S½NW¼, NW¼NW¼ and SW¼NE¼NW¼.
T. 7 S., R. 79 W.,
Sec. 3, NW¼, W½SW¼, W½E½SW¼, and SE¼SE¼SW¼;
Sec. 4, all;
Sec. 5, S½, NE¼, and S½NW¼;
Sec. 8, E½, NW¼, and NE¼SW¼;
Sec. 9, all;
Sec. 10, NW¼NW¼NE¼, S½NW¼NE¼, SW¼NE¼, SW¼SE¼NE¼, NW¼, and S½;
Sec. 11, N½NW¼SW¼, S½S½, and S½N½S½;
Sec. 12, S½S½ and S½N½S½;
Sec. 14, N½N½;
Sec. 15, lots 8 thru 14, inclusive, E½NE¼ and SE¼NW¼;
Sec. 16, all;
Sec. 17, NE¼ and NE¼SE¼.

The areas described aggregate approximately 22,087 acres in Grand, Cleer Creek, Summit and Eagle Counties. This application excludes any patented lands within the described areas.

The purpose of this withdrawal is to allow the Forest Service administrative alternatives in managing these lands.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal may present their views in writing to the Colorado State Director. A public meeting will be scheduled and held. The public meeting will be conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the public meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 99–3581 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two upcoming meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Thursday, March 25, 1999 at 7:00 p.m.

Address: Bushkill Visitor Information Center, Bushkill, PA 18324.

Meeting Date and Time: Saturday, June 12, 1999 at 9:00 a.m.

Address: New Jersey District Office, Layton, NJ.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including: Natural Resources and Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, and Interpretation, as well as Special Committee Reports. Superintendent William G. Laitner will give a report on various park issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Pub. L. 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

The meetings will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Congressional Listing for Delaware Water Gap NRA.

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002
Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, DC 20515
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

Citizen Advisory Commission, P. O. Box 284, Bushkill, PA 18324. Minutes of the meetings will be available for inspection several weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: February 2, 1999.

William G. Laitner,

Superintendent.

[FR Doc. 99–3607 Filed 2–12–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

FY 1999 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of funds for School-Based Partnerships, '99, a grant program designed to keep children safe by reducing school-related crime. This program, which complements the COPS Office's efforts to add 100,000 officers to our nation's streets and support innovative community policing, will help make schools safer for all children. The School-Based Partnerships '99 grant program will provide policing agencies with a unique opportunity to work with schools and community-based organizations to address persistent school-related crime problems. Applicants must focus on one primary school-related crime or disorder problem, occurring in or around an elementary or secondary school, such as: drug dealing or use on school grounds, problems experienced by students on the way to and from school, assault/sexual assault, alcohol use or alcohol-related problems/DWI, threat/intimidation, vandalism/graffiti, loitering and disorderly conduct directly related to crime or student safety, disputes that pose a threat to student safety, or larceny.

All local, Indian tribal, school police departments (consisting of officers with sworn authority) and other public law enforcement agencies committed to community policing are eligible to apply. Law enforcement agencies must partner with either a specific school, school district, or a nonprofit organization. A partnership between a policing agency and a specific school is encouraged, but if such a partnership is not practical, a policing agency may partner with a nonprofit community group. A collaboration agreement outlining the conditions and benefits each participant will contribute to the project must be included in the application.

DATES: School-Based Partnerships Application Kits will be available in March 1999. The deadline for application is April 30, 1999. The deadline for applications is April 30, 1999. Applications must be postmarked by April 30, 1999, to be eligible.

ADDRESSES: To obtain an application and the companion guide, ''Problem-Solving Tips: A Guide to Reducing Crime and Disorder Through Problem-Solving Partnerships,'' or for more information, call the U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. A copy of the application kit and ''Problem-Solving Tips'' also will be available in March on the COPS Office web site at: http://www.usdoj.gov/cops.

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770 or your grant advisor.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorized the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. As part of the Clinton Administration's commitment to combat and prevent crime in and around America's schools, the Justice Department's Office of Community Oriented Policing Services (COPS) has funding available for School-Based Partnerships '99, a grant program designed to keep children safe by reducing school-related crime. This program, which complements the COPS Office's efforts to add 100,000 officers to our nation's streets and support innovative community policing, will help make schools safer for all children.

The School-Based partnerships '99 grant program will provide policing agencies with a unique opportunity to work with schools and community-based organizations to address persistent school-related crime problems. Applicants must focus on one primary school-related crime or disorder problem, occurring in or around an elementary or secondary school, such as: drug dealing or use on school grounds, problems experienced by students on the way to and from school, assault/sexual assault, alcohol use or alcohol-related problems/DWI, threat/intimidation, vandalism/graffiti, loitering and disorderly conduct directly related to crime or student safety, disputes that pose a threat to student safety, or larceny.

The School-Based Partnerships '99 program emphasis problem analysis, a key component of problem solving, to help develop effectiveness responses, including prevention and intervention efforts. For example, a problem analysis might show that 80 percent of the assaults on students at a particular school are committed by truant students with prior arrest records from other schools. A comprehensive response to this problem might involve a collaborative effort among a team of social services personnel, school administrative staff, police and probation officers. This team might work together to change policies and improve communication to exert more control over the offenders and the problem behaviors. Similarly, other responses may include: training students in conflict resolution, restorative justice/community justice initiatives, crime awareness/prevention programs, programs targeting likely victims and offenders at high-risk times, social intervention programs, physical changes in the environment to reduce the problem, and school policy and procedural changes.

Applicants will use problem-solving methods to understand the causes of the problem; develop specific, tailor-made responses to that problem; and assess the impact of those responses. In order to help communities use creative problem solving to address school-related problems, this grant will fund resources such as: Computer technology; crime analysis personnel; the cost of conducting student surveys and victim/offender interviews; the cost of community organizers, school personnel and/or students involved in analyzing or coordinating the project; and training and technical assistance in collaborative problem solving. To complement this grant program, school resource officers may be hired through the COPS Universal Hiring Program (UHP) and/or the COPS in Schools grant program.

Although this grant program is focused on the careful analysis of a specific school-related crime problem, it is not intended to be overly complex or

technical. Applicants are not expected to be experts in problem solving and crime analysis. Any organization concerned with school safety or crime issues is encouraged to participate in this program. Applicants that would like assistance in problem-solving techniques are encouraged to plan for such technical assistance in their project budgets.

This grant program is expected to be extremely competitive. A total of up to $15,000,000 in funding will be available under the School-Based Partnerships program. A local match will not be required, although applicants are encouraged to contribute cash or in-kind resources to their proposed projects.

Grant funds must be used to supplement, and not supplant, state or local funds that otherwise would be devoted to public safety activities.

All local, Indian tribal, school police departments (consisting of officers with sworn authority) and other public law enforcement agencies committed to community policing are eligible to apply. Law enforcement agencies must partner with either a specific school, school district, or a nonprofit organization. A partnership between a policing agency and a specific school is encouraged, but if such a partnership is not practical, a policing agency may partner with a nonprofit community group. A collaboration agreement outlining the conditions and benefits each participant will contribute to the project must be include in the application.

Law enforcement agencies (primary applicants) may submit only one application. Schools or community-based entities (secondary applicants) that apply as partners are expected to include student representatives in the project.

An award under the School-Based Partnerships '99 grant program will not affect the eligibility of an agency to receive awards under any other COPS program.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: February 5, 1999.

Joseph E. Brann,

Director.

[FR Doc. 99–3614 Filed 2–12–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–07; Exemption Application No. D–10372, et al.]

Grant of Individual Exemptions; Keystone Financial, Inc. and Certain of Its Affiliates (Keystone), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the Keystone Financial, Inc. and Certain of Its Affiliates (Keystone) Located in Harrisburg, Pennsylvania.

[Prohibited Transaction Exemption 99–07; Exemption Application No. D–10372]

Exemption

Section I—Exemption for In-Kind Transfers of CIF Assets

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply to the in-kind transfers of assets of various employee benefit plans for which Keystone served as a fiduciary (the Client Plans), that were held in certain collective investment funds (CIFs) maintained by Keystone, in exchange for shares of the KeyPremier Funds (the Funds), an open-ended investment company registered under the Investment Company Act of 1940 (the ICA), for which Keystone is an investment adviser and may provide other services (i.e., Secondary Services, as defined below in Section II(h)), which occurred on December 2, 1996, February 3, 1997 and July 1, 1997,[1] provided that the following conditions were met:

(a) A fiduciary (the Second Fiduciary) who was acting on behalf of each affected Client Plan and who was independent of and unrelated to Keystone, as defined in Section II(g) below, received advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (c) below.

(b) On the basis of the information described in paragraph (c) below, the Second Fiduciary provided prior

[1] In this regard, Keystone represents that any further in-kind transfers of CIF assets to the Funds will comply with the conditions of Prohibited Transaction Exemption (PTE) 97–41 (62 FR 42830, August 8, 1997). PTE 97–41 permits the purchase by an employee benefit plan (i.e. a Client Plan) of shares of one or more open-end management investment companies (i.e mutual funds) registered under the ICA, in exchange for assets of the Client Plan transferred in-kind to the mutual fund from a collective investment fund (i.e. a CIF) maintained by a bank or a plan adviser, where the bank or plan adviser is the investment adviser to the mutual fund and also a fiduciary to the Client Plan, if the conditions of the exemption are met. However, as noted further below, Keystone distributed written confirmation to the Client Plans regarding the in-kind transfer of CIF assets made to the Funds within 120 days, rather than within the 105-day period required by Section I(g) of PTE 97–41. Thus, an individual exemption to cover these specific CIF conversions is necessary to provide the appropriate retroactive relief.

written authorization for the in-kind transfer of the Client Plan's CIF assets in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees to be received by Keystone in connection with its services to the Fund. Such authorization by the Second Fiduciary must have been consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) The Second Fiduciary who was acting on behalf of a Client Plan received in advance of the investment by the Plan in any of the Funds, a full and detailed written disclosure of information concerning the Funds which included, but was not limited to:

(1) A current prospectus for each portfolio of each of the Funds in which such Client Plan was considering investing;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, and any fees for Secondary Services, as defined in Section II(h) below, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Keystone considered such investments to be appropriate for the Client Plan; and

(4) A statement describing whether there were any limitations applicable to Keystone with respect to which assets of the Client Plan may be invested in the Funds, and, if so, the nature of such limitations.

(d) For each Client Plan, the combined total of all fees received by Keystone for the provision of services to the Client Plan, and in connection with the provision of services to any of the Funds in which the Client Plans invested, was not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) Neither Keystone nor an Affiliate received any fees payable pursuant to Rule 12b–1 under the ICA (the 12b–1 Fees) in connection with the transactions.

(f) All dealings between the Client Plans and any of the Funds were on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(g) No sales commissions were paid by the Client Plans in connection with the in-kind transfers of CIF assets in exchange for shares of the Funds.

(h) The transferred assets constituted the Client Plan's pro rata portion of all assets that were held by the CIF immediately prior to the transfer.

(i) Following the termination of each CIF, each Client Plan received shares of the Funds that had a total net asset value equal to the Client Plan's pro rata share of the assets of the CIFs that were exchanged for such Fund shares on the date of transfer.

(j) With respect to each in-kind transfer of CIF assets to a Fund, each Client Plan received shares of the Fund which had a total net asset value that was equal to the value of the Plan's pro rata share of the assets of the corresponding CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set forth by the Securities and Exchange Commission (SEC) Rule 17a–7(b) under the ICA (Rule 17a–7) for the valuation of such assets. Such procedures must have required that all securities for which a current market price was not obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ[2] were to be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the in-kind transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Keystone.

(k) Not later than thirty (30) days after completion of each in-kind transfer of CIF assets in exchange for shares of the Funds which occurred on December 2, 1996, February 3, 1997, and July 1, 1997, Keystone sent by regular mail to the Second Fiduciary, a written confirmation which contained:

(i) The identity of each of the assets that was valued for purposes of the transaction in accordance with SEC Rule 17a–7(b)(4) under the ICA;

(ii) The price of each of the assets involved in the transaction; and

(iii) The identity of each pricing service or market maker consulted in determining the value of such assets.

(l) For each in-kind transfer of CIF assets, Keystone sent by regular mail to the Second Fiduciary, no later than one-hundred and twenty (120) days after completion of the asset transfer made in exchange for shares of the Funds,[3] a written confirmation which contained:

(1) The number of CIF units held by each affected Client Plan immediately before the in-kind transfer, the related per unit value, and the aggregate dollar value of the units transferred; and

(2) The number of shares in the Funds that were held by each affected Client Plan immediately following the in-kind transfer, the related per share net asset value, and the aggregate dollar value of the shares received.

(m) Keystone maintains for a period of six (6) years the records necessary to enable the persons, as described in paragraph (n) below, to determine whether the conditions of the exemption have been, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Keystone, the records are lost or destroyed prior to the end of the six (6) year period, and

(2) No party in interest, other than Keystone, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (n) below.

(n)(1) Except as provided in paragraph (n)(2) and notwithstanding any provisions of Section 504(a)(2) and (b) of the Act, the records referred to in paragraph (m) above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of each of the Client Plans who has authority to acquire or dispose of shares of any of the Funds owned by such Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary; and

(2) None of the persons described in paragraph (n)(1)(ii) and (iii) of this Section I shall be authorized to examine trade secrets of Keystone, or commercial or financial information which is privileged or confidential.

Section II—Definitions

For purposes of this exemption,

(a) The term ''Keystone'' means Keystone Financial, Inc., and affiliates, as defined in Section II(b)(1).

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries,

[2] The National Association of Securities Dealers Automated Quotation National Market System.

[3] See Footnote 1 above.

controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' means the KeyPremier Funds for which Keystone served as investment adviser, and provided certain ''Secondary Services'' (as defined paragraph (h) below), for the Funds that were involved in the in-kind transfers of CIF assets which occurred on December 2, 1996, February 3, 1997, and July 1, 1997.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales of Fund shares, as calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who was independent of and unrelated to Keystone at the time of the subject transaction. For purposes of this exemption, the Second Fiduciary will not be deemed to have been independent of and unrelated to Keystone if:

(1) Such Second Fiduciary was directly or indirectly controlled, was controlled by, or was under common control with Keystone;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary was an officer, director, partner, or employee of Keystone (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly received any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

With respect to the Client Plans, if an officer, director, partner, or employee of Keystone (or a relative of such persons), was a director of such Second Fiduciary, and if he or she abstained from participation in (i) the choice of the Plan's investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I above, then Section II(g)(2) above shall not apply.

(h) The term ''Secondary Service'' means a service, other than an investment management, investment advisory, or similar service, which was provided by Keystone to the Funds involved in the subject transaction, including but not limited to custodial, accounting, administrative, brokerage or any other service.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on November 25, 1998 at 63 FR 65249.

EFFECTIVE DATE: This exemption is effective as of December 2, 1996, February 3, 1997 and July 1, 1997, for transactions described in Section I.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Bankers Trust Company (BTC) Located in New York, New York

[Prohibited Transaction Exemption 99–08; Exemption Application Nos. D–10592 through D–10594]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to BTC by certain employee benefit plans (the Plans) investing in Hometown America L.L.C. (the LLC) of security interests in the capital commitments of the Plans to the LLC, where BTC is the representative of certain lenders (the Lenders) that will fund a so-called ''credit facility'' providing loans to the LLC, and the Lenders are parties in interest with respect to the Plans; and (2) the proposed agreements by the Plans to honor capital calls made to the Plans by BTC, in lieu of the LLC's sole managing member, in connection with the Plan's capital commitments to the LLC where such capital calls relate to the security interests in the capital commitments previously granted to BTC; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LLC and to execute such grants and agreements in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; and (c) with respect to Plans that may invest in the LLC in the future, such Plans will have assets of not less than $100 million, and not more than 5% of the assets of such Plan will be invested in the LLC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 25, 1998 at 63 FR 65254.

Notice to Interested Persons: The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant represents that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by December 18, 1998. Interested persons were notified that they had until January 17, 1999 to comment on the proposed exemption.

Written Comments: The only comment letter received by the Department was filed by the applicant to clarify three items contained in the Summary of Facts and Representations in the notice of proposed exemption (the Summary).

First, the applicant notes that Representation 9 of the Summary correctly states that some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LLC by virtue of providing fiduciary services to such Plans. However, the applicant wishes to also note that the Lenders may provide services other than fiduciary services to such Plans.

Second, the applicant notes that Representation 9 of the Summary also contains a reference to William M. Stephens (Mr. Stephens), who was the Chief Investment Officer of Ameritech Corporation (Ameritech) at the time of the application. However, the applicant states that Mr. Stephens is no longer the Chief Investment Officer of Ameritech. Thus, the applicant wishes to clarify that the use of the word ''currently'' in referring to Mr. Stephens acting in that capacity is no longer correct.

Finally, in Representation 12 of the Summary, BTC represents that the only direct relationship between any of the Members of the LLC and any of the Lenders to the LLC is the execution of the Estoppel. The Estoppel, as discussed earlier in the Summary, is an

acknowledgment by each Member that the LLC and the Manager have pledged and assigned to BTC, for the benefit of each Lender, all of their rights under the LLC Agreement relating to capital commitments and capital calls of such Members. In this regard, the applicant wishes to clarify that this absence of any direct relationship between the Members and the Lenders is also true at the time of any investment by a Plan in the LLC.

Accordingly, after consideration of the entire record, including the applicant's comments, the Department has determined to grant the exemption as proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bankers Trust Company (Bankers Trust) Located in New York, New York

[Prohibited Transaction Exemption 99–09; Application Number D–10644]

Exemption

Section I

The restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The sale (the Sale) of fractional amounts of certain fixed-income instruments (Fractional Amounts) to Bankers Trust and its affiliates by plans for which Bankers Trust or its affiliates provide fiduciary or other services (Client Plans), as well as employee benefit plans established and maintained by Bankers Trust or its affiliates (BT Plans) (collectively, the Plans); or (2) as an alternative to the Sale of the Fractional Amounts (the Alternative), the receipt by the Plans from Bankers Trust of cash equal to the amount that Bankers Trust or its affiliates receive from the issuer of the fixed-income instrument in lieu of the Fractional Amount, exclusive of transaction costs, plus accrued interest, provided that the following conditions are met:

(a) Each Sale or Alternative involves a one time transaction for cash;

(b) The terms of each Sale or Alternative are at least as favorable to the Plan as those terms which would be available in an arm's-length transaction with an unrelated party;

(c)(1) Under a Sale, the Plans receive an amount in cash which is not less than the par value for each of the Fractional Amounts; or (2) under the Alternative, the Plans receive cash equal to the amount received by Bankers Trust from the issuer of the fixed-income security in lieu of the Fractional Amount, exclusive of transaction costs, plus accrued interest;

(d) In the case of the single Client Plans,

(1) Each Sale or Alternative is subject to the prior approval of an independent plan fiduciary;

(2) The independent fiduciary of each Plan is furnished written notice at least 60 days prior to the proposed Sale or Alternative transaction, containing information relevant to the independent fiduciary's determination whether to approve the Sale or Alternative transaction. The notice will inform the independent fiduciary that failure to respond within 45 days of receipt of the notice will constitute authorization of Bankers Trust to engage in the transaction. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be delivered to the independent fiduciaries each year notifying them of their right to not participate in this program;

(e) In the case of the Client Plans participating in collective funds to which Bankers Trust serves as trustee or investment manager,

(1) Each Sale or Alternative transaction engaged in by the collective fund is subject to the prior approval of each independent plan fiduciary of participating Plans in the fund;

(2) The independent fiduciary of each Plan is furnished written notice at least 60 days prior to the proposed Sale or Alternative transaction, containing information relevant to the independent fiduciary's determination whether to approve the Sale or Alternative transaction or withdraw from the collective fund prior to the Sale or Alternative. The notice will inform the independent fiduciary that failure to respond within 45 days of receipt of the notice will constitute authorization of the collective fund for which Bankers Trust serves as trustee or investment manager to engage in the transaction. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be delivered to the independent fiduciaries each year notifying them of their right to withdraw from the collective fund;

(f) In the case of the Plans, Bankers Trust must engage in the Sale or Alternative within 30 days of the date that the Fractional Amounts or the cash received by Bankers Trust from the issuers of the fixed-income security in lieu of the Fractional Amounts are received from the issuer;

(g) The Plans do not incur any commissions or other expenses relating to the Sales or Alternatives; and

(h) (1) Bankers Trust or an affiliate maintains or causes to be maintained within the United States, for a period of six years from the date of such transaction, the records necessary to enable the persons described in this section to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than Bankers Trust or its affiliates, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Bankers Trust or its affiliates, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized employees of (a) the Department, (b) the Internal Revenue Service, (c) plan participants and beneficiaries, (d) any employer of plan participants and beneficiaries, and (e) any employee organization whose members are covered by such plan; except that none of the persons described in (c) through (e) of this subsection shall be authorized to examine trade secrets of Bankers Trust or its affiliates or any commercial or financial information which is privileged or confidential.

Section II. Definitions

(a) The term ''affiliate'' of Bankers Trust means any other bank or similar financial institution directly or indirectly controlling, controlled by, or under common control with Bankers Trust.

(b) The term ''Euro'' means the single European currency to be introduced on January 1, 1999 in eleven Member States of the European Union.[4]

(c) The term ''Fractional Amount'' means, with respect to any fixed-income instrument, an amount less than one Euro.

(d) The term ''independent plan fiduciary'' means a plan fiduciary

[4] For purposes of reference, the Euro is slated to have a conversion rate of 1 Euro equals 1 European Currency Unit (ECU). The ECU is a basket of 12 European currencies that is frequently used for inter-governmental and market transactions. Currently, the ECU is worth less than one U.S. dollar.

independent of Bankers Trust and any of its affiliates.

(e) The term ''par value'' means the face value of the fixed-income instrument.

(f) The term ''Plan'' includes all employee benefit plans to which Bankers Trust or an affiliate acts as a service provider, including a fiduciary, and all plans established and maintained by Bankers Trust and its affiliates, which have net assets of at least $25,000,000.

Effective Date: This exemption is effective for the period beginning on January 1, 1999 and ending three years from the date on which each country joining the European Economic and Monetary Union converts to the Euro.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 21, 1998, at 63 FR 56224.

Written Comments and Hearing Requests: The Department received one written comment from the applicant with respect to the proposed exemption. In the letter, the applicant raised several concerns regarding the proposed exemption.

Bankers Trust represents that it has concerns regarding paragraph (f) of Section I of the proposed exemption, which would not permit Bankers Trust or its affiliates to serve as investment manager or trustee with investment discretion with respect to assets involved in the transaction. Bankers Trust believes that such a condition provides no additional safeguards for Plans both advised and trusteed by Bankers Trust. In fact, Bankers Trust states that it harms these Plans because they will be forced to sell their fractional shares in the market, thereby subjecting them to potential market discounts and transaction costs. The applicant represents that the condition will lead to the anomalous result that Plans trusteed by Bankers Trust but advised by others will be ''made whole'' for fractional shares, while Plans both advised and trusteed by Bankers Trust, to whom arguably an even greater duty is owed, will be the only Plans suffering adverse consequences in the market associated with the fractional shares resulting from conversion to the Euro. The Department agrees with the foregoing and has decided to delete this condition from the grant of the exemption.

In addition, Bankers Trust clarified the procedures for opting out of the transaction by Plans participating in collective funds sponsored by Bankers Trust. Bankers Trust states that if there is such an objection by a Plan participating in a collective fund, the Plan will be given the opportunity to withdraw from the collective fund prior to the Sale or Alternative. Following notice of the prospective Sale or Alternative by the fund, Plan fiduciaries which do not object within 45 days of such notice will be deemed to have approved the transaction. Bankers Trust states that it has already provided notice of the transaction to all of its trust, collective trust, and managed accounts with notice of the Sale or Alternative and a copy of the proposed exemption. In this regard, the Department has modified the language of paragraph (d) of the proposal and added a new paragraph (e) to provide for transactional approval by independent fiduciaries of single Client Plans and Client Plans invested in collective funds. Further, paragraph (e) as it appeared in the proposed exemption has been redesignated as paragraph (f) in the grant.

Finally, Bankers Trust alerted the Department to two developments that have occurred in the markets participating in Euro since the proposed exemption appeared in the **Federal Register**. First, the applicant originally believed that all of the markets participating in Euro would move to a Euro-only environment beginning on January 1, 1999. While that continues to be true of nine of the eleven countries converting to Euro, Ireland will permit legacy currency or Euro currency instructions until January 8, 1999, and the Netherlands will permit legacy currency or Euro currency instructions throughout the entire three-year transition period. Second, France and the Netherlands have decided to use a variation on the redenomination process described in the proposal. Instead of issuing fractional shares, France and the Netherlands have directed that financial instruments will be redenominated to whole Euros, with the value of the fractional share compensated with cash. Because it appears that the cost of transferring the cash value of the fractional share from a subcustodian to a Plan's account will exceed the value of that amount, Bankers Trust states that it will credit client accounts with the conversion price of the Fractional Amount, plus accrued interest exclusive of transaction costs, as a service to its clients. In addition, Bankers Trust states that it will credit the value paid by the issuer, regardless of whether it actually receives that amount because of transaction costs, to the extent that any issuers in the future specify a different method for dealing with fractional shares. In this regard, the Department is modifying Section I of the proposed exemption, which proposed relief for the Sale of the Fractional Amounts by Client Plans and BT Plans to Bankers Trust or its affiliates to include an alternative transaction (the Alternative). The Alternative transaction will be the receipt by the Plans from Bankers Trust of cash amounts that Bankers Trust receives from the issuer of the fixed-income instrument from which the fractional amount is derived, exclusive of transaction costs, plus accrued interest. Further, the Department is modifying paragraph (c) of Section I as it appeared in the proposed exemption to state as follows:

(c) (1) Under a Sale, the Plans receive an amount in cash which is not less than the par value for each of the Fractional Amounts; or (2) under the Alternative, the Plans receive cash equal to the amount received by Bankers Trust from the issuer of the fixed-income security in lieu of the Fractional Amount, exclusive of transaction costs, plus accrued interest.

The Department received no other written comments, nor any requests for a hearing. Accordingly, the Department has determined to grant the exemption as modified.

For Further Information Contact: Contact James Scott Frazier of the Department, phone number (202) 219–8881 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the

fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 9th day of February, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–3563 Filed 2–12–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10693, et al.]

Proposed Exemptions; Standard Bank Employees Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Standard Bank Employees Profit Sharing Plan (the Plan), Located in Hickory Hills, Illinois

[Application No. D–10693]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.)

Part I. Purchases of Residential Mortgage Notes

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of October 1, 1998, to the purchases by the Plan of certain residential mortgage notes (the Notes) from Standard Bank and Trust Company (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) An independent qualified fiduciary will decide which Notes will be purchased for the Plan;

(2) Only first mortgage Notes will be purchased by the Plan;

(3) The Notes which will be purchased by the Plan will have: (a) a borrower payment history with the Employer of at least three months; (b) a maximum 15 year maturity; and (c) the loan to value ratio of the collateral will be at least 150% of the principal amount of the Note;

(4) If the mortgage loan is an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(5) If the mortgage loan is a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(6) No more than twenty-five percent (25%) of the value of the Plan's total assets will be invested in the Notes;

(7) No more than ten percent (10%) of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower;

(8) The fees received by the independent fiduciary for serving in that capacity with respect to the Plan for the transactions described herein, combined with any other fees derived from the Employer or related parties,

will not exceed one percent (1%) of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein; and

(9) The conditions of Prohibited Transaction Exemption (PTE) 93–71 (58 FR 51109, September 30, 1993) have been met. PTE 93–71, which expired September 30, 1998, provided prospective relief for the purchases by the Plan of certain Notes from the Employer.[1]

Part II. Repurchases of Residential Mortgage Notes

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the repurchases of the Notes (the Repurchases) by the Employer: (a) in the event of default; (b) if the limitations set forth in Part I (6) and/or (7) are exceeded; and (c) at other times as determined by the independent fiduciary,[2] provided that the Repurchases will be at a price which is equal to the greater of the outstanding principal balance of the Note plus accrued interest through the date of repurchase, or the current fair market value of the Note as determined by the independent fiduciary.

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of October 1, 1998.

Summary of Facts and Representations

1. The Plan is a profit sharing plan, which, as of December 31, 1997, had approximately 202 participants and beneficiaries. As of September 22, 1998, the Plan had $4,233,826 in total assets. The Plan trustee and administrator is Standard Bank and Trust Company located at 2400 West 95th Street, Evergreen Park, Illinois. The Plan is audited on an annual basis by Deloitte & Touche, a certified public accounting firm. The Employer is a licensed Illinois State bank, and is a recognized mortgage lender. The Employer is a member of the Federal Deposit Insurance Corporation (FDIC), and is examined annually by the Illinois Commissioner of Banks and every eighteen months by the FDIC.

2. Among its banking activities, the Employer serves as a mortgage lender wherein the Employer makes loans to borrowers to purchase a residential dwelling unit (RDU) or to refinance mortgage loans on the RDU. The borrower signs or guarantees a mortgage note payable to the Employer secured with a mortgage or a trust deed and, if appropriate, an assignment of rents recorded against the RDU. In the case of a purchase or refinancing, an appraisal is obtained from a certified independent appraiser establishing the market value of the RDU being pledged as collateral for the mortgage note. A title insurance policy insuring the first and paramount lien of the mortgage on the RDU is obtained from a licensed title insurance company, and hazard insurance is also obtained naming the Employer as a mortgagee. In compiling its mortgage portfolio, the Employer reviews the following criteria:

(a) The credit record of the borrower showing that the borrower is a good credit risk and has a record of paying bills in a timely manner;

(b) A verification of the borrower's employment or source of income, indicating that the gross income is adequate to service the mortgage debt;

(c) The ratio of mortgage payments to borrower's income; and

(d) An appraisal by a certified independent appraiser establishing the market value of the RDU to be pledged as collateral for the mortgage note.

3. The Employer was granted an individual exemption by the Department in 1993 (PTE 93–71), for prospective purchases of certain residential mortgage notes (i.e., the Notes) by the Plan from the Employer, a party in interest with respect to the Plan. PTE 93–71 provided temporary relief, and remained effective for a five year period beginning on September 30, 1993, which was the date the final grant was published in the **Federal Register**. Thus, PTE 93–71 expired September 30, 1998. The applicant requests herein that this proposed exemption, if granted, be effective as of October 1, 1998, for the sake of continuity, although no new purchases of the Notes by the Plan have occurred since September 30, 1998. This proposed exemption contains conditions that are substantially similar to the conditions contained in PTE 93–71.

4. The Employer proposes to prospectively continue selling the Notes originated by the Employer to the Plan.[3]

William J. Duffner (Mr. Duffner), CPA, of Evergreen Park, Illinois, will serve as an independent fiduciary for the Plan with respect to the proposed transactions and will have investment discretion regarding any new purchases of the Notes by the Plan. In this regard, Mr. Duffner also served as the Plan's independent Fiduciary under PTE 93–71.

Mr. Duffner represents that he is self-employed as a Certified Public Accountant (CPA) as well as a real estate and financial consultant. Mr. Duffner and the accounting firm of Duffner & Company, P.C., provide a wide range of services including, but not limited to, investment analysis for pension and profit sharing plans, Keogh plans and individual retirement accounts (IRAs). Mr. Duffner and his firm also provide assistance to such plans and other investors in residential mortgage and land title matters. Mr. Duffner represents that he is unrelated to the Plan and the Employer[4] and is experienced with mortgage investments and related matters. Mr. Duffner states that by virtue of his education and experience he is qualified to serve as an independent fiduciary for the Plan for the transactions described herein.

Mr. Duffner has been advised by legal counsel as to the duties and responsibilities of an ERISA fiduciary and assumes those responsibilities for the Plan in regard to the transactions described herein. Mr. Duffner also states that the fees received by him for serving as the Plan's independent fiduciary, combined with any other fees derived from the Employer or related parties, will not exceed one percent (1%) of his annual gross income from all sources for each fiscal year that he serves as independent fiduciary.

5. As the independent fiduciary, Mr. Duffner will verify information, review documents and make computations as

[1] The applicant represents that, as mandated by PTE 93–71, the Employer has filed Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and paid the applicable excise taxes for certain past purchases by the Plan of the Notes from the Employer which occurred prior to the effective date of PTE 93–71.

[2] The Department notes that if a violation of any of the terms and conditions of Part I occurs, the exemptive relief provided by Part I for purchases of the Notes by the Plan will no longer be available. However, the Department further notes that the loss of exemption under Part I will not affect the use of Part II to dispose of the Notes previously acquired by the Plan pursuant to the exemption.

[3] The Department notes that the decisions to acquire and hold the Notes are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department is not proposing relief for any violations of Part 4 which may arise as a result of the acquisition and holding of the Notes by the Plan.

Furthermore, this exemption, if granted, does not apply to any prohibited transactions which may arise as a result of the Employer receiving origination fees from the borrowers in connection with the Notes which in the future will be purchased by the Plan.

[4] Mr. Duffner does acknowledge that he personally maintains deposit and loan accounts with the Employer. However, such accounts represent a de minimus amount of the total accounts maintained by the Employer.

necessary for each proposed sale of a Note by the Employer to the Plan. The Notes will represent original acquisition mortgage loans or mortgage loan refinancings. The Notes will be first mortgage Notes and will be seasoned for at least three months. The Notes to be offered to the Plan will be selected by the Employer. However, Mr. Duffner will have discretion with respect to whether a purchase of the Notes will be made by the Plan. Prior to any prospective purchase by the Plan, Mr. Duffner will review alternative Plan investments. Mr. Duffner will determine whether the purchase of a specific Note would be in the best interest of the Plan as an investment for the Plan's portfolio. In this regard, Mr. Duffner will review Employer's credit and security files maintained on the specific mortgage loan evidenced by the Note and any other relevant documents to ascertain:

(a) The borrower's employment or source of income by reference to the borrower's financial statement, loan application and tax information;

(b) The ratio of mortgage payments to the borrower's income;

(c) The credit worthiness and payment history of the borrower by reference to credit, employment and financial information;

(d) That the borrower is not an employee of the Employer and is independent of the Plan and the Employer;

(e) Any required guaranty or assignment of rents;

(f)(1) If the mortgage loan is an original acquisition mortgage loan, that the Note does not exceed two-thirds of the lower of the purchase price or the appraised value of the RDU mortgaged by the borrower to the Employer to secure the Note; or

(2) If the mortgage loan is a refinancing of the original acquisition mortgage loan, that the Note does not exceed two-thirds of the appraised value of the RDU mortgaged by the borrower to the Employer to secure the Note;

(g) That the Note has been seasoned for at least three months and is secured by a first mortgage on a single-family RDU and specifies a maximum fifteen (15) year maturity with a fixed interest rate per annum on the principal balance;

(h) That a title insurance policy has been issued to the Employer insuring the mortgage on the RDU as a first and paramount lien and designating the Employer, its successors and assigns as the named insured;

(i) That a hazard insurance policy and flood insurance policy, if applicable, have been issued insuring the Employer and its successors and assigns as mortgagee of the RDU in an amount not less than the principal amount of the Note; and

(j) That the Employer, as servicer of the Notes, will charge the Plan only for its direct costs in connection with such services, as permitted by section 408(b)(2) of the Act.

Mr. Duffner can also require the Employer to repurchase any Notes from the Plan to meet liquidity needs of the Plan. Such repurchases will be for the greater of the outstanding principal balance of the Note plus accrued interest through the date of repurchase, or the current fair market value of the Note. The fair market value will be determined based on computations described below.

6. On the date of any sale, Mr. Duffner will also verify that the sale price of the Note to the Plan is equal to the current fair market value of the Note. In this regard, Mr. Duffner will rely on the following method in determining the fair market value of the Note:

(a) The average yield of comparable RDU mortgage loans will be determined based upon the interest rates offered by direct federally insured lenders in the Employer's market area. Such interest rate information will be obtained from independent published sources or the Employer's in-house survey of mortgage loan interest rates offered by other direct federally insured lenders in the Employer's market area;

(b) The fair market value of the Note will then be determined by adjusting the principal amount of the Note to a sum which will result in a yield equal to the average yield computed by reference to the published sources or the Employer's in-house survey referred to in (a) above. The current fair market value of the Note may result in a sale at a premium or a discount from the outstanding principal balance on the Note. However, differences between average market yield and the yield on the Note of less than ¼% will be considered a de minimis variance and no adjustment will be made for such variance; and

(c) Once the fair market value of the Note is determined, that amount will be increased to reflect accrued interest due the Employer from the borrower through the date of the sale of the Note to the Plan, to arrive at the sale price of the Note.[5]

The Plan will then pay the Employer the sales price in cash. Any Note being evaluated by Mr. Duffner would have been originated by the Employer for its own portfolio and not as an agent for the Plan. The Plan will pay no transfer charges or other costs in relation to these transactions. It is represented that any risks and burdens involved in the origination, closing, booking and servicing of the mortgage loans will be borne by the Employer at no cost to the Plan.

7. Mr. Duffner as the independent fiduciary will be responsible for reviewing the Plan's financial statements and the Employer's compliance with the terms of the exemption (if granted) as set forth in this document. Mr. Duffner will ensure that the Plan's aggregate investment in the Notes does not at any time exceed 25% of the Plan's total assets, and that the Plan's investment in the Notes from any one borrower does not at any time exceed 10% of the Plan's total assets. In this regard, Mr. Duffner will conduct annual reviews of the total assets of the Plan in order to determine their fair market value. These reviews will take place on each anniversary date from the date that the final grant for this proposed exemption is published in the **Federal Register**. If on those occasions, the aggregate fair market value of the Notes in the Plan's portfolio exceeds either the 25% or the 10% limitation as set forth herein, Mr. Duffner will require the Employer to repurchase any Notes as necessary to comply with the 25% and 10% limitations. Such repurchases will be completed within three (3) business days after each annual review and will be at a price equal to the greater of the outstanding principal balance of the Notes plus accrued interest through the date of repurchase, or the fair market value of the Notes on the date of review. Furthermore, Mr. Duffner will monitor the Employer's mortgage loan servicing department to assure the receipt of monthly payments of principal and interest due on each Note purchased by the Plan, and the remission of such payments to the Plan.

8. Mr. Duffner will also monitor the Plan's rights in default situations. In this regard, the Employer has agreed to repurchase any Note (i.e., a Repurchase) which is delinquent for three

[5] When determining the purchase price to the Plan of a Note originated by the Employer, the independent fiduciary will consider prepaid interest in the form of origination fees or points charged to the borrower by the Employer and retained by the Employer. Origination fees or points will be considered in the comparison of the nominal yield of the Note to the average yield in the Employer's market area for comparable residential dwelling unit mortgage loans offered by other federally insured lenders. The average yield figures from other federally insured lenders will include prepaid interest in the form of origination fees or points. By making this comparison, any prepaid interest in the form of origination fees or points retained by the Employer will be considered in the computation of the purchase price of the Note to the Plan when the purchase price of the Note is adjusted to reflect an average market yield.

consecutive monthly payments of principal and interest at a price equal to the unpaid principal balance on the Note plus accrued interest through the date of repurchase. Such Repurchase shall occur not later than the last business day of the third consecutive month of uncured principal and interest payment default. Also, the Employer will remit to the Plan any late fees assessed and collected from the borrower. Mr. Duffner represents that a Note in default always has a fair market value which is not greater than the unpaid principal balance plus accrued interest through the date of repurchase. Therefore, Mr. Duffner will not conduct any fair market value computations for the Repurchases in the event of default. However, Mr. Duffner will verify the accuracy of the sums received by the Plan.

9. Mr. Duffner has determined that the continued purchase by the Plan of the Notes is administratively feasible, protective and in the interest of the Plan. Mr. Duffner represents that, due to current interest rate levels and other market conditions, Plan assets that are invested in debt instruments and certificates of deposits are returning substantially lower yields than the Notes. Traditionally, mortgage note investments have certain inherent risks, such as the borrower's credit risk. However, under the conditions of this proposed exemption, the Plan will not be subject to those risks due to the Employer's obligation to repurchase from the Plan any Notes in default. In addition, the independent fiduciary (i.e., Mr. Duffner) can require the Employer to repurchase any Notes from the Plan in order to satisfy the Plan's liquidity needs and to maintain compliance with the 25% and 10% limitations as set forth herein. Therefore, Mr. Duffner concludes that acquisition of the Notes by the Plan will result in higher earnings for the Plan with less risks than comparable fixed income investments.

The Employer and Mr. Duffner understand that the effectiveness of the exemption, if granted, will be dependent on the compliance by the parties with the terms and conditions of the exemption as set forth herein. Furthermore, the Employer and Mr. Duffner understand that in the event that unanticipated circumstances reduce the assets of the Plan to the extent that a violation of any of the terms and conditions of the exemption results, the relief provided by the exemption will no longer be available, unless sufficient Repurchases of the Notes are made by the Employer within three (3) business days after the annual review described in Paragraph 7 above, or within three (3) business days of the discovery by Mr. Duffner, as independent fiduciary, of the unanticipated event which gave rise to any violation of the terms and conditions of the exemption. In such instances, no additional purchases of the Notes will be made by the Plan until the conditions of the exemption can be met.

In this regard, the applicant makes a request regarding a successor independent fiduciary (the Successor). Specifically, if it becomes necessary to appoint the Successor to replace Mr. Duffner, the applicant will send a letter to the Department thirty (30) days prior to the appointment of the Successor. The letter will specify that the Successor has responsibilities, experience and independence similar to those of Mr. Duffner. If the Department does not object to the Successor, the new appointment will become effective on the 30th day after the Department receives such letter.

10. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The independent fiduciary (i.e., Mr. Duffner) will decide which Notes will be purchased for the Plan;

(b) Only first mortgage Notes will be purchased by the Plan;

(c) The Notes which will be purchased by the Plan will be seasoned for at least three months, will have maximum 15 year maturity, and the loan to value ratio of the collateral will be at least 150% of the principal amount of the Note;

(d) In the case of an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(e) In the case of a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(f) In the event of a default and/or if the limitations described in (g) and (h) below are exceeded, the independent fiduciary (i.e., Mr. Duffner) can require the Employer to repurchase any Notes sold to the Plan. Such Repurchases will be for the greater of the outstanding principal balance of the Notes plus accrued interest through the date of Repurchase, or the current fair market value of the Notes;

(g) No more than twenty-five percent (25%) of the value of the Plan's total assets will be invested in the Notes;

(h) No more than ten percent (10%) of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower;

(i) Mr. Duffner, as the Plan's independent fiduciary, states that the fees received by him for serving as an independent fiduciary to the Plan, combined with any other fees derived from the Employer or related parties, will not exceed one percent (1%) of his annual gross income from all sources for each fiscal year that he serves as the independent fiduciary;

(j) The conditions of PTE 93–71 have been met. PTE 93–71, which expired September 30, 1998, provided prospective relief for the purchases by the Plan of certain Notes from the Employer.

(k) The Employer and Mr. Duffner, as the Plan's independent fiduciary, understand that the effectiveness of the exemption, if granted, will be dependent on the compliance by the parties with the terms and conditions of the exemption as set forth herein; and

(l) The Employer and Mr. Duffner, as the Plan's independent fiduciary, understand that in the event that unanticipated circumstances reduce the assets of the Plan to the extent that a violation of any of the terms and conditions of the exemption results, the relief provided by the exemption will no longer be available unless sufficient Repurchases of the Notes are made within three (3) business days by the Employer, and no additional purchases of the Notes are made by the Plan until the conditions of the exemption can be met.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section

401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 9th day of February, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–3564 Filed 2–12–99; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors' Performance Reviews Committee

Note: This is a republication of the notice of meeting published in the Federal Register on February 12, 1999. It contains an additional item on the meeting agenda.

TIME AND DATE: The Board of Directors' Performance Reviews Committee will meet on February 21, 1999. The meeting will commence at 1:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: Eden Roc Hotel, 4525 Collins Avenue, Miami Beach, FL 33140.

STATUS OF MEETING: Except for approval of the meeting agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

2. Approval of the minutes of the Committee's meeting of November 14, 1998.

Closed Session

3. Continue and complete the Committee's performance appraisal of the President of the Corporation.

4. Continue and complete the Committee's performance appraisal of the Inspector General of the Corporation.

Open Session

5. Consider and act on matters in preparation for the annual performance reviews of the President and the Inspector General for FY 1999.

6. Consider and act on other business.

7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: February 11, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–3838 Filed 2–11–99; 3:04 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–031]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connections Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 4721, Notice Number 99–021, January 29, 1999.

PREVIOUSLY ANNOUNCED DATES OF MEETING: Monday, February 22, 1999, 8:30 a.m. to 5:00 p.m., and Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Radisson Resort on the Port Hotel, 8701 Astronaut Boulevard, Cape Canaveral, Florida.

CHANGES IN THE MEETING: Time changes will be Monday, February 22, 1999, 8:00 a.m. to 6:00 p.m., and Tuesday, February 23, 1999, 8:30 a.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. George Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

Dated: February 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–3582 Filed 2–12–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–032]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 4474, Notice Number 99–020, January 29, 1999.

PREVIOUSLY ANNOUNCED DATES OF MEETING: Monday, February 22, 1999, 8:30 a.m. to 5:00 p.m., and Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Radisson Resort on the Port Hotel, 8701 Astronaut Boulevard, Cape Canaveral, Florida.

CHANGES IN THE MEETING: Time changes will be Monday, February 22, 1999, 8:00

a.m. to 6:30 p.m., and Tuesday, February 23, 1999, 8:30 a.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

Dated: February 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–3583 Filed 2–12–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–033)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 4722, Notice Number 99–024, January 29, 1999.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: Wednesday, February 24, 1999, 9:00 a.m. to 5:30 p.m.; Thursday, February 25, 1999, 8:00 a.m. to 5:45 p.m.; and Friday, February 26, 1999, 8:30 a.m. to 12 Noon.

ADDRESSES: Salon 1, Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, Florida 32920.

CHANGES IN THE MEETING: Time changes will be Wednesday, February 24, 1999, 8:15 a.m. to 5:30 p.m.; Thursday, February 25, 1999, 8:00 a.m. to 5:30 p.m.; and Friday, February 26, 1999, 8:30 a.m. to 12:00 Noon.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

Dated: February 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–3584 Filed 2–12–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–034)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS) Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 4722, *Notice Number:* 99–023, January 29, 1999.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: Monday, February 22, 1999, 8:30 a.m. to 5:00 p.m.; Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Bermuda Room, Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, Florida 32920.

CHANGES IN THE MEETING: Time changes will be Monday, February 22, 1999, 8:00 a.m. to 6:30 p.m.; Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harley Thronson, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0362.

Dated: February 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–3585 Filed 2–12–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–035)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 64 FR 4721, Notice Number: 99–022, January 29, 1999.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: Monday, February 22, 1999, 8:30 a.m. to 5:00 p.m.; Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Jamaica Room, Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, Florida 32920.

Changes in the Meeting: Time changes will be Monday, February 22, 1999, 8:00 a.m. to 6:30 p.m.; Tuesday, February 23, 1999, 8:30 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

Dated: February 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–3586 Filed 2–12–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning the Civil Rights and Section 504 Accessibility Checklists. A copy of the collection request can be obtained by contacting the office listed below in the address section of the notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESS** section below on or before April 12, 1999. The National Endowment for the Arts is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, e.g., permitting the electronic submission of response.

ADDRESSES: Angelia Richardson, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 815, Washington DC 20506–0001, telephone (202) 682–5454 (this is not a toll free number), fax (202) 682–5533.

Murray Welsh,

Director, Administrative Services.

[FR Doc. 99–3608 Filed 2–12–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: March 1, March 2 and March 8, 1999, 8:30 a.m.–5:00 p.m.

Place: Room 365 and 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Contact Person(s) Steve Mahaney, Program Director, CISE/OCDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Research Infrastructure Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under U.S.C. 522b (c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 10, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–3666 Filed 2–12–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: March 1, 1999; 8:00 am–5:00 pm.

Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Postdoctoral Fellowship Panel, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 10, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resources Management.

[FR Doc. 99–3665 Filed 2–12–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panels in Materials Research (1203).

Date and Time: March 1, 1999; 8:00 am—5:00 pm.

Place: Room 1060, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Liselotte J. Schioler, Program Director, Division of Materials Research, Room 1065.41, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 (703) 306–1836.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Ceramics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data; such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 10, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc 99–3664 Filed 2–12–99; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

''Tell Us How We're Doing!''
SEC File No. 270–406, OMB Control No. 3235–0463

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this previously approved questionnaire to the Office of Management and Budget for approval.

The title of the questionnaire is ''Tell Us How We're Doing!''

The Commission currently sends the questionnaire to persons who have used the services of the Commission's Office of Investor Education and Assistance. The questionnaire consists mainly of eight (8) questions concerning the quality of services provided by OIEA. Most of the questions can be answered by checking a box on the questionnaire.

The Commission needs the information to evaluate the quality of services provided by OIEA. Supervisory personnel of OIEA use the information collected in assessing staff performance and for determining what improvements or changes should be made in OIEA operations for services provided to investors.

The respondents to the questionnaire are some of those investors who request assistance or information from OIEA.

The total reporting burden of the questionnaire in 1998 was

approximately 89 hours. This was calculated by multiplying the total number of investors who responded to the questionnaire times how long it is estimated to take to complete the questionnaire (355 respondents × 15 minutes = 89 hours).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: February 8, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3669 Filed 2–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following meeting during the week of February 8, 1999.

A closed meeting was held on Tuesday, February 9, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who had an interest in the matters were also present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting held on Tuesday, February 9, 1999, at 11:00 a.m., was:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 11, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc 99–3881 Filed 2–11–99; 3:40 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41027; File No. SR–Amex–99–05]

Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Changing the Name of the Internet Commerce Index to TheStreet.com E-commerce Index

February 8, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 4, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. 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 Exchange seeks to change the name of the Internet Commerce Index to TheStreet.com E-commerce Index (the ''Index''). The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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 Amex 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 Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 19, 1998, the Amex submitted to the Commission a proposal to trade narrow-based options on the Index. The proposed was submitted pursuant to Section 19(b)(3)(A) of the Act and became effective upon filing, provided that the Exchange commerce trading in options not earlier than 30 days after the date of the filing.[3] The Amex now proposes to change the name of the Index from the Internet Commerce Index to TheStreet.com E-commerce Index.

Notwithstanding the change in the name of the Index, the Index will continue to be maintained in accordance with all of the terms set forth in Exchange Rule 901C, Commentary .02, as discussed in the original proposal. The Amex will continue to have sole discretion with respect to all final determinations concerning adjustments to the Index and its components including the replacement of any component, although the Amex may, from time to time, consult with TheStreet.com, Inc. in connection with the Exchange's maintenance of the Index. TheStreet.com, Inc., similar to other financial news vendors, is in the business of preparing and publishing editorial, evaluation and analysis reports, and news services related to the business of financial news and information which are available in the commercial marketplace though various facilities, such as TheStreet com Web site on the portion of the Internet referred to as the World Wide Web located at the uniform resource locator (''URL'') address designated at http://www.thestreet.com.

[3] Securities Exchange Act Release No. 40955 (January 19, 1999), 64 FR 3727 (January 25, 1999).

2. Basis

The proposed rule change is consistent with Section 6(b)[4] of the Act in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change became effective upon filing pursuant to Section 19(b)(3)(A)[6] and Rule 19b–4(e)(1)[7] of the Act. The proposed rule change has been properly designated by the self-regulatory organization as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of existing Amex Rule 901C.

Pursuant to Section 19(b)(3)(A) of the Act, at any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-99–05 and should be submitted by March 9, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3668 Filed 2–12–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b-4(e)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41021; File No. SR–NYSE–98–44]

Self-Regulatory Organizations; New York Stock Exchange, Incorporated; Order Approving Proposed Rule Change Regarding an Interpretation With Respect to Rule 344 (''Supervisory Analysts'')

February 4, 1999.

I. Introduction

On December 3, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), 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 amending an interpretation regarding the meaning and administration of NYSE Rule 344 (''Supervisory Analysts''). Notice of the proposal appeared in the **Federal Register** on December 30, 1998.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposal

The Exchange proposed to amend an interpretation concerning the meaning and administration of NYSE Rule 344. NYSE Rule 344 establishes standards for qualification of candidates for Supervisory Analyst designation at member organizations. The Exchange intends to publish the interpretation as an Interpretation Memorandum for inclusion in the Exchange's Interpretation Handbook.

Research reports issued by a member organization must, under the provisions of NYSE Rule 472(b) (''Communications with the Public''), be prepared or approved by a Supervisory Analyst. NYSE 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 the Chartered Financial Analysts Level I Examination and pass Part I of the Series 16 Examination. The examination consists of two parts: Part I, Regulatory Administration, and Part II, Review of Security Analysis. Currently, the interpretation of NYSE Rule 344 requires Supervisory Analyst candidates to have ''at least three years prior experience as a securities analyst.'' The interpretation, as amended, requires Supervisory Analyst candidates to have ''at least three years experience, within the most recent six years, involving securities or financial analysis.'' The Exchange will continue to require candidates for the Supervisory Analyst designation to pass the Series 16 Examination.

The Exchange also proposed to include in the interpretation the following as examples of appropriate experience: (1) Equity or fixed income research analyst; (2) credit analyst for a securities rating agency; (3) supervising preparation of materials prepared by financial/securities analysts; (4) financial analytical experience gained at banks, insurance companies or other financial institutions; and (5) academic experience relating to the financial/securities markets/industry.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular,

[1] 17 CFR 240.19b–4.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 40812 (December 21, 1998), 63 FR 71991 (December 30, 1998).

[4] In approving this rule, the Commission has considered the proposed rule's impact on

the requirements of Section 6 and the rules and regulations thereunder.[5] The Commission believes that the proposal is consistent with the provisions of Section 6(c)(3)(B) of the Act[6] providing that an exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and that an exchange may bar a natural person from becoming a member or person associated with a member, if such person does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange.

The Commission believes the Exchange has developed standards to help ensure that persons associated with Exchange members and member organizations as Supervisory Analysts are appropriately qualified and experienced to approve communications with the public. The Exchange represents that requiring three years experience as a ''securities analyst'' is too restrictive in light of the current business environment. Because the role of Supervisory analyst has changed to consist primarily of reviewing research reports prepared by others, as opposed to, the preparation of research reports, ''appropriate experience'' need not be limited to exclusively experience as a ''securities analyst.'' The Commission believes that expanding the definition of industry experience as set forth in the proposal is consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–98–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3667 Filed 2–12–99; 8:45 am]

BILLING CODE 8010–01–M

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(c)(3)(B).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41018; File No. SR–PCX–98–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Telephone Use on the Options Floor

February 3, 1999.

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 June 26, 1998, the Pacific Exchange, Inc. (''PCX'' 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. On November 12, 1998, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new rule setting forth procedures and restrictions regarding telephone use on the Options Trading Floor (''Options Floor''). The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation, SEC dated November 10, 1998 (''Amendment No. 1''). The substance of Amendment No. 1 is incorporated into this notice.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to establish rules and procedures for telephone use on the Options Floor. Proposed Rule 6.2(h) sets guidelines for the use of telephones by Market Makers, Lead Market Makers (''LMMs''), Floor Brokers, Clerks, and Floor Managers.

The PCX is proposing to establish a formal rule requiring that Members and Member Firms must register, prior to use, any new telephone to be used on the Options Floor. Proposed Rule 6.2(h) states that each phone registered with the Exchange must be registered by category of user (Market Maker, LMM, Floor Broker, Clerk or Manager). If there is a change in the category of any user, the phone must be re-registered with the Exchange. At the time of registration, Members and Member Firm representatives must sign a statement indicating that they are aware of and understand the rules governing the use of telephones on the Options Floor.

The Rule further states that no Member or Member Firm may employ any alternative communication device, including but not limited to e-mail, on the Options Floor without the prior approval of the Options Floor Trading Committee.

Capacity and Functionality

The proposed Rule specifies the capacity and functionality permitted for the use of telephones on the Options Floor. The Rule states specifically that no wireless telephone used on the Options Floor may have an output greater than one watt and that no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies and any similar devices. The rule does permit speed-dialing features for Member phones.

Members and Member Firm Employees

The proposed Rule states specific guidelines for each category of user on the Options Floor, as follows:

Market Makers and LMMs

The proposed Rule states that Market Makers and LMMs may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the Options Floor).

The Rule also states that Market Makers and LMMs may use the Pit Rep and LMM telephones located at the trading posts only for the purpose of marketing option issues, responding to customer inquiries, or otherwise conducting Exchange business. No person other than a Pit Rep, Market Maker [4] or an LMM may use the Pit Rep or LMM phones. This is to ensure that phones will be accessible for customer inquiries and marketing.

The Rule further states that Market Makers located off the Options Floor may not place an order by calling a Floor Broker who is present in a trading crowd. Market Makers located off the Options Floor may not otherwise place an order by calling the Pit Rep or LMM phone in the trading crowd. The Rule also states that any telephonic order entered from the Options Floor must be placed with a person located in a member firm booth. This will facilitate adequate surveillance of telephonic orders and ensure that there is a record of the order in the event that a problem arise in connection with the order. It is also consistent with Rule 6.85. Commentary .03, which requires verbal orders from Market Makers to be written up outside of the trading crowd.[5]

Floor Brokers

The Rule states that Floor Brokers may use cellular and cordless phones, but only to communicate with persons located on the Options Floor. These phones may not include a call forwarding feature. This Rule codifies long-standing PCX policies regarding phone use by Floor Brokers which are designed to ensure that orders are entered in a manner that allows for routine monitoring and surveillance by the Exchange. In addition, the Rules states that headset are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.

The Rule further states that Floor Brokers may receive orders over their phones from any persons located on the Options Floor. Floor Brokers who receive telephonic orders while in the trading crowd must step outside of the crowd, write up an order ticket and time stamp it before representing the order in the crowd. This is consistent with Rule 6.85, Commentary .03, which states that when a Floor Broker receives a verbal order from a Market Maker, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it.[6]

Any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth. Further, the Rule prohibits the Floor Brokers from using the Pit Rep or LMM telephones under any circumstances. This is to ensure that telephones are available for marketing option issues, responding to customer inquiries, or othewise conducting Exchange business relating to Market Makers and Lead Market Makers.

Clerks

The proposed Rule states that Floor Broker Clerks and Stock Executions Clerks are subject to the same terms and conditions on telephone use as Floor Brokers and that Market Maker Clerks are subject to the same terms and conditions on telephone use as Market Makers. The Rule further states that the Options Floor Trading Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems [7] or capacity problems [8] resulting from the number of such phones then in use on the Options Floor. In such circumstances, the Committee will first consider restricting the use of such phones by Market Maker Clerks, then by Stock Execution Clerks, and then finally, by Floor Broker Clerks.

Floor Managers

Proposed Rule 6.2(h) states that Member Firm Floor Managers may use any telephone, including any cellular or cordless phones, for any business purpose relating to their management responsibilities.

General Access Phones, Telephone Records, and Exchange Liability

Proposed Rule 6.2(h) states that phones located outside the trading areas may be used by any Member, Clerk, or Member Firm Floor Manager to communicate with persons on the Options Floor. The rule also states that Members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year and the Exchange reserves the right to inspect such records pursuant to Rule 10.2.

Finally, proposed Rule 6.2(h) states that the Exchange assumes no liability to Members or Member Firms due to conflicts between phones in use on the Options Floor or due to electronic interference problems resulting from the use of telephones on the Options Floor.

Minor Rule Plan

Currently the PCX Minor Rule Plan includes as a minor rule violation, the unauthorized use of telephones located in the trading post areas.[9] The PCX is proposing to change the language in the rule to refer to the proposed rule on telephone use on the Option Trading Floor (Rule 6.2(h)). Specifically, the provision will now state: Floor Member or Member Firm employee violated rules on telephones on the Options Floor. In addition, the PCX is proposing to increase the fine amount for a third violation from $750.00 to $1,000.00 to better reflect the seriousness of a third violation within two years.

2. Statutory Basis

The proposal is consistent with Section 6(b) [10] of the Act, in general, and Section 6(b)(5) [11] of the Act, in particular, in that it is designed to regulate communications to and from the Exchange's Options Trading Floor in a manner that promote just and equitable principles of trade and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[4] *See* Amendment No. 1, *supra* note 3.

[5] PCX Rule 6.85, Commentary .03 provides in part: ''When a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it.''

[6] *Id.*

[7] The term ''electronic interference'' refers to a situation where, even though there are talk paths available, a user cannot get a good signal because of interference with monitors, static, or a bay station not working correcty. Amendent No. 1, *supra* note 3.

[8] The Term ''capacity problems'' is used to describe a situation where a user cannot get a signal because no talk path is available on a bay station. Currently, there are 96 talk paths available. If all 96 talk paths are being used, the 97th user will be unable to get a signal because all talk paths are being used. Ammendment No. 1 *supra* note 3.

[9] *See* PCX Rule 10.13.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Exchange.

All submissions should refer to File No. SR–PCX–98–30 and should be submitted by March 9, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3670 Filed 2–12–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Southwest Georgia Regional Airport, Albany, GA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Southwest Georgia Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 18, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Federal Aviation Administration, DOT, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard C. Howell, Airport Director of the Albany-Dougherty County Aviation Commission (ADCAA) at the following address: 3905 Newton Road, Albany, Georgia 31707–3460.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the ADCAA under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Larry Clark, Program Manager, Atlanta Airports District Office 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7144.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Southwest Georgia Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 4, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by ADCAA was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 29, 1999.

The following is a brief overview of the application.

PFC Application No.: 98–02–C–00–ABY.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1999.

Proposed charge expiration date: December 17, 2004.

Total estimated PFC revenue: $798,449.

Brief description of proposed project(s):

1. ANTN Digital Training System
2. Rehabilitate General Aviation Apron
3. Airfield Perimeter Fencing
4. Airfield Perimeter fencing—Road Widening Project
5. Bunker Gear for ARFF Personnel
6. Telecommunication Device for the Deaf
7. ADA Signage—Terminal Building
8. Commuter Passenger Boarding Bridge
9. Local Share Reimbursement for:
   - Lighting Vault
   - ARFF Facility
   - Rehabilitate Taxiway Lights (TXY A)
   - ARFF Vehicle
   - Rehabilitate Runway Lights (RWY 4/22)
   - Rehabilitate Taxiway A (Partial)
   - Airfield Signage
   - Rehabilitate Beacon
   - Rehabilitate TXY A (Partial) and TXY C
   - Rehabilitate Runway Lights (RWY 16/34)
   - Rehabilitate Taxiway Lights (TXY B, C, and E)
   - Expand and Rehabilitate Apron (Design only)
   - Rehabilitate Taxiways D and E (Design only)
   - Master Plan Update
   - Rehabilitate Runway 4/22 (Design only)
   - Rehabilitate Runway 4/22
   - Rehabilitate Runway 16/34

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the ADCAA.

Issued in College Park, Georgia on February 4, 1999.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 99–3685 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5068]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1998 Honda VF750 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1998 Honda VF750 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1994–1998 Honda VF750 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 18, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1994–1998 Honda VF750 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1994–1998 Honda VF750 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1994–1998 Honda VF750 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1994–1998 Honda VF750 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1994–1998 Honda VF750 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model head lamp assemblies; (b) installation of U.S.-model reflex reflectors on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 10, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–3637 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5071]

Notice of Receipt of Petition for Decision That Nonconforming 1996–1998 Suzuki GSF 750 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996–1998 Suzuki GSF 750 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1996–1998 Suzuki GSF 750 motorcycles that were

not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 18, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1996–1998 Suzuki GSF 750 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1996–1998 Suzuki GSF 600 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1996–1998 Suzuki GSF 750 to the 1996–1998 Suzuki GSF 600, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1996–1998 Suzuki GSF 750, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1996–1998 Suzuki GSF 600, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1996–1998 Suzuki GSF 750 is identical to the 1996–1998 Suzuki GSF 600 with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model head lamp assemblies; (b) installation of U.S.-model reflex reflectors on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 10, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–3672 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5069]

Notice of Receipt of Petition for Decision That Nonconforming 1994–1998 Mercedes-Benz C190 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1994–1998 Mercedes-Benz C190 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that the 1994–1998 Mercedes-Benz C190 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 18, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety

standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1994–1998 Mercedes-Benz C190 passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1994–1998 Mercedes-Benz C220 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1994–1998 Mercedes-Benz C190 to the 1994–1998 Mercedes-Benz C220, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1994–1998 Mercedes-Benz C190, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1994-1998 Mercedes-Benz C220, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994–1998 Mercedes-Benz C190 is identical to the 1994–1998 Mercedes-Benz C220 with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1994–1998 Mercedes-Benz C190 complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner states that requisite parts on the non-U.S. certified 1994–1998 Mercedes-Benz C190 will be marked prior to importation to comply with the Theft Prevention Standard found in 49 CFR Part 541.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 10, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–3673 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5070]

Notice of Receipt of Petition for Decision That Nonconforming 1985–1998 Kawasaki ZX600 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1985–1998 Kawasaki ZX600 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1985–1998 Kawasaki ZX600 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 18, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1985–1998 Kawasaki ZX600 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1985–1998 Kawasaki ZX600 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1985–1998 Kawasaki ZX600 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1985–1998 Kawasaki ZX600 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1985–1998 Kawasaki ZX600 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.—model head lamp assemblies; (b) installation of U.S.—model reflex reflectors on vehicles that are not already so equipped.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.—model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 10, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–3674 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 10:00 a.m. on Tuesday, February 23, 1999, at the Governor's Club, 777 South Flagler Drive, 1209e West Palm Beach, Florida. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than February 19, 1999, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400

Seventh Street, SW, Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on February 9, 1999.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 99–3604 Filed 2–12–99; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33708]

The Blacklands Railroad Company—Operation Exemption—Lines of Northeast Texas Rural Rail Transportation District

The Blacklands Railroad Company (BLRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from East Texas Central Railroad its rights under an agreement with Northeast Texas Rural Rail Transportation District (NETEX) [1] to operate over approximately 38 miles of rail line in the State of Texas as follows: (1) approximately 31 miles of rail line owned by NETEX, beginning at milepost 524.0, located approximately 6.2 miles west of Sulphur Springs, and proceeding west through Hopkins and Delta Counties to milepost 555.0, at Simtrott, in Hunt County; and (2) approximately 7 miles of rail line owned by the St. Louis Southwestern Railway Company, between milepost 524.0 and milepost 517.0, pursuant to trackage rights acquired by NETEX for the purpose of interchanging and switching at Sulphur Springs (subject lines).[2]

The transaction is scheduled to be consummated on or after the February 9, 1999 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33708, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 9, 1999.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams

Secretary.

[FR Doc. 99–3648 Filed 2–12–99; 8:45 am]

BILLING CODE 4915–00–P

[1] See *East Texas Central Railroad, Inc.—Operation Exemption—Northeast Texas Rural Rail Transportation District,* STB Finance Docket No. 32841 (Sub-No. 1) (STB served Sept. 27, 1996).

[2] BLRR will operate the subject lines.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33714]

Fredonia Valley Railroad, Inc.—Acquisition and Operation Exemption—Paducah & Louisville Railway, Inc.

Fredonia Valley Railroad, Inc., a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by lease from Paducah & Louisville Railway, Inc. and operate approximately 1.88 miles of rail line located between milepost 97.25 (Survey Station 4577+00) and Survey Station 4676+28, at Good Street, in Princeton, Caldwell County, KY.

The transaction is expected to be consummated on March 1, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33714, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1100 New York Avenue, N.W., Suite 750 West, Washington, DC 20005–3934.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 9, 1999.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–3646 Filed 2–12–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–558X]

Doniphan, Kensett and Searcy Railway—Abandonment Exemption—in Searcy, White County, AR

On January 27, 1999, Doniphan, Kensett and Searcy Railway (DK&S) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 [1] to abandon a portion of its line of railroad known as the DK&S Branch extending from milepost 299.12 to the end of the line at milepost 300.40, in Searcy, a distance of 1.28 miles in White County, AR. The line traverses U.S. Postal Service Zip Codes 72143, 72144 and 72145 and includes the non-agency rail station at milepost 300.40 in Searcy.

The line does not contain federally granted rights-of-way. Any documentation in DK&S's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 17, 1999.

Unless an exemption is granted, as sought, from the OFA provisions of 49 U.S.C. 10904, any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless an exemption is granted, as sought, from the public use provisions of 49 U.S.C. 10905, any request for a public use condition under 49 CFR 1152.28 or for

[1] DK&S seeks exemptions from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. These exemption requests will be addressed in the final decision.

trail use/rail banking under 49 CFR 1152.29 will be due no later than March 8, 1999.[2] Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–558X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 4, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–3647 Filed 2–12–99; 8:45 am]

BILLING CODE 4915–00–P

[2] DK&S states that, because it has already agreed to transfer the property to Harding University for use in constructing campus housing, DK&S will not negotiate with any party for transfer of the line for trail use.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Submission for OMB review; joint agency comment request.

SUMMARY: On October 1, 1998, the OCC, the Board, and the FDIC (the agencies) requested public comment for 60 days on proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments received, the Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, approved the proposed revisions, including selecting one of two alternatives for one proposed change. Therefore, in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the agencies hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the Call Report collections of information.

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC, the Board, and the FDIC 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 Office of Management and Budget (OMB) control number.

Comments are invited on: (a) Whether the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

DATES: Comments must be submitted on or before March 18, 1999.

ADDRESSES: interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Washington, DC 20219; Attention: Paperwork Docket No. 1557–0081 [Fax number (202) 874–5274; Internet address: regs.comments@occ.treas.gov]. Comments will be available for inspection and photocopying at the ODD's Public Reference Room, 250 E Street, SW, Washington, DC 20219 between 9:00 a.m. and 5:00 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

Board: Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments should be addressed 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 at the rear of the 550 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 in the FDIC Public Information Center, Room, 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office

of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the submission may be obtained by contacting:

OCC: Jessie Gates, OCC Clearance Officer, or Camille Dixon, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend, with revision, the following currently approved collections of information:

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031, 032, 033, 034.[1]

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

For OCC

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,600 national banks.

Estimated Time per Response: 39.92 burden hours.

Estimated Total Annual Burden: 415,220 burden hours.

For Board

OMB Number: 7100–0036.

Estimated Number of Respondents: 994 state member banks.

Estimated Time per Response: 45.80 burden hours.

Estimated Total Annual Burden: 182,101 burden hours.

For FDIC

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,985 insured state nonmember banks.

Estimated Time per Response: 29.67 burden hours.

Estimated Total Annual Burden: 710,345 burden hours.

The estimated time per response is an average which varies by agency because of differencies in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices). The time per response for a bank is estimated to range from 15 to 400 hours, depending on individual circumstances.

General Description of Report

This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for select sensitive items, this information collection is not given confidential treatment. Small business (i.e., small banks) are affected.

Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition and performance of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

On October 1, 1998, the OCC, the Board, and the FDIC jointly published a notice soliciting comments for 60 days on proposed revisions to the Call Report (63 FR 52794). The notice described the specific changes that the agencies, with the approval of the FFIEC, were proposing to implement as of March 31, 1999.

The agencies initially proposed to revise the Call Report effective March 31, 1999, by: deleting the existing items from the amortized cost and fair value of high-risk mortgage securities and (on the FFIEC 034 report) for losses deferred pursuant to 12 U.S.C. 1823(j); adding new items for accumulated net gains (losses) on cash flow hedges and for the year-to-date change in this new component of equity capital in response to the issuance of a new accounting standard for derivative instruments and hedging activities; either adding a new item or expanding the scope of an existing item in order to distinguish nonmortgage servicing assets from other intangible assets; and making a number of instructional changes, primarily to incorporate recent changes in accounting standards, to further conform with generally accepted accounting principles in other areas, and to improve the reporting of certain regulatory capital information.

After considering the comments, the FFIEC and the agencies decided to proceed with all of the proposed changes. With respect to nonmortgage servicing assets, the FFIEC and the agencies selected the proposed approach under which the scope of the existing item for ''purchased credit card relationships'' would be expanded to include these servicing assets.

Comments

In response to this notice, the agencies collectively received two comment letters, both of which were from bankers' associations. One association supported the proposed reductions in detail, accepted the new items proposed for accumulated net gains (losses) on cash flow hedges, preferred the approach for reporting nonmortgage servicing assets which the FFIEC and the agencies have decided to implement, and supported the proposed instructional change affecting the reporting of market risk equivalent assets. This association did not address the other proposed instructional changes. The second association stated that it ''generally concurs with the proposals'' and favored adding a new item to the Call Report for nonmortgage servicing assets, an approach that the FFIEC and the agencies decided not to take. This association did not comment on any of the proposed instructional changes. However, it recommended that ''unless there is an overriding need for immediate implementation * * * any changes to the Call Report be postponed until the March 31, 2000 report to avoid complicating Year 2000 systems compliance requirements.''

The FFIEC and the agencies believe that it may be less problematic to implement the new cash flow hedge items and the nonmortgage servicing assets reporting change in 1999 than to delay implementation until the first quarter of 2000. Because of their fiscal years, some banks must implement Financial Accounting Standards Board (FASB) Statement No. 133, Accounting for Derivative Instruments and Hedging Activities (FAS 133), in the third or

[1] The FFIEC 031 report form is filed by banks with domestic and foreign offices. The FFIEC 032 report form is filed by banks with domestic offices only and total assets of $100 million or more but less than $300 million. The FFIEC 034 report form is filed by banks with domestic offices only and total assets of less than $100 million.

fourth quarter of 1999. Other banks may choose to adopt FAS 133 earlier than required at the beginning of any fiscal quarter in 1999, e.g., as of January 1, 1999. The information to be reported in the new cash flow hedge items is information that banks adopting FAS 133 in 1999 will be required to report in financial statements prepared under generally accepted accounting principles in 1999. Banks not required to adopt FAS 133 until the year 2000 will not have any amounts to report in the new items during 1999. In addition, only a relatively small percentage of banks hold freestanding derivatives that are subject to FAS 133. As of September 30, 1998, approximately 500 of the more than 8,900 FDIC-insured commercial banks reported having such derivatives. Some banks may also hold financial instruments with embedded derivatives that may be separated from the host contract and accounted for as a derivative under FAS 133.

As for nonmortgage servicing assets, the regulatory capital amendment which led the agencies to propose this reporting change took effect on October 1, 1998. Banks with nonmortgage servicing assets that wish to include these assets in regulatory capital, subject to the limits set forth in the agencies' capital standards, have already modified their internal regulatory capital calculation procedures for this change and are already reporting regulatory capital information in Call Report Schedule RC–R—Regulatory Capital in accordance with the amended capital standards. Under these capital standards, nonmortgage servicing assets must be combined with purchased credit card relationships for purposes of applying a Tier 1 capital sublimit. Therefore, revising the existing Call Report item for purchased credit card relationships to include nonmortgage servicing assets (rather than having separate items for each of these two types of intangibles, which the agencies had also proposed as an alternative) is similar to the approach taken in the capital standards. In addition, this Call Report revision should affect only a small number of banks. Fewer than 100 reported that they had any purchased credit card relationships as of September 30, 1998. Call Report data for that date also suggest that fewer than 100 banks had any nonmortgage servicing assets.

In its comment letter, the first bankers' association also commented that the agencies have not yet made significant progress in satisfying the requirements of Section 307 of the Riegle Community Development and Regulatory Improvement Act of 1994. Section 307 requires the four federal banking and thrift agencies to work jointly to develop a single form for the filing of core information by banks, savings associations, and bank holding companies. It also directs the agencies to review the information they collect from these institutions that supplements the core information and eliminate those reporting requirements that are not warranted for safety and soundness or other public purposes. In this regard, the FFIEC and the agencies regularly review the existing Call Report requirements in order to identify items that are no longer sufficiently useful to warrant their continued collection. Since 1995 these reviews have led to the elimination of numerous items and reductions in the level of detail in several areas.

In addition, the FFIEC and the agencies have, as part of their Section 307 efforts, adopted generally accepted accounting principles as the reporting basis for the Call Report; combined the four sets of Call Report instructions into a single comprehensive set; developed an index to the instructions; made the Call Report forms, instructions, and data available on the Internet; and implemented an electronic filing requirement for the Call Report. The FFIEC and the agencies are currently surveying Call Report users within the agencies and are continuing to review the uses of individual Call Report items in order to ascertain their relative importance to the agencies. These actions are part of the agencies' ongoing effort to eliminate information with the least practical utility and to increase uniformity among regulatory reports.

Summary of the Revisions to the Call Report

The revisions to the Call Report listed below, which have been approved by the FFIEC, must be reviewed and approved by OMB. The agencies expect to implement these changes as of the March 31, 1999, report date. Unless otherwise indicated, the revisions will apply to all four sets of report forms (FFIEC 031, 032, 033, and 034). Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31, 1999, report date, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available.

Deletions

(1) In Schedule RC–B—Securities, the agencies are deleting Memorandum items 8.a and 8.b for the amortized cost and fair value of ''High-risk mortgage securities.''

(2) The agencies are deleting the balance sheet items on the FFIEC 034 report forms for small banks relating to deferred agricultural loan losses (Schedule RC, items 12.b, 12.c, 28.b, and 28.c).

New or Revised Items

(1) The agencies are adding a new item 26.c to the equity capital section of Schedule RC—Balance Sheet for accumulated net gains (losses) on cash flow hedges under FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities. The agencies also are adding a new item 11.b to Schedule RI–A—Changes in Equity Capital for the year-to-date change in these accumulated net gains (losses). Existing item 11 on Schedule RI–A is renumbered as item 11.a.

(2) In Schedule RC–M—Memoranda, the agencies are expanding the scope of item 6.b.(1), ''Purchased credit card relationships,'' to cover ''Purchased credit card relationships and nonmortgage servicing assets,'' with item 6.b.(2) covering the remaining ''All other identifiable intangible assets.'' Through 1998, nonmortgage servicing assets have been reported in item 6.b.(2).

Instructional Changes

(1) The agencies are revising the instructions to conform with American Institute of Certified Public Accountants' Statements of Position 98–1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use, and 98–5, Reporting on the Costs of Start-Up Activities.

(2) The agencies are adding a new entry to the Glossary section of the instructions which discusses the reporting of securities activities, including descriptions of certain trading practices. These practices were previously discussed in the agencies' 1992 Supervisory Policy Statement on Securities Activities, which was replaced in April 1998 by a revised policy statement on investment securities that does not address these reporting issues.

(3) The agencies are revising the Glossary entry for ''Allowance for Loan and Lease Losses'' to indicate that the cost basis of a loan or lease that has been reduced through a direct write-down may not be increased at a later date by reversing the previous write-down.

(4) The agencies are revising the Glossary entry for ''Business Combinations'' and the instructions for the Schedule RC–M, item 6.c, ''Goodwill,'' to clarify that goodwill cannot ordinarily be sold or dividended

to a parent company or affiliate or charged off in the year of acquisition.

(5) For banks subject to the market risk capital guidelines, the agencies are revising the instructions for reporting ''Net risk-weighted assets'' in item 3.d.(1) of Schedule RC–R—Regulatory Capital so that the bank's ''Market risk equivalent assets'' are included in this item. The caption for item 3.d.(2) of Schedule RC–R is modified to read ''Market risk equivalent assets included in net risk-weighted assets above.'' This makes the reporting of ''Net risk-weighted assets'' in the Call Report consistent with the reporting of this item in the FR Y–9C bank holding company report.

(6) The agencies are revising the instructions for reporting low level recourse transactions in Schedule RC–R to explain how the allowable amount of the allowance for loan and lease losses should be calculated by banks that use the ''direct reduction method'' for these transactions.

Dated: February 5, 1999.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 8, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 4th day of February, 1999.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–3620 Filed 2–12–99; 8:45 am]

BILLING CODES 4810–33–M, 6210–01–M, 6714–01–M

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. Due to recent legislation, the interest rate applicable to overpayments by corporations is now different than the interest rate for overpayments by non-corporations. For the quarter beginning January 1, 1999, the interest rates for overpayments will be 6 percent for corporations and 7 percent for non-corporations, and the interest rate for underpayments will be 7 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was recently amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations. The interest rate applicable to underpayments is not so bifurcated.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 98–61 (*see*, 1998–51 IRB, dated December 21, 1998), the IRS determined the rates of interest for the second quarter of fiscal year (FY) 1999 (the period of January 1–March 31, 1999). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (4%) plus three percentage points (3%) for a total of seven percent (7%). For corporate overpayments, the rate is the Federal short-term rate (4%) plus two percentage points (2%) for a total of six percent (6%). For overpayments made by non-corporations, the rate is the Federal short-term rate (4%) plus three percentage points (3%) for a total of seven percent (7%). These interest rates are subject to change for the third quarter of FY–1999 (the period of April 1–June 30, 1999).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
Prior to:				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6

Dated: February 10, 1999.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 99–3618 Filed 2–12–99; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Tuesday
February 16, 1999

Part II

Department of Transportation

Federal Aviation Administration

Policy and Procedures Concerning the Use of Airport Revenue; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA) DoT

ACTION: Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy (''Final Policy'') was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of proposed policy issued by the FAA in February 1996, and December 1996, which were published in the **Federal Register** for public comment. The Final Policy describes the scope of airport revenue that is subject to the Federal requirements on airport revenue use and lists those requirements. The Final Policy also describes prohibited and permitted uses of airport revenue and outlines the FAA's enforcement policies and procedures. The Final Policy includes an outline of applicable record-keeping and reporting requirements for the use of airport revenue. Finally, the Final Policy includes the FAA's interpretation of the obligation of an airport sponsor to maintain a self-sustaining rate structure to the extent possible under the circumstances existing at each airport.

DATES: This Final Policy is effective February 16, 1999.

FOR FURTHER INFORMATION CONTACT: J. Kevin Kennedy, Airport Compliance Specialist, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8725; Barry L. Molar, Manager, Airport Compliance Division, AAS–400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3446.

SUPPLEMENTARY INFORMATION:

Outline of Final Policy

The Final Policy implements the statutory requirements that pertain to the use of airport revenue and the maintenance of an airport rate structure that makes the airport as self-sustaining as possible. The Final Policy generally represents a continuation of basic FAA policy on airport revenue use that has been in effect since enactment of the Airport and Airway Improvement Act of 1982 (AAIA), currently codified at 49 U.S.C. § 47107(b). The FAA issued a comprehensive statement of this policy in the Notice of Proposed Policy dated February 26, 1996 (Proposed Policy), and addressed four particular issues in more detail in the Supplemental Notice of Proposed Policy dated December 18, 1996 (Supplemental Notice). The Final Policy includes provisions required by the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994) (FAA Authorization Act of 1994), and the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264 (October 9, 1996), 110 Stat. 3269 (FAA Reauthorization Act of 1996). The Final Policy also includes changes adopted in response to comments on the Proposed Policy and Supplemental Notice.

The Final Policy contains nine sections. Section I is the Introduction, which explains the purpose for issuing the Final Policy and lists the statutory authorities under which the FAA is acting.

Section II, ''Definitions,'' defines federal financial assistance, airport revenue and unlawful revenue diversion.

Section III, ''Applicability of the Policy,'' describes the circumstances that make an airport owner or operator subject to this Final Policy.

Section IV, ''Statutory Requirements for the Use of Airport Revenue,'' discusses the statutes that govern the use of airport revenue.

Section V, ''Permitted Uses of Airport Revenue,'' describes categories and examples of uses of airport revenue that are considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all permitted uses but is intended to provide examples for practical guidance.

Section VI, ''Prohibited Uses of Airport Revenue,'' describes categories and examples of uses of airport revenue not considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all prohibited uses but is intended to provide examples for practical guidance.

Section VII, ''Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure,'' describes policies regarding the requirement that an airport maintain a self-sustaining airport rate structure. This is a new section of the policy, which provides more complete guidance on the subject than appeared in either the Proposed Policy or Supplemental Notice.

Section VIII, ''Reporting and Audit Requirements,'' addresses the requirement for the filing of annual airport financial reports and the requirement for a review and opinion on airport revenue use in a single audit conducted under the Single Audit Act, 31 U.S.C. §§ 7501–7505.

Section IX, ''Monitoring and Compliance,'' describes the FAA's activities for monitoring airport sponsor compliance with the revenue-use requirements and the requirement for a self-sustaining airport rate structure and the range of actions that the FAA may take to assure compliance with those requirements. Section IX also describes the sanctions available to FAA when a sponsor has failed to take corrective action to cure a violation of the revenue-use requirement.

Background

Governing Statutes

Four statutes govern the use of airport revenue: the AAIA; the Airport and Airway Safety and Capacity Expansion Act of 1987; the FAA Authorization Act of 1994; and the FAA Reauthorization Act of 1996. These statutes are codified at 49 USC 47101, *et seq.*

Section 511(a)(12) of the AAIA, part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97–248, (now codified at 49 USC 47107(b)) established the general requirement for use of airport revenue. As originally enacted, the revenue-use requirement directed public airport owners and operators to ''use all revenues generated by the airport * * * for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property.''

The original revenue-use requirement also contained an exception, or ''grandfather'' provision, permitting certain uses of airport revenue for non-airport purposes that predate the AAIA.

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (December 30, 1987), narrowed the permitted uses of airport revenues to nonairport facilities that are ''substantially'' as well as directly related to actual air transportation; required local taxes on aviation fuel enacted after December 30, 1987, to be

spent on the airport or, in the case of state taxes on aviation fuel, state aviation programs or noise mitigation on or off the airport; and slightly modified the grandfather provision.

The FAA Authorization Act of 1994 Act included three sections regarding airport revenue.

Section 110 added a policy statement to Title 49, Chapter 471, ''Airport Development,'' concerning the preexisting requirement that airports be as self-sustaining as possible, 49 USC § 47101(a)(13).

Section 111 added a new sponsor assurance requiring airport owners or operators to submit to the Secretary and to make available to the public an annual report listing all amounts paid by the airport to other units of government, and the purposes for the payments, and a listing of all services and property provided to other units of government and the amount of compensation received. Section 111 also requires an annual report to the Secretary containing information on airport finances, including the amount of any revenue surplus and the amount of concession-generated revenue.

Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the revenue-use requirement and the requirement that airports be as self-sustaining as possible.

Section 112(b) amends 49 USC § 47111, ''Payments under project grant agreements,'' to provide the Secretary, with certain limitations, to withhold approval of a grant application or a new application to impose a Passenger Facility Charge (PFC) for violation of the revenue-use requirement. Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the revenue retention requirement. Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the FAA considers the lawful diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the airport's first year after August 23, 1994.

Section 112(e), which amended the Anti-Head Tax Act, 49 USC § 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

Title VIII of the FAA Reauthorization Act of 1996 included new provisions on the use of airport revenue. Among other things, section 804 codifies the preexisting grant-assurance based revenue-use requirement as 49 U.S.C. § 47133. Section 804 also expands the application of the revenue-use restriction to any airport that is the subject of Federal assistance.

Section 805, codified as 49 U.S.C. § 47107(m) *et seq.*, requires recipients of Federal assistance for airports who are subject to the Single Audit Act to include a review and opinion on airport revenue use in single audit reports.

Under section 47107(n), the Secretary, acting through the Administrator of the FAA, will perform fact finding and conduct hearings in certain cases; may withhold funds that would have otherwise been made available under Title 49 of the U.S. Code to a sponsor including another public entity of which the sponsor is a member entity, and may initiate a civil action under which the sponsor shall be liable for a civil penalty, if the Secretary receives a report disclosing unlawful use of airport revenue. Section 47107(n) also includes a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. The Secretary is also authorized to recover civil penalties in the amount of three times the unlawfully diverted airport revenue under 49 U.S.C. § 46301(n)(5).

Section 47107(o) requires the Secretary to charge a minimum annual rate of interest on the amount of any illegal diversion of revenues. Interest is due from the date of the illegal diversion.

Section 47107(l)(5) imposes a statute of limitation of six years after the date on which the expense is incurred for repayment of sponsor claims for reimbursement of past expenditures and contributions on behalf of the airport. A sponsor may claim interest on the amount due for reimbursement, but only from the date the Secretary determines that the airport owes a sponsor.

Procedural History

In response to provisions in the 1994 Authorization Act, the FAA issued the Proposed Policy. (61 FR 7134, February 26, 1996) After reviewing all comments received in response to the notice, the FAA issued the Supplemental Notice on December 11, 1996, and requested further public comment. (61 FR 66735, December 18, 1996) Although the FAA published both documents as proposed policies, both notices stated that the FAA would apply the policies in reviewing revenue-use issues pending publication of a final policy.

The Department received 32 comments on the Proposed Policy and received 50 comments on the Supplemental Notice. Comments were received from airport owners and operators, airline organizations, transit authorities, and affected businesses and organizations. Most of the commenters were airport owners and operators. The Airport Council International-North America and the American Association of Airport Executives also provided comments supporting the sponsor/operator positions. Two major groups commented on behalf of the airlines—the Air Transport Association of America and the International Air Transport Association.

The Aircraft Owners and Pilots Association and the National Air Transportation Association commented on behalf of the general aviation and private aircraft owners. AOPA was primarily concerned with sponsor/airport accountability and the prompt and effective enforcement of the revenue diversion prohibitions.

Several port authorities, transit authorities, environmental groups, other public interest groups, trade associations, private businesses and individuals commented on a variety of specific issues.

The following discussion of comments is organized by issue rather than by commenter. Issues are discussed in the order they arise in the Final Policy. Airport proprietors and their representatives who took similar positions on an issue are collectively referred to as ''airport operators.'' Airlines and airline trade associations are referred to as ''air carriers'' when the organizations took common positions. The summary of comments is intended to represent the general divergence or correspondence in commenters' views on various issues. It is not intended to be an exhaustive restatement of the comments received.

In addition, many comments on the original notice of proposed policy were addressed in the supplemental notice.

Those comments are not addressed again in this discussion.

The FAA considered all comments received, even if they are not specifically identified in this summary.

Discussion of Comments by Issue

1. Applicability

a. Applicability of Policy to Privately Owned Airports

In accordance with the statutes in effect at the time it was published, the Proposed Policy applied only to public agencies that had received AIP grants for airport development. The Proposed Policy included a specific statement that it did not apply to privately owned airports that had taken AIP grants while under private ownership. The Supplemental Notice did not modify these provisions.

The Comments: A public interest group concerned about reducing airport noise and mitigating its impacts recommended that the policy should apply to operators of privately owned airports.

Final Policy: The new statutory provision added by the Reauthorization Act of 1996, governing the restriction on the use airport revenue, 49 U.S.C. § 47133, does not differentiate between publicly or privately owned airports. The statute applies to all airports that have received Federal assistance. Under the AAIA certain privately-owned airports that are available for public use are eligible to receive airport development grants. As a result, any privately owned airport that receives an AIP grant after October 1, 1996, (the effective date of the FAA Reauthorization Act of 1996), is subject to the revenue use requirements. The applicability section of the Final Policy, Section III, is modified to reflect the expansion of the revenue-use requirement to include privately-owned airports.

b. Applicability of Policy to Publicly and Privately Owned Airports Subject to Federal Assistance

As a result of the same change in the law, recipients of Federal assistance provided after October 1, 1996, other than AIP grants, are also subject to the revenue-use restrictions. However, the Reauthorization Act of 1996 did not define Federal assistance, and the legislative history does not provide guidance on the meaning of this term. In addition, it did not explicitly address the status of airports that received Federal assistance other than AIP airport development grants before October 1, 1996, and therefore were not already bound by the revenue use restrictions. These issues are addressed in the Final Policy, based on the FAA's review of the statute, its legislative history and relevant judicial decisions.

Applicability of the revenue-use requirement under § 47133 depends on the definition of the term ''Federal assistance.'' In the absence of guidance in the statute and legislative history, the FAA has relied on the interpretation given to the similar term ''Federal financial assistance'' in Federal regulations and court decisions. 28 CFR part 41, ''Implementation of Executive Order 12250, Non-discrimination on the Basis of Handicap in Federally Assisted Programs,'' section 41.4(e) establishes the definition of ''Federal financial assistance'' for all Federal agencies implementing § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. That definition is in turn subject to the limitation of the Department of Transportation v. Paralyzed Veterans, 477 U.S. 597 (1986) (Paralyzed Veterans), which specifically addressed the issue of whether certain facilities and services provided by the FAA in managing the national airspace system constituted federal assistance. That decision held that the provision of air navigation services and facilities to airlines by the FAA did not make the commercial airline passenger service a Federally assisted program within the meaning of § 504.

The FAA's interpretation of the term ''Federal assistance'' is included in Section II of the Final Policy, Definitions. The Final Policy's definition of ''Federal assistance'' adapts the generalized language of 28 CFR § 41.4(e) to the specific circumstances of airports receiving Federal support and reflects the holding of the Paralyzed Veterans decision. The definition lists as Federal Assistance the following:

(1) Airport development and noise mitigation grants;

(2) Transfers, under various statutory provisions, of Federal property at no cost to the airport sponsors; and

(3) Planning grants related to a specific airport.

Under this definition, FAA installation and operation of navigational aids and FAA operation of control towers are not considered Federal assistance, based on the Supreme Court decision in Paralyzed Veterans. Similarly, the FAA does not consider passenger facility charges (PFCs) to be Federal assistance even though PFCs may be collected only with approval of the FAA.

Airport development and noise mitigation grants are considered Federal assistance because they apply to a specific airport, and that airport is, therefore, ''subject to Federal assistance'' under the statute. Transfers of Federal property to an airport are considered Federal assistance because they also apply to a specific airport. Planning grants may apply to a specific airport or may be more general in nature. Under § 47133, the FAA considers only planning grants related to a specific airport to be Federal assistance.

However, not all airports that are the subject of Federal assistance are necessarily bound to the revenue-use assurance simply by the passage of § 47133. Established Federal grant law prevents a statute from being construed to modify unilaterally the terms of preexisting grant agreements absent a clear showing of legislative intent to do so. *Bennett* v. *New Jersey* 470 U.S. 632 (1985), 84 L.Ed 2d 572, 105 S.Ct. 1555. Neither the statutory language nor its legislative history indicates an intent by Congress to apply § 47133 to impose the revenue-use requirement on airports that were not already subject to it. By contrast, a recent example of Congressional intent to modify preexisting grant agreements exists in § 511(a)(14) of the Airport and Airway Improvement Act of 1982, 49 USC App. 2210(a)(14), which was recodified at 49 USC 47107(c)(2)(B). That subsection, which was added to the AAIA in 1987, established requirements for the disposal of land acquired with Federal grants that is no longer needed for airport purposes. The statute by its terms applied to an ''airport owner or operator [who] receives a grant before on or after December 31, 1987'' for the purchase of land for airport development purposes. This language demonstrated a clear Congressional intent to modify preexisting grant agreements. The language of § 47133 and its legislative history lacks any such express direction.

Therefore, the FAA does not interpret § 47133 to impose the revenue-use requirements on an airport that was not already subject to the revenue-use assurance on October 1, 1996. An airport that had accepted Surplus Property from the Federal government, but did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue-use requirement by operation of § 47133. If that airport accepted additional Federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue-use requirement. As discussed below, by operation of § 47133, the revenue-use requirement would remain in effect as long as the airport functioned as an airport.

For airports that were already subject to the revenue-use requirement on October 1, 1996, and those that become subject to the requirement after that date, the effect of § 47133 is to extend the duration of the requirement indefinitely. This application is not explicit in the statute and reference to the legislative history of the statute is necessary to determine congressional intent and the specific meaning and application of the statutory language. The legislative history of § 47133 makes it clear that Congress enacted § 47133 to extend the duration of the revenue-use requirement for airports that are already subject to it. In describing an earlier version of § 47133, the Committee on Transportation and Infrastructure of the House of Representatives stated that the reason for the change was because ''revenue diversion burdens interstate commerce even if the airport is no longer receiving grants. In recognition of this fact, the bill applies the exact same revenue diversion prohibition to airports that have a FAA certificate [modified to airports that are subject to Federal assistance in conference] as now applied to airports that receive AIP grants. For the most part, these will be the same airports.'' H.R. Rep. 104–714 (July 26, 1996) at 38, reprinted at 1996 US Code, Congressional and Administrative News at 3675. The report further stated that broadening the prohibition would ''make it clear that an airport cannot escape this prohibition [on revenue diversion] by refusing to accept AIP grants[;]'' remove ''this perverse incentive to refuse AIP grants * * *[;].'' and ''once again [encourage] all airports to use available Federal money to increase safety, capacity, and reduce noise.'' *Id.*

Any airport that had an outstanding AIP grant agreement in effect on October 1, 1996, was already bound to the same revenue use assurance that is contained in § 47133. Because § 47133 is extending the duration of an existing obligation, there is no conflict with the principle of Federal grant law outlined above.

c. Relationship of Final Policy to Airport Privatization

In the applicability and definition section of the Proposed Policy, the FAA stated that proceeds from the sale of the entire airport as well as from individual parcels of land would be considered as airport revenue. The FAA also stated that it did not intend ''to effectively bar airport privatization initiatives,'' and that the FAA would take into account ''the special conditions and constraints imposed by the fact of a change in ownership of the airport.'' 61 Fed. Reg. at 7140. The FAA proposed to remain ''open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of § 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure.'' *Id.*

Airport operators: A number of airport operators expressed concern that the guidance in the Proposed Policy was too ambiguous to encourage privatization and might discourage privatization initiatives. One operator suggested that the FAA should take a flexible approach to the proceeds of a privatization transaction when an airport's concession revenues are sufficient to allow a public owner to use some sales proceeds for nonairport purposes without increasing fees charged to aeronautical users and without continuing a need for Federal subsidy. Another airport operator suggested that the financial terms of a transaction would reflect the local circumstances in which the transaction was negotiated and recommended that the FAA account for this fact in reviewing revenue diversion claims.

Air carriers: ATA adamantly opposed the sale or transfer of a public use airport in a situation when such an action would cause airport revenue to be taken off the airport. ATA believes that the FAA does not have the flexibility or the statutory authority to require anything less than 100% compliance under 49 USC § 47107(b).

General aviation: The AOPA is concerned that the policy gives the impression that airport privatization is a fully resolved issue. The AOPA believes that the policy must avoid any implication that the issue is resolved or that the FAA endorses privatization.

Other commenters: Three public interest organizations addressed the issue of privatization from different perspectives. A group concerned with preventing and mitigating airport noise suggests that the FAA must ensure that adequate funds remain available to meet current and future airport noise mitigation needs. This group recommended that, before approving a transfer, the FAA should conduct a thorough audit of the airport's compliance with noise compatibility requirements, plans, and promises, and that the FAA should assess the adequacy of resources to address noise compatibility problems. The FAA should also require enforcement mechanisms to ensure implementation of noise compatibility and mitigation measures as a condition of the sale or transfer.

Two other groups supported a policy that does not discourage airport privatization. One of these suggested that the FAA consider defederalization of airports. The comments regarding defederalization are beyond the scope of this proceeding, because they would require statutory changes.

Final Policy: The Final Policy adopts the basic approach of the Proposed Policy toward privatization, with some language changes for clarity and readability. In addition, the Final Policy explicitly acknowledges the Airport Privatization Pilot Program.

Guidance on the process for obtaining FAA approval of the sale or lease of an airport is contained in FAA Order 5190.6a, Airport Compliance Requirements. The Final Policy is not intended to modify the process in any way. FAA approval is required for any transfer, including those between government entities. The Final Policy makes clear, however, that in processing an application for approval the FAA will: (a) treat proceeds from the sale or lease as airport revenue; and (b) apply the revenue-use requirement flexibly, taking into consideration the special conditions and constraints imposed by a change in ownership of the airport. For example, as is noted in the Final Policy, if the owner of a single airport is selling the airport, it may be inappropriate to require the seller to simply return the proceeds to the private buyer to use for operation of the airport.

The FAA requires the transfer document to bind the new operator to all the terms and grant assurances in the sponsor's grant agreement. The FAA retains sufficient authority and power through its grant assurances to ensure compliance by the new owner with all of its obligations, including any grant-based obligations relating to mitigation of environmental impacts of the airport; to conduct sponsor audits and to take other appropriate action to ensure that the airport is self-sustaining.

The Final Policy's approach to privatization does not represent, as ATA suggests, less than 100 percent compliance with the revenue-use requirement. The FAA agrees with the ATA that we cannot waive that requirement. Rather, the FAA has committed to exercise its authority to interpret the requirement in a flexible way to account for the unique circumstances presented by a change of ownership.

The Final Policy is not an endorsement of privatization and it does not resolve the policy debate about privatization. FAA will continue to review the sale or lease of an airport on

a case-by-case basis, including transfers proposed under the Airport Privatization Pilot Program, 49 U.S.C. 47134, created by § 149 of the FAA Reauthorization Act of 1996. The demonstration program authorizes the FAA to exempt five airports from Federal statutory and regulatory requirements governing the use of airport revenue. Under the program, the FAA can exempt an airport sponsor from its obligations to repay Federal grants, to return property acquired with Federal assistance, and to use the proceeds of the sale or lease exclusively for airport purposes. The latter exemption is also subject to approval by the air carriers serving the airport.

The FAA notes the concerns that the revenue-use requirement may discourage privatization. Congress addressed this prospect by enacting the Privatization Pilot Program, which authorizes the FAA to grant exemptions from sections 47107(b) and 47133 to permit the sponsor to use sales or lease proceeds for nonairport purposes, on certain conditions. That exemption would not be required unless sales or lease proceeds were airport revenue. In addition, the FAA will consider the unique circumstances—financial and otherwise—of individual transactions in determining compliance with section 47107(b), and this should address to some degree the commenters' concerns about privatization.

d. Effect of § 47133 on Return on Investment for Private Airport Owners or Operators That Accept Federal Assistance

By extending the revenue-use requirement to privately-owned airports, § 47133 requires the FAA to consider a new issue—the extent to which a private owner that assumes the revenue-use obligation may be compensated from airport revenue for the ownership of the airport. Section 47133 prohibits all such private airport owners or operators from using airport revenue for any purpose other than the capital and operating costs of the airport. However, the FAA does not consider section 47133 to preclude private owners or operators from being paid or reimbursed reasonable compensation for providing airport management services. Private operators, presently, provide airport management services at a number of airports. In many cases, these airports are publicly owned and subject to the revenue-use requirement. The private operator is providing these services under some form of contract with the public owner. These services are considered part of the operating cost of the airport owner, and the fees can be paid from airport revenue.

It is reasonable to equate private operators managing publicly owned airports with private owner/operators managing privately owned or leased airports. To avoid any confusion of the issue, reasonable compensation for management services provided by the owner of a privately-owned airport is identified as a permitted use of airport revenue in the Final Policy.

Private airport owners may typically expect a return on their capital investment. Such investment could be considered a capital cost of the airport. In the case of private owners or operators of airports who have assumed the revenue-use obligation, that obligation would limit the ability to use the return on capital invested in the airport for nonairport purposes. In particular, the FAA expects private owners to be subject to the same requirements governing a self-sustaining airport rate structure and the recovery of unreimbursed capital contributions and operating expenses from airport revenue as public sponsors. Under section 47107(l)(5), private sponsors—like public sponsors—may recover their original investment within the six-year statute of limitation. In addition, they are entitled to claim interest from the date the FAA determines that the sponsor is entitled to reimbursement under section 47107(p). Any other profits generated by a privately-owned airport subject to section 47133 (after compensating the owner for reasonable costs of providing management services) must be applied to the capital and operating costs of the airport.

This interpretation is required by provisions of 49 U.S.C. 47134, the airport privatization pilot program. Section 47134 authorizes the FAA to grant exemptions from the revenue-use requirement to permit the private operator to ''earn compensation from the operations of the airport.'' This exemption would not be necessary if section 47133 did not restrict the freedom of the private owner of a Federally-assisted airport to use the profits from the investment in the airport for nonairport purposes. This interpretation does not unreasonably burden private owners, because they receive a benefit (in the form of either Federal property added to the airport or Federal grant funds) in exchange for assuming the restrictions on the use of their profit.

e. Grandfather Provisions

The Proposed Policy included a discussion of the grandfather provisions of section 47107(b) in the section on permitted uses of airport revenue. That discussion included a list of examples of financing obligations and statutory provisions that had been previously found by the Department of Transportation to confer grandfather status.

The Comments: Two airport operators commented on this issue. One is an airport operator whose status under the grandfather provisions was under consideration by the FAA when the Proposed Policy was published. Its concerns were addressed by the FAA's consideration of its individual situation.

The second commenter is airport operator already established as a grandfathered airport operator. This commenter recommends that the Final Policy continue to recognize the rights of grandfathered airports.

Final Policy: The Final Policy continues to recognize the rights of grandfathered airport owners set forth at title 49 U.S.C. 47107(b)(2) and 47133. To qualify an airport for grandfathered status, the statute requires that local covenants, assurances or governing laws pre-dating September 2, 1982, must specifically pledge the use of airport generated revenues to support not only the airport but also the general debt obligations or other facilities of the owner or operator. However, the Final Policy is modified to reflect the requirement in the 1996 FAA Reauthorization Act that the FAA consider the increase in grandfathered payments of airport revenue as a factor militating against the award of discretionary grants.

f. Applicability to Non-municipal Airport Authorities

Lehigh-Northampton Airport Authority (LNAA): LNAA asserted that the airport revenue-use requirement does not allow FAA to regulate airport transactions with non-governmental parties and does not empower FAA to override state and local laws governing the use of airport revenue for airport marketing and promotional activities. The commenter advanced a number of arguments as to why FAA does not have authority to restrict such transactions. First, Congress has shaped the revenue diversion statute to identify financial irregularities in dealings between an airport enterprise account and another unit of government. The statute does not contemplate FAA regulation of airport financial relationships with non-government parties. Second, Congress did not intend the ''capital or operating costs'' language in the revenue diversion statute to authorize a new Federal regulatory scheme to narrow the types or levels of airport expenditures beyond

what is legal under applicable state and local law. Third, there is not a statutory requirement for FAA to regulate airport expenditures for community events or charitable contributions in the absence of facts suggesting that such expenditures are the result of undue influence by a governmental unit.

The LNAA currently has a case pending before the FAA under FAR Part 13, in which certain expenditures that LNAA characterizes as marketing and promotional expenses are being examined for consistency with the revenue-use requirement. LNAA's assertions with respect to its own promotional activities will be addressed by the FAA in that proceeding. To the extent that LNAA's practices were inconsistent with this Final Policy, LNAA will have an opportunity to argue that the Final Policy should not be applied to its situation.

The general issues of the use of airport revenue for marketing and promotional expenses and charitable donations are discussed separately below.

The FAA is not modifying the applicability of the Final Policy based on LNAA's other concerns. The language of section 47107(b) explicitly states that revenue generated by the airport may only be expended for the capital or operating costs of the airport or local airport system; it contains no limiting language concerning ''financial irregularities.'' The statute further defines expenditures for general economic development and promotion as unlawful use of airport revenue, providing specific authority over transactions that do not involve transfers of airport revenue to other governmental entities. See 49 U.S.C. 47107(l)(2). This provision grants authority for regulation of expenditures for charitable and community-use purposes.

In addition, the Congressional mandate to establish policies and procedures to ''assure the prompt and effective enforcement'' of the revenue use and self-sustainability requirements (49 U.S.C. 47107(l)(1)) provides statutory authority to adopt more detailed guidance on permitted and prohibited uses of airport revenue. Many airport operators have expressed concern over the difficulty of responding to OIG findings of unlawful revenue use without clear and specific FAA guidance on permitted and prohibited practices.

Finally, the grandfathering provision establishes Congressional intent to prohibit certain airport revenue practices authorized by state or local law that do not satisfy the specific requirements of the grandfather provisions of the AAIA.

2. Definition of Airport Revenue

a. Proceeds From Sale of Airport Property

The Proposed Policy included proceeds from the sale of airport property in the proposed definition of airport revenue. No distinction was made between property acquired with airport revenue and property acquired with other funds provided by the sponsor. In the explanatory statement, the FAA discussed alternatives it had considered, including limiting the definition to property acquired with airport revenue. (61 FR 7138) The FAA also stated that a sponsor would be able to recoup any funds it contributed to finance the acquisition of airport property as an unreimbursed capital contribution.

Airport operators: Airport operators objected to defining proceeds from the sale of airport property as airport revenue. ACI/AAAE argued that the definition would reduce incentives for airport sponsors to pursue legitimate airport endeavors. One airport operator argued that the definition constitutes a transfer of wealth from the taxpayers to the airport users, and that cities would be less willing to contribute to future airport projects. Another individual operator argued that the policy should not apply to property acquired with the sponsor's own funds and to property acquired with airport revenue before 1982. This airport operator further argues that application of the policy to property acquired before 1982 amounts to a taking of airport property without just compensation and without Congressional authorization. Finally, this operator argued that the proposed definition appears to contradict a portion of the FAA Compliance Handbook, Order 5190.6A (October 2, 1989), Paragraph 7–18, that states there is no required disposition of net revenues from sale or disposal of land not acquired with Federal assistance.

Air carriers: The ATA commented that the use of airport revenue for repayment of contributions from prior years should be limited. According to ATA, reimbursements should be permitted only when the sponsor and airport enter into a written agreement concerning the terms of reimbursement before the service or expenditure is provided.

Other commenters: A public interest organization opposed the treatment of proceeds from the sale of airport property as airport revenue. This commenter argued that the sponsor, as the principal provider of airport's land and capital, has a legitimate claim to cash-out the value of its investments and to use the proceeds for other purposes.

The Final Policy: The Final Policy does not modify the treatment of proceeds from the sale, lease or other disposal of airport property. Proceeds from the sale lease or other disposal of all airport property are considered airport revenue subject to the revenue-use requirement and this policy, unless the property was acquired with Federal funds or donated by the Federal government. While proceeds from disposal of Federally-funded and Federally-donated property are also airport revenue, these proceeds are subject to separate legal requirements that are even more restrictive than the revenue-use requirement.

As discussed in the Proposed Policy, this definition is consistent with the language of the original version of section 47107(b), which applies to ''all revenues generated by the airport.''

In addition, the Airport Privatization Pilot Program, 49 U.S.C. 47134, permits the FAA to grant exemptions from the revenue-use requirements to permit a sponsor to keep the proceeds from a sale or lease transaction, but only to the extent approved by 65 percent of the air carriers. An exemption would not be required unless the proceeds from the sale or lease of the entire airport were airport revenue within the meaning of section 47107(b) and 47133. Since the proceeds from the sale of an entire airport are airport revenue, it follows that the proceeds from the sale of individual pieces of airport property are also airport revenue.

Further, section 47107(l)(5)(A) establishes a six-year period during which sponsors may claim reimbursement for their capital and operating contributions. This limitation on seeking reimbursement could be avoided through the process of disposing of airport property, if the proceeds of sales were not themselves considered airport revenue. Through section 47107(l)(5)(A) Congress has defined the rights of airport owners and operators to recover their investments in airport property for use for nonairport purposes. Subject to the six-year statute of limitations, the sponsor is entitled to use airport revenues for reimbursement of such contributions. Section 47107(p) provides that a sponsor may also claim interest if the FAA determines that a sponsor is entitled to reimbursement, but interest runs only from the date on which the FAA makes the determination. As discussed below, the Final Policy provides flexibility to

structure future contributions to permit reimbursement over a longer period of time in order to promote the financial stability of the airport. The six-year limitation, which is incorporated in the Final Policy, also addresses ATA's request for a time limit on the airport owner or operator's ability to claim recoupment for past unreimbursed requests.

The FAA does not accept the suggestion that the definition is an unauthorized taking of sponsor property without just compensation. First, as noted, the definition is supported by the 1996 FAA Reauthorization Act, which included an express provision for an exemption from the revenue use restriction for sale and lease proceeds. Second, all airport sponsors, including the airport commenters, voluntarily agreed to their restrictions on the use of airport revenue when they accepted grants-in-aid under the AIP program. Finally, the definition does not deprive the commenter of its property. The proceeds from the disposal will still flow to the commenter sponsor to be used for a legitimate local public purpose—operation and development of the commenter's airport.

The FAA acknowledged in the Proposed Policy that existing FAA internal orders contain provisions on the status of proceeds from the disposal of airport property that are inconsistent with this Final Policy. As stated in the Proposed Policy, this inconsistency does not preclude the FAA from defining proceeds from the disposal of airport property as airport revenue in this Final Policy. Rather, ''the Policy takes precedence, and the orders will be revised to reflect the policies in this statement.'' 61 FR 7138. In addition, the provisions in the FAA internal orders are in conflict with the 1996 FAA Reauthorization Act. Because of this statutory conflict, the FAA cannot continue to apply them.

b. Revenue Generated by Off-airport Property

The Proposed Policy defined as airport revenue the revenue received for the use of property owned and controlled by a sponsor and used for airport-related purposes, but not located on the airport.

Airport operators: The ACI–NA/AAAE and two individual airport operators objected to this definition of airport revenue. The ACI–NA/AAAE stated that revenues received from off-airport activities should ordinarily not be counted as airport revenue. One airport operator argued that this definition is inconsistent with the statutory definition of airport in the AAIA. The other airport operator (the State of Hawaii) is especially concerned about revenue generated by off-airport duty fee shops.

No other comments were received.

Final Policy: The Final Policy does not modify the definition of airport revenue as it pertains to off-airport revenue. This definition is consistent with FAA's prior interpretation, which has defined as airport revenue the revenues received by the airport owner or operator from remote airport parking lots, downtown airport terminals, and off-airport duty free shops.

After enactment of the original revenue-use requirement, the FAA initiated an administrative action to require the State of Hawaii to use its revenue from off-airport duty free sales in a manner consistent with section 47107(b). In response, Congress amended the revenue-use requirement to provide a specific and limited exemption to the State of Hawaii to permit up to $250 million in off-airport duty-free sales revenue to be used for construction of highways that are part of the Federal-Aid highway system and that are located in the vicinity of an airport. See, 49 U.S.C. § 47107(j). The statutory exemption would only be necessary if the revenue from off-airport duty free shops is airport revenue within the meaning of the statute.

c. Royalties From Mineral Extraction

The Proposed Policy included royalties from mineral extraction on airport property earned by a sponsor as airport revenue.

Airport operators: One airport operator objected to including revenue from the sale of sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport in the definition of airport revenue. The operator stated that the retention of mineral rights as airport property would represent a windfall to the airport at the sponsor's expense; that the Proposed Policy is contrary to congressional intent and that it would take, without compensation, valuable property rights from the sponsor. The operator also cited a prior decision where FAA concluded the production of natural gas at Erie, Pennsylvania, does not serve either the airport or any air transportation purpose. The royalties generated by such production were determined to be outside the scope of the revenue-use requirement.

Final Policy: The Final Policy retains the proposed definition of airport revenue to include the sale of sponsor-owned mineral, natural, agricultural products or water to be taken from the airport. On further review of the Erie interpretation in this proceeding, the FAA no longer considers the analogy drawn in that interpretation—between mineral extraction and operation of a convention center or water treatment plant—to be appropriate. Rather, mineral and water rights represent a part of the airport property and its value. Just as proceeds from the sale or lease of airport property constitute airport revenue, proceeds from the sale or lease of a partial interest in the property—i.e. water or mineral rights—should also be considered airport revenue. The FAA will not require an airport owner or operator to reimburse the airport for past mineral royalty payments used for nonairport purposes based on the Erie interpretation. However, all airport owners and operators will be required to treat these payments as airport revenue prospectively, starting on the publication date of the Final Policy.

With respect to agricultural products, the FAA has always treated lease revenue from agricultural use of airport property as airport revenue, even if that revenue is calculated as a portion of the revenue generated by the crops grown on the airport property. The definition in the Final Policy will assure that the airport gets the full benefit of agricultural leases of airport property, regardless of the form of compensation it receives for agricultural use of airport property.

The FAA does not consider this interpretation to create a taking of airport owner or operator property. As discussed in other contexts, the limitation on the use of airport revenue was voluntarily undertaken by the airport operator upon receiving AIP grants. In addition, the revenues generated by these activities will still flow to the sponsor for its use for a legitimate local governmental activity, the operation and development of its airport.

d. Other Issues

The Final Policy includes a discussion of the requirement of 49 U.S.C. § 40116(d)(2)(A). This provision requires that taxes, fees or charges first taking effect after August 23, 1994, assessed by a governmental body exclusively upon businesses at a commercial service airport or upon businesses operating as a permittee of the airport be used for aeronautical, as well as airport purposes. This addition is included, at the suggestion of a commenter, to comply with the statutory provision, which was enacted as section 112(d) of the 1994 FAA Authorization Act.

3. Permitted Uses of Airport Revenue

a. Promotion/marketing of the Airport

Congress, in the FAA Authorization Act of 1994, permitted the use of airport revenues for promotion of the airport by expressly prohibiting ''use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems.'' The Supplemental Proposed Policy cited this law and recognized that many airport sponsors engage in some form of promotional effort, to encourage use of the airport and increase the level of service. Accordingly, the Supplemental Notice provided that ''[a]irport revenue may be used for * * * [c]osts of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport.'' 61 FR 66470.

However, the preamble to the Supplemental Notice stated that promotional/marketing expenditures directed toward regional economic development, rather than specifically toward promotion of the airport, would not be considered a permitted use of airport revenue. In addition, the FAA proposed to prohibit the use of airport revenue for a direct purchase of air service or subsidy payment to air carriers because the FAA does not consider these payments to be capital or operating costs of the airport.

Airport operators: In their comments to the original proposed policy, ACI–NA/AAAE requested that FAA establish a ''safe harbor,'' or a maximum dollar amount (perhaps based on a percentage of airport costs), under which an airport could spend airport revenue on certain promotional and marketing activities. Greater percentage amounts would be allowed for the costs of airport-specific activities, while lower amounts would be allowed for joint efforts for campaigns and organizations that have broader, regional marketing missions.

Several airport operators supported this ''safe harbor'' concept in their comments to the docket for the original Proposed Policy. One such commenter, without reference to ACI/AAAE's remarks, suggested a cap of 5% of an airport's budget as a ''safe harbor'' for marketing expenses that are not directly related to the airport or airport system. Furthermore, this commenter would limit the use of airport revenue to a maximum share of 20 percent of the overall cost of any joint-project budget.

ACI/AAAE did not pursue the concept of ''safe harbor'' in their comments to the docket for the Supplemental Policy, focusing instead on the discretion of the airport operator to use reasonable business judgment to determine potential benefits to the airport. Several airports concurred with the ACI–NA/AAAE position, and one airport operator added that joint-marketing expenses, if reasonable and clearly related to aviation, should be considered an operating cost of the airport.

The ACI/AAAE and several individual airport operators commented that an airport cannot be distinguished from the region served by the airport. ACI/AAAE commented that the policy should permit reasonable spending for marketing of communities and regions because airports are not ultimate destinations of passengers. Therefore, airport operators must be free to make a reasonable attempt to increase revenues by investing in the promotion of their community as a destination.

Some airports specifically opposed the ATA's suggestion of a cap, described below.

Air carriers: In its comments to the Supplemental Notice, the ATA mentioned the concept of a maximum or ''cap'' under which expenditures would be considered reasonable, but would apply it to efforts to promote the services of the airport itself. The ATA would have the policy prohibit entirely the use of airport revenue for the promotion of regional development, because ''expenditures by an airport to promote local or regional economic development—as opposed to the services and functionality of an airport—should not be considered legitimate airport costs.'' In regard to cooperative or joint-marketing expenses, the ATA focused on airport participation in joint-marketing of new airline services, suggesting that these activities be limited to a 60-day promotional period. ATA also warned against abuses of cooperative marketing, in particular programs that result in promotion of a particular airline.

The ATA rejected the airport position that use of airport revenue to fund regional promotional activities is acceptable, because airports themselves are not destinations. They stated, ''[l]ocal governments that are also airport sponsors should not be permitted to pass off local and regional promotional activities in order to charge such costs to an airport. Indeed, many civic organizations and chambers of commerce undertake such activities directly, since continued economic development directly benefits the local businesses that constitute such organizations.''

The Final Policy: The FAA has modified the provisions on permitted uses of airport revenue in regard to promotion and marketing in the Final Policy. The FAA has applied the sections 47107(b) and 47107(l) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport. The permitted uses of airport revenue for marketing and promotion are split into two paragraphs, V.A.2 and V.A.3., in the Final Policy—one addressing costs that may be fully paid with airport revenue, and one addressing costs that may be shared. The issues of general economic development, direct subsidies of air carriers, the waiving of fees to airport users and airport participation in airline marketing and promotion is further addressed in Section VI.

The Final Policy provides, under V.A.2, that expenditures for the promotion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. These expenditures may be financed entirely with airport revenue, and the expenditures may include the costs of employees engaged in the promotion of airport services. In addition, cooperative airport-airline advertising of air service at the airport may be financed with airport revenue, with or without matching funds. The FAA is prepared to rely on airport management to assure that the level of expenditures for such purposes would be reasonable in relation to the airport's specific financial situation. In addition, cooperative airport-airline advertising of air service must be conducted in compliance with applicable grant assurances prohibiting unjust discrimination in providing access to the airport.

For other advertising and promotional activities, such as regional or destination marketing, airport revenue may be used to pay a share of the costs only if the advertising or promotional material includes a specific reference to the airport. The share must be reasonable, based on the benefits to the airport of participation in the activity. The FAA construes the prohibition on ''use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems' to preclude the reliance on airport management judgment to support the use of airport revenue for general destination advertising containing no references to the airport. Likewise, the prohibition precludes adoption of a safe-harbor

provision for general promotional expenses.

Except as discussed above, the Final Policy does not limit the amounts of airport revenue that can be spent for all permitted promotional marketing and advertising activities. The FAA expects that expenditure of airport revenues for these purposes would be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs. Examples of permissible and prohibited expenditures are included in the Final Policy itself.

b. Reimbursement of Past Contributions

The Proposed Policy permitted airport revenue to be used to reimburse a sponsor for past unreimbursed capital or operating costs of the airport. The Proposed Policy did not include a limit on how far back in time a sponsor could go to claim reimbursement, in accordance with the law in effect at the time. In addition, the Preamble noted that the FAA had not to date permitted a sponsor to claim reimbursement for more than the principal amount actually contributed to the airport. The FAA requested comment on whether the FAA should permit recoupment of interest or an inflationary adjustment or whether, in the case of contributed land, recoupment should be based on current land values.

Airport operators: ACI–NA/AAAE and a number of individual airport operators supported recoupment of interest or inflation adjustment on previous contributions or subsidies to the airport.

Air carriers: The ATA objected to the Proposed Policy and commented that recoupment should be subject to a number of requirements to prevent abuses.

The Final Policy: After the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49 U.S.C. §§ 47107(l)(5), 47107(p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to section 47107(p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest bearing loan to the airport when it is made. The interest rate charged to the airport should not exceed a rate that the sponsor received for other investments at the time of the contribution.

c. Donations of Airport Revenue to Charitable/Community Service Organizations

The Supplemental Proposed Policy addressed the use of airport property for public recreational purposes, and addressed the use of airport funds to support community activities and for participation in community events. The FAA proposed that the use of airport revenue for such donations would not be considered a cost of operating the airport, unless the expenditure is directly related to the operation of the airport. For example, expenditures to support participation in the airport's federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport. In contrast, expenditures to support a sponsor's participation in a community parade would not be considered to be directly related to the operation of the airport.

Airport operators: ACI–NA/AAAE contended that the expenditure of airport revenue for community or charitable purposes is appropriate and should be recognized as legitimate. Airports, regardless of their size, type, and certification or lack thereof, are important members of their local communities and, therefore, must be able to maintain their prominent, highly visible roles in their respective communities. Airports are regarded by their communities as local business enterprises and, consequently, are expected to contribute to local non-profit charitable concerns in the same manner as other local business enterprises.

Individual airport operators generally supported the position of ACI–NA/AAAE, although some individual operators acknowledged that some limitation on the expenditures may be appropriate. One suggested a *de minimis* standard; another proposed a ''safe harbor'' based on a percentage of the airport's total budget. Another urged that airport owners/operators be allowed leeway to make contributions of airport funds, in reasonable amounts and consistent with the local circumstances, and to use airport property for charitable purposes on the same basis.

Other airport operators commented that the Final Policy should give comparable treatment to the use of airport funds and airport property for community goodwill by recognizing the limited use of airport revenue to support charitable and community organizations as a legitimate operating cost of the airport.

Air carriers: Air carriers did not comment specifically on charitable contributions, although they commented extensively on the use of airport property for community or charitable purposes. Generally the air carriers suggested that use of airport property should be subject to strict conditions to avoid abuse.

Other commenters: An advocacy group in support of a particular airport commented that, in order for an airport to be as self-sustaining as possible, the use of each income dollar is critical, and that federally assisted airports must be fully responsive to the citizens of the community by providing information on the use of airport funds.

Final Policy: The Final Policy generally follows the approach of the Supplemental Notice. Airport funds may be used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport. In addition, the policy provides explicitly that where the amount of the contribution is minimal, the airport operator may consider the ''directly and substantially related to air transportation'' standard to be met if the contribution has the intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport.

Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that benefit is intangible and not quantifiable. Where the amount of the contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and

the benefit of community acceptance for the airport.

However, if there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue may be an expenditure for the benefit of the community, rather than an operating cost of the airport. The different treatment of the use of airport funds (direct payments to charitable and community organizations) and the use of airport property (less than FMV leases for charitable or community purposes) is grounded in the applicable laws: the revenue-use requirement (section 47107(b)), which governs the use of airport funds, provides far less flexibility than the requirement for a self-sustaining rate structure (section 47107(a)(13)), which applies to the use of airport property.

Examples of permitted and prohibited expenditures are included in the Final Policy.

d. Use of Airport Revenue to Fund Mass Transit Airport Access Projects

The Supplemental Proposed Policy addressed in Part VII.C., the circumstances in which an airport sponsor could provide airport property at less than fair market value to a transit operator. The Supplemental Proposed Policy did not address the use of airport revenue to finance the construction of transit facilities. That issue, however, was raised in the comments.

Airport Operators: Two airport operators supported the use of airport revenue for the construction of transit facilities. One commenter stated that an airport should be permitted to use airport revenues and assets to provide mass transit service to on-airport commercial uses. Another commenter referred to the AIP Handbook, FAA Order 5100.38A § 555, which provides AIP project eligibility for rapid transit facilities.

Air carriers: Air carriers did not specifically discuss the use of airport revenue to finance transit facilities. However, as discussed below, they objected to providing airport property for transit facilities at nominal lease rates.

Other Commenters: Two commenters representing transit operator interests supported the expenditure of airport revenues to finance transit facilities. A transit operator stated that in order to create a better balance between transit and highway interests, transit facilities should be totally eligible expenses, paid for in the same manner as other road and parking enhancements. A transit trade association urged the FAA to take appropriate actions to ensure that passenger fees and other airport revenues are widely eligible to fund a range of airport surface transportation modes, including public transportation.

The FAA also received extensive comments on providing airport property for use by transit providers at less than FMV rents. These comments are addressed separately below.

Final Policy: The Final Policy has been modified to provide guidance on the use of airport revenues to finance airport ground access projects. The Final Policy states that airport revenue may be used for the capital or operating costs of such a project if it can be considered an airport capital project, or is part of a facility owned or operated by the airport sponsor and directly and substantially related to air transportation of passengers or property, relying directly on the statutory language of § 47107(b).

As an example, the Final Policy summarizes the FAA's decision on the use of airport revenue to finance construction of the rail link between San Francisco International Airport and the Bay Area Rapid Transit (BART) rail system extension running past the airport. In that decision, the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people travelling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by nonairport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered ''airport passengers'' to include airport visitors and employees working at the airport.

4. Accounting Issues

a. Principles for Allocation of Indirect Costs

Based on the comments to the Proposed Policy, the FAA addressed the principles of indirect cost allocation in its Supplemental Notice. The Supplemental Notice made clear that the allocation of indirect costs is allowable under 49 USC § 47107(b), and that no particular method of cost allocation will be required, including OMB Circular A–87. To ensure, however, that indirect costs are limited to allowable capital and operating costs, the FAA proposed to apply certain general principles and prohibitions to the allocation of costs. The Supplemental Notice did not limit significantly the development of local cost allocation methodologies, or interfere with the application of Generally Accepted Accounting Principles (GAAP) and other accounting industry recognized standards.

In the Supplemental Notice, the FAA stated that it would expect that a Federally approved cost allocation plan that complied with OMB Circular A–87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowable under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport.

The Supplemental Notice also required specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. The general sponsor cost allocation plan could not result in an over-allocation to an enterprise fund. In addition, the sponsor would have to charge comparable users, such as enterprise accounts, for indirect costs on a comparable basis.

Lastly, the Supplemental Notice proposed to prohibit the allocation of general costs of the sponsoring government to the airport. However, this prohibition would not affect direct or indirect billing for actual services provided to the airport by local government.

Airport Operators: Generally, airport operators agreed with the proposal to acknowledge that the allocation of indirect costs as allowable under 49 USC § 47107(b), and to provide that no particular allocation methodology, including OMB Circular A–87, be required.

One airport operator requested the FAA to further clarify that it is not imposing on airport sponsors all of the specific elements of OMB CircularA–87. The operator was concerned that the statement in the Supplemental Notice that the FAA ''believe[s] the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement'' may lead to confusion over whether adherence to OMB Circular A–87 is mandatory for

allocating costs to be paid by airport revenue.

Several airport operators were concerned that the FAA would not accept the allocation of costs in accordance with a Federally-approved cost allocation plan, but could review the plan to ensure that allocation of specific cost items meet the special revenue retention requirements. For example, one airport operator commented that the FAA's approach would impose on airport sponsors burdens and requirements in excess of the detailed requirements of OMB-Circular A–87, which are designed to ensure a reasonable and consistent cost allocation system. The airport proprietor proposed that such compliance with a federally-approved cost allocation plan be considered sufficient to satisfy the revenue retention requirement.

Another airport operator proposed that the FAA revise the policy to clarify that a specific cost, as opposed to a type of cost, cannot be treated as both a direct and an indirect cost. The airport operator offered as an example a city-owned and operated airport at which some police services are provided by officers assigned exclusively to the airport and other services are provided by general duty police officers. The commenter suggested that it should be permissible to charge the airport for the officers assigned exclusively to the airport as a direct cost and to charge for the general duty officers as an indirect cost allocation.

Additionally, this commenter proposed revising the policy to clarify that costs that are chargeable to one city department on a direct basis may be charged to other city departments on an indirect basis. The airport operator offered an example in which police are exclusively assigned to a city-owned airport, but are not exclusively assigned to other city departments. The commenter argued that it would be reasonable to charge the airport for police services as a direct cost, and to charge the other departments as an indirect cost allocation.

Several airport operators were also concerned that the supplemental policy implied that a local cost allocation plan must provide that all users for a service be billed equally. For example, ACI-NA and AAAE suggested that the requirement for consistent application should be interpreted to require the local government to go through the exercise of assessing indirect costs against all governmental departments, including those wholly funded by that governmental entity. Likewise, an airport operator requested that the FAA clarify that the supplemental policy does not mean that an airport sponsor must actually bill all of its General Fund agencies for certain municipal costs in order to be able to charge such costs to its airports. All of those airport proprietors that expressed concern over this proposed policy generally commented that this issue was considered and rejected by the Department of Transportation in the Second Los Angeles International Airport Rates Proceeding, Docket OST–95–474. According to the airport proprietors, the DOT recognized that in many cases sponsor agency operations are paid from a common General Fund. Under those circumstances, it is illogical and unnecessary for one General Fund agency to bill another General Fund agency for municipal services.

One airport operator proposed that the word ''equally'' be removed from VII.B.4 of the proposed policy. The commenter urged that the FAA allow airport sponsors the flexibility to allocate costs to various users on a reasonable, equitable basis relative to the benefits received, even though specific users may sometimes be treated differently. Returning to its example of police services, the commenter suggested that if the sponsor chooses not to charge a housing authority for costs of a special police unit assigned to that authority, it should be of no concern to the FAA as long as those costs are not then charged to the airport.

Another airport operator argued that each of its proprietary departments are unique and governed by different City Charter provisions; that they make different uses of city services; and have different financial arrangements with the sponsor's general fund. This commenter argued that treating the departments the same for cost allocation purposes because the departments are enterprise funds would, therefore, serve no valid purpose.

Several airport operators disagreed with FAA's proposed policy to prohibit the indirect cost allocation of general costs of government. Several commenters stated that the proposed policy would reverse longstanding practice at many airports and could be inconsistent with federally-approved cost allocation plans, which provide for the allocation of a share of indirect costs of various local government functions. One airport operator argued that there is no statutory basis for prohibiting the allocation of general costs of government, other than costs for particular identified services.

Finally, one airport operator commented that the proposed policy does not sufficiently clarify the appropriate allocations for fire and police stations that do not serve the airport exclusively. The airport operator proposed that policy explicitly permit a sponsor to allocate costs based on the intended purpose and value of the station to the airport, not its actual use. The airport operator argues that a more flexible approach could better implement the applicable statutory provision that prohibits ''direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport.''

Airlines: ATA supports the proposed policy clarification that no particular cost allocation methodology for indirect costs is preferred.

The Final Policy: The Final Policy reflects a different and simplified approach to indirect cost allocation that is intended to facilitate development of permissible cost allocation plans and the review of those plans in the single audit process. The Final Policy specifies that the cost allocation plans must be consistent with Attachment A of OMB Circular A–87. Attachment A sets forth general principles for developing cost allocation plans. Those principles are essentially a restatement of the principles proposed in the Supplemental Policy. By referring to Attachment A, the Final Policy establishes a standard that is well understood by airport cost accountants and by airport operators' independent auditors. The Final Policy does not require compliance with the other attachments to OMB Circular A–87, which include more rigid requirements and defines categories of grant recipient costs that are eligible and ineligible for reimbursement with Federal grant funds.

The Final Policy continues to specify that the costs allocated must themselves be eligible for expenditure of airport revenue under section 47107(b). Attachment A to OMB Circular A–87 provides principles for cost allocation methodologies. The cost items that may be charged to airport revenue are determined by the requirements of section 47107(b). Therefore, sponsors, and the FAA, cannot rely solely on compliance with OMB Circular A–87 to assure that the costs items charged to the airport in a Federally approved cost allocation plan are consistent with section 47107(b).

The Final Policy continues to specify that the airport must not be charged directly and indirectly for the same costs. The FAA is not persuaded that the example of police services offered by an airport sponsor requires a modification of this requirement. This

provision is not intended to preclude both the direct and indirect billing in the situation cited by the commenter—where police services are provided to the airport on both an exclusive-use and a shared-use basis. In the cited example, it would be preferable to bill for police exclusively assigned to the Airport on a direct cost basis. It would be impossible, however, to bill for the shared-use police without engaging in some form of indirect cost allocation. The FAA did not intend the supplemental policy to preclude treatment of police services as both direct and indirect costs in these circumstances, only to preclude double billing on both a direct and indirect basis, for the same police costs.

Similarly, with respect to the second example of police services where the airport receives exclusive-use police services and other sponsor departments receive shared-use police services, the FAA did not intend the Supplemental Notice to preclude disparate billing methodologies. Inherent in Attachment A is that comparable units of a sponsoring government making comparable uses of the sponsor's services should have costs allocated and billed in a comparable fashion. The clarification noted above should address this situation as well. In the second example sited, the FAA would consider the sponsor departments receiving shared-use police services not to be comparable to the airport receiving exclusive use police services.

The Final Policy also provides that the allocation plan must not burden the airport with a disproportionate share of allocated costs, and requires that all comparable units of the airport owner or operator be billed for indirect costs billed to the airport. The FAA is unwilling to accept the suggestion that comparable users of a service may sometimes be treated differently for billing purposes, so long as the costs attributed to one unit of government are not then charged to the airport. The FAA believes that such practices would result in an unfair burden being placed upon the airport simply because of the airport's ability to pay.

This provision, however, is not intended to require a sponsor's General Fund activities to bill other General Fund activities for indirect costs that are properly allocable to those activities, if the airport is billed. The policy is clear that comparable billing for services is required only for comparable users.

Enterprise funds need not be treated as comparable to units of a sponsoring government financed from the sponsor's general fund, and comparable billing between enterprise funds and other units of government is not required. While the FAA may presume that enterprise funds are comparable to each other, an airport sponsor is free to demonstrate that particular enterprise funds are sufficiently different in material ways—such as the way they consume sponsor services or their overall financial relationships with the sponsor—to justify different practices in charging for indirect costs. The Final Policy does not further define comparability because decisions on comparability will depend on the specific circumstances of a sponsor. The Final Policy also explicitly permits the allocation of general costs of government and central services costs to the airport, if the cost allocation plans meets the Final Policy's requirements. As specified in the Final Policy, however, the allocation of these costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the allocated costs.

In addition, the FAA continues to recognize that use of airport revenue to pay some expenses not normally considered to be allowable pursuant to OMB Circular A–87, such as fire and police services, is consistent with the revenue retention requirement. If such costs are allocated as an indirect cost in accordance with the Final Policy, they will be considered by the FAA as acceptable charges.

The Final Policy is modified to permit the allocation of certain categories of a sponsor's general cost of government as an indirect charge to the airport. Such charges include indirect expenses of the Office of Governor of a State, State legislatures, offices of mayors, county supervisors, city councils, etc. An airport owner's or operator's central service costs may also be allocated to the airport. The Final Policy specifies that allocation of these categories of costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the costs.

The FAA proposed to prohibit the allocation of all general costs to the airport on the grounds that the payment of such costs with airport revenue would be inconsistent with the purpose of the revenue use restriction—to avoid subsidy of general sponsor governmental activity. It is clear from the comments that airports routinely pay for a share of the general costs the legislative and executive branches of the governmental unit of which the airport is a part under cost allocation plans prepared in accordance with GAAP. Further, the comments demonstrate that the payment of legislative and executive branch costs by airport revenue can be justified as a cost of the airport because the legislative and executive branches have direct, tangible oversight and control responsibilities for the airport, and their activities provide direct benefits to the airport, such as in the areas of funding, capital development, and marketing.

In addition, under the Final Policy, the costs of shared-use facilities must be allocated to all users of the facility, even if the original purpose of constructing the facility was to provide exclusive use or benefit to the airport. While a sponsor-owned facility may have originally been established for the benefit of the airport, the FAA believes that the purpose of the facility can change from time to time based on local circumstances and that allocation of costs should be based on current purpose, as well as use. The FAA may consider a number of factors in determining current purpose, including current use, design and functionality.

b. Standard of Documentation for the Reimbursement of Cost of Services and Contributions to Government Entities

In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures used by airport owners. As a matter of policy and procedure, the FAA has consistently required that reimbursement of capital and operating costs of an airport made by a government entity must be clearly supportable and documented.

Neither the Proposed Policy nor the Supplemental Notice explicitly discussed a standard of documentation that must be achieved for a sponsor to claim reimbursement for services and/or contributions it provided to the airport. However, events subsequent to the issuance of both documents indicate a need for FAA to provide specific guidance on the standard of documentation that will support the expenditure of airport revenues.

In the examination of a possible diversion of airport revenue by the City of Los Angeles at Los Angeles International, Ontario, Van Nuys and Palmdale Airports (FAA Docket No. 16–01–96), the FAA reviewed the underlying documentation which the City of Los Angeles offered to support the payment of approximately $31 million in airport revenue to the Los Angeles' general fund as the reimbursement of sponsor contributions and services provided to the airport. In the Director's Determination dated March 17, 1997, the FAA stated its standard of documentation to justify such reimbursements. Accordingly, the

FAA is including that standard in the Final Policy.

The Final Policy requires that reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, be supported by adequate documentary evidence. Adequate documentation consists of underlying accounting records and corroborating evidence, such as invoices, vouchers and cost allocation plans, to support all payments of airport revenues to other government entities. If this underlying accounting data is not available, the Final Policy allows reimbursement to a government entity based on audited financial statements, if such statements clearly identify the expenses as having been incurred for airport purposes consistent with the Final Policy statement. In addition, the Final Policy provides that budget estimates are not a sufficient basis for reimbursement of government entities. Budget estimates are just that—estimates of projected expenditures, not records of actual expenditures. Therefore, budget estimates cannot be relied on as documentary evidence to show that the funds claimed for reimbursement were actually expended for the benefit of the airport.

Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates must, however, be adjusted to actual expenses in the subsequent accounting period.

5. Prohibited Uses of Airport Revenue

a. Impact Fees/Contingency Fees

The Proposed Policy prohibited the payment of impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities. The Supplemental Notice did not modify this provision. The term ''impact fees'' was not defined in the Proposed Policy.

Airport operators: One Florida airport sponsor stated that impact fees should be allowable to either a sponsoring or non-sponsoring governmental body. Another commented that the language referring to a ''non-sponsoring'' governmental body was vague and confusing. Within the state of Florida, impact fees are typically administered by a non-sponsoring government body. It was stated that the wording did not seem to prohibit impact fee payments when assessed by a ''sponsoring'' agency, or impact fees that an airport sponsor is obligated to pay.

The Final Policy: For clarity, the Final Policy is modified to delete the reference to ''non-sponsoring'' governmental body and to delete the reference to fees the sponsor is not obligated to pay. In addition, the FAA is adding a statement that in appropriate circumstances, airport revenue may be used to reimburse a governmental body for expenditures that the imposing government will incur as a result of on-airport development, based on actual expenses incurred.

The effect of the deletions is to broaden the prohibition to all impact fees, within the meaning of the term used in the policy statement. As such, the deletions are consistent with the statutory prohibition on payment of airport revenues that do not reflect the value of services or facilities actually provided to the airport. Until a governmental unit undertakes the activity for which the impact fee is intended to compensate, it is impossible to know with certainty whether the impact fee is an accurate reflection of the cost of the activity attributable to the airport or its value to the airport, or even that the activity will occur. This situation is true regardless of both the status of the governmental unit as airport sponsor and the status of the fee as discretionary. The FAA understands that many local laws or regulations authorizing impact fees do not require the fees to be spent to mitigate or accommodate the results of the airport action that triggers the fee. The FAA has no basis for assuring the payment of impact fees would be consistent with the purpose of section 47107(b)—to prevent an airport sponsor who received Federal assistance from using airport revenues for expenditures unrelated to the airports.

The broader prohibition is consistent with applicable FAA policies. Longstanding FAA policy has permitted a sponsor to claim reimbursement from airport revenue only for ''clearly supportable and documented charges, * * * supported by documented evidence.'' FAA Order 5190.6A, par. 4–20.a(2)(c)(ii). An impact fee assessed before the imposing government incurred any expenses to accommodate airport growth would not meet this standard.

In addition, a standard of documentation required by the Final Policy applies to all expenditures of airport revenues subject to section 47107(b), including impact fee payments. That standard requires that expenditures of airport revenues be supported by data on the actual costs incurred for the benefit of the airport, not by budget or other estimates, which impact fees essentially are. The Final Policy will allow submission of those assessed fees resulting from the proposed development when the amount of the fees become fully quantifiable, as provided for in Section IV of the Final Policy, following implementation by the imposing government of the mitigation measures for which the impact fee is assessed. At that time, the FAA can best determine whether the fees assessed against airport revenue satisfy the requirements of section 47107(b) and this policy. In unusual circumstances, the FAA may permit a prepayment of estimated impact fees at the commencement of a mitigation project, if the funds are necessary to permit the mitigation project to go forward, so long as there is a reconciliation process that assures the airport is reimbursed for any overpayments, based on actual project costs, plus interest.

However, the Final Policy does take into account the potential that an airport operator may be required by state or local law to finance the costs of mitigating the impact of certain airport development projects undertaken by the airport sponsor. Therefore, where airport development causes a government agency to take an action, such as constructing a new highway interchange in the vicinity of the airport, airport revenues may be used equal to the prorated share of the cost. In all cases, the action must be shown to be necessitated by the airport development. In the case of infrastructure projects, such impact mitigation must also be located in the vicinity of the airport. This proximity requirement is not being applied to all mitigation measures because some mitigation measures—especially certain environmental mitigation measures—may not occur in the vicinity of the airport.

The Final Policy also acknowledges the possibility that an airport operator may be bound by local or state law to use airport revenue to pay an impact fee that is prohibited by this policy. The Final Policy states that the FAA will consider any such local circumstances in determining appropriate corrective action.

b. Subsidy of Air Carriers

As discussed in Section V ''Permitted Uses,'' the Supplemental Notice acknowledged the fact that Congress, in the 1994 FAA Authorization Act, effectively authorized the use of airport revenue for promotion of the airport by expressly prohibiting ''use of airport revenues for general economic development, marketing, and

promotional activities unrelated to airports or airport systems.'' At the same time, that statutory provision also limited the scope of acceptable promotional activity.

In the Supplemental Notice, the FAA proposed new policy language that more clearly addressed the kinds of promotional and marketing activities that are and are not legitimate operating costs of the airport under 47107(b). In the Supplemental Notice, Section VIII(I), the FAA proposed that ''[d]irect subsidy of air carrier operations'' is a prohibited use of airport revenue because it is not considered a cost of operating the airport. The FAA drew a distinction between methods of encouraging new service. Supplemental Notice proposed to allow the use of airport revenue to encourage passengers to use the airport through promotional activities, including cooperative promotional activities with airlines and to allow airport operators to enhance the viability of new service through fee incentives, on the one hand. As noted, the FAA proposed to prohibit the use of airport revenue to simply buy increased use of the airport by paying an air carrier to operate aircraft, on the other. The FAA considered the former activities to be a permitted expenditure for the promotion and marketing of the airport and the latter to be a prohibited expenditure for general economic development. The FAA explained in the preamble to the Supplemental Notice that neither promotional activities nor promotional fee discounts would be considered a prohibited direct subsidy of airline operations. 61 FR at 66738.

Airport operators: In their comments on the Supplemental Notice, ACI–NA/AAAE state that, generally, an expenditure or activity should not be considered revenue diversion if there is a reasonable expectation that such an expenditure or activity will benefit the airport. Furthermore, they note that the law does not single out direct air carrier subsidy or fee waivers for more stringent scrutiny than other marketing activities. This argument in favor of the reasonable business judgement of the airport management should be applied to the use of airport revenue for promotion and marketing not unrelated to the airport, including direct air carrier subsidies and fee waivers. ACI/AAAE stated ''both forms of financial assistance should be permitted, if an airport has a reasonable expectation that the subsidy will benefit the airport and the subsidy or discount is made available on a non-discriminatory basis.''

ACI/AAAE further stated that there is no real distinction between direct subsidy and fee waivers, as well as none between direct subsidy and the residual airport costing methodologies, making the distinction in the policy illogical. They predicted that the proposed policy is likely to promote detrimental effects, including eliminating air service to some small airports, increasing congestion at dominant hubs at the expense of medium-sized airports, reducing potential competition and raising fares.

Several individual airport operators concurred with the ACI–NA/AAAE position. One operator commented that any subsidies should be permitted, as long as the airport remains self-sustaining and the subsidies are not included in airline costs in calculating landing fees, terminal rents and other user charges.

Another airport operator, the LNAA, which is engaged as a party in a 14 CFR Part 13 investigation regarding its former air carrier subsidy program, commented that there is no real difference between an airport making a direct subsidy to an air carrier or waiving fees.

Two airport operators expressed different views. One operator agreed that airport revenues should not be used to subsidize new air carrier service because the practice of subsidization could lead to destructive competition for air service among airports. Another airport operator stated that it ''does not currently engage in nor does it contemplate any form of direct subsidy to air carriers in exchange for air service.'' This operator considers the Supplemental Notice to provide adequate flexibility to airport operators to foster and promote air service development.

Air carriers: The ATA strongly opposed the assertion that direct subsidies of airline operations with airport revenue may be considered to be operating costs of the airport and would extend the prohibition to indirect subsidies. They argued that the distinction in the proposed policy that allows fee waivers under certain circumstances, but prohibits direct subsidy is illogical. Both result in revenue diversion, whether the beneficiary is ''a start up carrier, a new entrant in a market, or an existing carrier at an airport.'' The ATA further commented, in connection with joint marketing endeavors, that the permissible ''promotional period'' should be defined, as should the scope of permissible marketing activities.

The Final Policy: The FAA has clarified the policy provision on the direct subsidy of air carriers with airport revenue; however, the prohibition remains, as does the distinction between direct subsidy and the waiving of fees and the joint promotion of new service. The FAA has applied the test of section 47107(b) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport.

In pursuit of uniformity, the FAA has integrated references to the section on the permitted uses of airport revenue, as well as to the section on self-sustainability, to assist airport operators in pursuing reasonable strategies to promote the airport and provide incentives to encourage new air service. Among other things, marketing of air service to the airport, and expenditures to promote the airport to potential air service providers can be treated as operating costs of the airport. Of course, support for marketing of air service to the airport must be provided consistently with grant assurances prohibiting unjust discrimination.

The setting of fees is a recognized management task, based on a number of considerations, including the airport management's assessment of the services needed by airport consumers, and the airport management's assessment of the financial arrangements necessary to secure that service. The FAA has consistently maintained that fee waivers or discounts involving no expenditure of airport funds raise issues of compliance with the self-sustaining rate structure requirement, not the revenue-use requirement. The Final Policy therefore, permits fee waivers and discounts during a promotional period. The waiver or discount must be offered to all users that are willing to provide the type and level of new service that qualifies for the promotional period. The Policy limits the fee waiver or discount to promotional periods because of the requirement that the airport maintain a self-sustaining airport rate structure. In addition, indefinite fee waivers or discounts could raise questions of compliance with grant assurances prohibiting unjust discrimination. The Final Policy does not define a permitted promotional period. There is too much variation in the circumstances of individual airports throughout the country to permit adoption of a single national definition of a suitable promotional period.

In contrast, the direct payment of subsidies to airline involves the expenditure of airport funds and hence raises questions under the revenue-use requirements. The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to

operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. Use of airport revenue for these purposes is expressly prohibited under the terms of the 1994 FAA Authorization Act. The Final Policy does not preclude a sponsor from using funds other than airport revenue to pay airline subsidies for new service, and it does not preclude other community organizations— such as chambers of commerce or regional economic development agencies—from funding a program to support new air service. Therefore, the Final Policy maintains the distinction between direct subsidy of air carriers and the waiving of fees, and prohibits the former.

6. Policies Regarding the Requirement for a Self-Sustaining Rate Structure

As noted in the summary, the Final Policy contains a separate section on the requirement that an airport maintain a rate structure that makes the airport as self-sustaining as possible under the circumstances at the airport, to provide more comprehensive guidance in a single document. The 1994 FAA Authorization Act directed the FAA to adopt policies and procedures to assure compliance with both the revenue uses and self-sustaining airport rate structure requirement. The general guidance repeats the guidance appearing in the Department of Transportation Policy Statement Regarding Airport Rates and Charges, 61 FR 31994 (June 21, 1996). The Final Policy interprets the basic requirement and addresses exceptions to the basic rule for leases of airport property at nominal or less-than fair market value (FMV) to specific categories of users.

Each federally assisted airport owner/operator is required by statute and grant assurance to have an airport fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurance to require airport sponsors to charge FMV commercial rates for nonaeronautical uses of airport property. However, in the case of aeronautical uses, user charges are also subject to the standard of reasonableness. In applying the two standards together for aeronautical property, the FAA has considered it acceptable for an airport operator to charge fees to aeronautical users that are less than FMV, but more than nominal charges. The FAA defines ''aeronautical use'' as any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Policy Statement Regarding Airport Fees, Statement of Applicability, 61 FR at 32017.

Many entities lease airport property for aeronautical and nonaeronautical uses at nominal lease rates. The FAA has determined that nominal leases to many of these entities is consistent with the requirement to maintain a self-sustaining airport rate structure. The Final Policy provides specific guidance regarding nominal leases for six categories of users. This guidance is discussed below.

a. Use of Property at Less Than FMV for Community/Charitable/Recreational Use

Airport operators: The ACI–NA/AAAE agree with the general conclusion that use of airport property for community and charitable purposes at less than FMV should be permissible. However, they argued that the criteria listed in the Supplemental Notice are too narrow. Other criteria should be considered, and an airport should be required to provide no more than one justification. The ACI–NA/AAAE specifically mentioned aeronautical higher education institutions and not-for-profit air and space museums as additional permitted uses, based on H.R. Rep. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 USCC.A.N. 3676.

Individual airport operators also requested more flexibility in various forms. One operator suggested that the Supplemental Notice establishes an unnecessary two-part test which many community uses of airport property will fail to satisfy. Another operator argued that such airport property use should not be limited to temporary arrangements, e.g., parks and baseball fields, which indicates that only uses that allow property to be returned rather quickly to the airport inventory would be permitted.

In contrast, another airport operator suggested that, in order to place less burden on the airport operator, such uses should be limited in scope and that the below-market value amount that an airport operator could charge for such usage should be established as some percentage of the appraised value of the property.

Air carriers: The ATA agrees in principle with the concept of limited use of airport property for certain specified community purposes at less than FMV. However, ATA stated that the Supplemental Notice lacks specificity and that its application would consequently be inconsistent with the self-sustaining and revenue-use requirements. The ATA proposed to narrow the first element of the standard to permit contribution of property if the property is put to a general public use desired by the local community and the use does not adversely affect the capacity, safety or operations of the airport. The ATA would narrow the second test by permitting the use of property that is expected to generate no more than minimal revenue, which the ATA would define as minimal revenue equal to or less than 20 percent of revenue that could be earned by similar airport property in commercial or air carrier use. When the property could be expected to earn more than this defined minimal amount, the ATA would permit less than FMV rental if the revenue earned by the community use approximates the revenue that would otherwise be generated.

The ATA would also require that the community use be subject to periodic review and renewed justification and that the airport proprietor retain absolute discretion to reclaim the property for airport use.

Other commenters: A member of the United States House of Representatives expressed concern that the policy, if adopted as proposed, does not provide sufficient flexibility to airport operators to be good neighbors within their community. This commenter suggested that in rural areas, requiring community organizations to pay FMV could reduce airport revenue as paying community organizations are forced off of the airport by higher rents and no new tenants are found.

Final Policy: The Final Policy generally permits below-FMV-rental of airport property for community uses, but generally limits the uses to property that is not potentially capable of producing substantial income and not needed for aeronautical use. Consistent with the suggestions of the ATA, the permitted community uses of such property will be limited to those that are compatible with the safe and efficient operation of the airport and which are for general local use. In addition, the community use should not preclude reuse of the property for airport purposes, if the airport operator determines that such reuse will provide greater benefits to the airport than the continued community use. Leases to private, non-profit organizations generally will be required to be at market rates unless the sponsor can demonstrate a ''community goodwill''

purpose to the lease, or can demonstrate a benefit to aviation and the airport, as discussed below.

While the Final Policy states that property provided for community use at no charge should be expected to produce no more than minimal revenue, we are not adopting a definition of minimal. For property that is capable of generating more than minimal revenue, a sponsor could charge less than FMV rental rates for community use, if the revenue earned from the community use approximates that revenue that could otherwise be generated. Providing such property for community use at no charge would not be appropriate.

The FAA has determined that this approach to community use strikes an appropriate balance between the needs of the airport to be a good neighbor and the Federal requirements on the use of airport revenue and property. This formulation provides substantial flexibility to airport operators. At the same time, the self-sustaining requirement and the policy goal of the revenue-use requirement justify some limitation on local discretion in this area.

The requirement that community use not preclude reversion to airport use is based on both the self-sustaining requirement and the airport sponsor's basic AIP obligation to operate a grant-obligated airport as an airport.

Under the Final Policy, the lease of airport property to a unit of the sponsoring government for nonaeronautical use at less than fair market value is considered a prohibited revenue diversion unless one of the specific exceptions permitting below-market rental rates applies. If a sponsor's use of airport property qualifies as community use, and the other requirements for community-use leases are satisfied, the FAA would not object to a lease at less than fair market value. Qualified uses could include park or recreational uses or other public service functions. However, such use would be subject to special scrutiny to ensure that the requirements for below-FMV community use is satisfied. The community use provision of the Final Policy does not apply to airport property used by a department or subsidiary agency of the sponsoring government seeking an alternative site for the sponsor's general governmental purposes at less-than-commercial value. For example, a city cannot claim the community use exception for a nominal value lease of airport property for a municipal vehicle maintenance garage. Such usage, while beneficial to the taxpaying citizens of the sponsoring government, would be difficult to justify as benefiting the airport by improving the airport's acceptance in the community.

b. Not for Profit Aviation Museums

The DOT OIG has cited instances in which an aviation museum at a federally assisted airport is leasing airport property at less than a fair market rental rate. In clarifying the revenue diversion prohibitions recommended for inclusion in the FAA Authorization Act of 1996, the House Transportation and Infrastructure Committee urged the FAA to take a flexible approach to the lease of airport property at below-market rates to not-for-profit air and space museums located on airport property. H.R. Rep. No. 104–714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 U.S.C.C.A.N. 3676 (House Report). The Committee recommended that this type of rental arrangement should not be considered revenue diversion because of the contribution that such museums make to the understanding and support of aviation.

One airport operator commented that long-term, less-than-market value rental arrangements, particularly for leaseholds encompassing permanent facilities, should be permitted when such arrangements serve a clear and valuable aviation-related purpose. This comment could include aviation museums.

One operator of a not-for-profit aviation museum urged the FAA to permit nominal rate leases. This operator stated that a FMV-based lease for its museum property would double its current operating budget.

The Final Policy: The Final Policy permits airport operators to charge reduced rental rates and fees, including nominal rates, to not-for-profit aviation museums, to the extent that the reduction is reasonably justified by the tangible and intangible benefits to the airport or civil aviation. This provision recognizes the potential for aviation museums to provide benefits to the airport by stimulating understanding and support of aviation, consistent with the suggestion contained in the House Report, U.S.C.C.A.N. 3676. Benefits to the airport may include any in-kind services provided to the airport and airport users by the aviation museum. The limitation to not-for profit museums is consistent with the requirement for a self-sustaining airport rate structure, because there is no reason to give for-profit aviation museums preferential treatment over other commercial aeronautical activities. All for-profit aeronautical activities provide some benefit to the airport, by making it more attractive for potential airport users. If this benefit were a sufficient reason to permit reduced rental rates to commercial aviation businesses on a routine basis, the requirement for a self-sustaining airport rate structure would be virtually unenforceable.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified aviation museum as it would any other aeronautical activity in setting rental rates and other fees to be paid by the museum.

c. Aeronautical Higher Education Programs

The DOT OIG has cited instances in which aeronautical secondary and post-secondary education programs at federally assisted airports are leasing airport property at less than a fair market rental rate.

In the House Report, 1996 U.S.C.C.A.N. 3676, the House Transportation and Infrastructure Committee also urged the FAA to take a flexible approach to aeronautical higher education programs located on airports. The Committee recognized that some federally obligated airports have leased property to non-profit, accredited collegiate aviation programs, and that facilitating these programs will help build a base of support for airport operations by giving students, who will be the future users of the national airspace system, easy access to aviation facilities.

The Final Policy: The Final Policy permits reduced rental rates, including nominal rates, to not-for-profit aeronautical secondary and post-secondary education programs conducted by accredited educational institutions, to the extent that the reduction is justified by tangible or intangible benefits to the airport or to civil aviation. This treatment is justified for the same reason that reduced rental rates and fees to certain aviation museums are permitted. Again, the benefits may include in-kind services provided to the airport and airport users. As with aviation museums, the educational institution and education program must be not-for-profit. For-profit aviation education, such as flight-training, is a standard commercial aeronautical activity at many airports. Permitting reduced rental rates and fees to for-profit aviation education programs would seriously undermine compliance with the self-sustaining requirement and could raise questions of compliance with the grant assurances prohibiting unjust discrimination.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified not-for-profit aeronautical education program as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

d. Civil Air Patrol Leases

Reduced-rental leases, including nominal leases, to the Civil Air Patrol/United States Air Force Auxiliary (CAP) at a number of airports have also been criticized in OIG audits. As a result of this criticism, some airport operators have been seeking higher rents from the CAP when leases have come up for renewal.

In its comments, the CAP contends that the current standard airport industry practice of permitting CAP use of airport property for a nominal rent confers substantial benefits to the airport and, in general, to the aviation community. The CAP, therefore, requests that a policy be adopted which would formally permit CAP units to continue to occupy facilities on federally obligated airports at a nominal rent, whether under formal lease arrangements, or otherwise, at the discretion of the airport owner/operator.

The Final Policy: The Final Policy permits reduced rental rates and fees to CAP units operating at the airport, in recognition of the benefits to the airport and benefits to aviation similar to those provided by not-for-profit aviation museums and aeronautical secondary education programs. As with other not-for profit-aviation entities, the reduction must be reasonably justified by benefits to the airport or to civil aviation. In-kind services to the airport and airport users may be considered in determining the benefits that the CAP unit provides. In addition, this treatment of the CAP, which has been conferred with the status of an auxiliary to the United States Air Force, is not identical to the treatment provided to military units in the Final Policy, as discussed below, but is consistent with that treatment.

The reduced rental rates and fees are available only to those CAP units operating aircraft at the airport. For CAP units without aircraft, a presence at the airport is not critical. The airport operator can accommodate those CAP units with property that is not subject to Federal requirements on maintaining a self-sustaining rate structure, without compromising the effectiveness of the CAP units. Of course, if such units provide in-kind services that benefit the airport, the value of those services may be recognized as an offset to FMV rates.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified not-for-profit aeronautical CAP lease as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

e. Police/Firefighting Units Operating Aircraft at the Airport

Many airports host police or fire-fighting units operating aircraft (often helicopters). The OIG has frequently criticized reduced rate or no-cost leases to these units of government as inconsistent with the self-sustaining and revenue-use requirements.

The Final Policy requires the airport operator to charge reasonable rental rates and fees to these units of government. In effect, these units of government must be treated the same as other aeronautical tenants of the airport. This treatment is consistent with the policy's general approach toward dealings between units of government—fees should be set at the level that would be produced by arm's-length bargaining. The treatment is also justified because police and fire-fighting aircraft units provide benefits to the community as a whole, and not necessarily to the airport. However, as with other police and fire-fighting units located at an airport, the policy does allow rental payments to be offset to reflect the value of services actually provided to the airport by the police and fire-fighting aircraft units.

f. Use of Property by Military Units

The US Air Force Reserve and the Air National Guard both have numerous flying units located on federally obligated, public-use airports. The majority of these aircraft-operating units are located on leased property at civilian airports established on former military airport land transferred by the US Government to the airport owner/operator under the Surplus Property Act of 1944, as amended, or under other statutes authorizing the conveyance of surplus Federal property for use as a public airport. Frequently, the favorable lease terms were contemplated in connection with the transfer of the former military property and may have been incorporated in property conveyance documents as obligations of the civilian airport sponsor. As with other reduced-rate leases, these arrangements have been criticized in individual OIG audits.

The Final Policy: The Final Policy provides that leasing of airport property at nominal lease rates to military units with aeronautical missions is not inconsistent with the requirement for a self-sustaining rate structure. The Department of Defense (DOD) has a substantial investment in facilities and infrastructure at these locations, and its operating budgets are based on the existence of these leases. Moving those facilities upon expiration of a lease or the payment of FMV rent for facilities to support military aeronautical activities required for national defense and public safety would be beyond the capability of the DOD without additional legislation and enlargement of the DOD operating budget. In all of the enactments on the self-sustaining rate structure requirement and use of airport revenue and the accompanying legislative history, the FAA can find no indication that Congress intended the airport revenue requirements to be applied in a way to disrupt the United States' defense capabilities or add significantly to the cost of maintaining those capabilities. Moreover, Congress specifically charged the FAA, in 49 U.S.C. § 47103, with developing a national plan of integrated airport systems (NPIAS) to meet, among other things, the country's national defense needs. Inclusion in the NPIAS is a prerequisite for eligibility for AIP funding. Thus, Congress clearly contemplated a military presence at civil airports. Therefore, the FAA will not construe the requirement for a self-sustaining airport rate structure to prohibit nominal leases to military units operating aircraft at an airport.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified military unit as it would any other aeronautical activity in setting rental rates and other fees to be paid by the military unit.

7. Lease of Airport Property at Less Than FMV for Mass Transit Access to Airports

The Supplemental Notice proposed that airport property could be made available at less than fair rental value for public transit terminals, rights-of-way, and related facilities, without being considered in violation of the requirements governing airport finances, under certain conditions. The transit system would have to be publicly owned and operated (or privately operated by contract on behalf of the public owner) and the transit facilities directly related to the transportation of air passengers and airport visitors and employees to and from the airport. Twenty-one responses addressed this issue.

Airport commenters: The airport operators concur with the principle of making airport land available for mass

transit at rates below fair market value. ACI–NA/AAAE stated that the determination to use airport property for a transit terminal, transit right-of-way, or related facilities at less than fair rental value is consistent with the grant assurance requiring airports to be self-sustaining.

Air carriers: The ATA asserted that FAA has exceeded its statutory authority in the proposal. ATA's considers transit facilities to be like commercial business enterprises, because they occupy airport property and charge their customers for their services. ATA also stressed that airport transit facilities are non-aeronautical facilities which are not ''directly and substantially related to the air transportation of passengers or property.''

Other commenters: Transit operators, including a transit operator trade association generally supported the position in the Supplemental Notice.

Another commenter stated that making airport property available at less than fair market rental value or making airport revenue available for transit facilities equates to the airport paying a hidden taxation. This commenter argued that it was not the intention of Congress, when it passed the AAIA, to have grant funds used to subsidize, either directly or indirectly, any activity that provides no benefit to air travel.

The Final Policy: The Final Policy incorporates the provision proposed in the Supplemental Notice, with a technical correction to include transit facilities use for the transportation of property to or from the airport. The FAA does not consider public transit terminals to be the equivalent of commercial business enterprises. Rather, they are more like public and airport roadways providing ground access to the airport. Generally speaking, the FAA does not construe the self-sustaining assurance to require an airport owner or operator to charge for roadways and roadway rights-of-way at FMV.

Moreover, even though publicly-owned transit systems charge passengers for their services, they generally operate at a loss and are subsidized by general taxpayer revenue. Charging fair market value for on airport facilities would thus burden general taxpayers with the costs of providing facilities used exclusively by transit passengers visiting the airport. Therefore, a requirement to charge FMV would not further the purpose of the self-sustaining assurance—to avoid burdening local taxpayers with the cost of operating the airport system.

a. Private Transit

ACI–NA/AAAE and four airport operators commented that private transit operators should have treatment equal to public transit operators. They argued that the concepts of public-private partnerships, and privatization of transportation facilities, may be realities in the not-too-distant future. Moreover, private ownership would not detract in the least from the functions identified in the Notice for these facilities, such as bringing passengers to and from the airport. They also noted that the language in the AIP Handbook (Order 5100.38A, Section 6) does not specifically exclude private operators. The language states transit facilities will be allowable provided they will primarily serve the airport.

One state Department of Transportation also urged that reduced rental rates should be offered to privately-owned and operated transit systems on the same basis as publicly-owned systems.

Final Policy. The Final Policy retains some distinctions between privately and publicly owned systems. In general, privately-owned systems are more analogous to other ground transportation providers—private taxis and limousine services, rental car companies—and even private parking lot operators. These entities are commercial enterprises that operate for profit and are a significant source of revenue for the airport. Most importantly, they are not supported by general taxpayer funds, and charging FMV would not raise questions of burdening local taxpayers with the cost of the airport.

However, the FAA is aware that, in many communities with no publicly-owned bus systems or very limited systems, privately-owned bus systems fulfill the role of providing public transit services to the airport. Accordingly, the FAA is revising the Final Policy to permit an airport operator to provide airport property at less than FMV rates to privately-owned systems in these limited circumstances.

b. Airport Passengers

Nine airport commenters addressed the proposed requirement that transit facilities be directly related to the transportation of air passengers and airport visitors and employees to and from the airport to qualify for less-than-FMV rentals. The commenters argue that the provision is too narrow by restricting the transit service to air-passengers and airport visitors and employees. One airport operator states that airport sponsors must have the flexibility to build airport transit systems that principally serve airport passengers, employees and other users but which may also secondarily transport some nonairport users. Two airport operators with general-use rail transit systems planned or operating on or near their airports argue that the airport benefits from improved ground access, reduced traffic congestion and improved air quality of general use systems and that rent-free property should, therefore, be provided to general use systems.

Final Policy: The Final Policy incorporates the language of the Supplemental Notice. That language does not preclude any use of transit facilities constructed on airport property by nonairport passengers if the property is to be leased at less-than-FMV. The requirement that the facilities be ''directly related'' to the airport does not equate to a requirement that the facilities be ''exclusively used'' for airport purposes. However, if the intended use of a facility is not exclusive airport use, some rental charge may be necessary to reflect the benefits provided to the general public. The determination on whether the facilities are ''directly related'' will be made on a case-by-case basis.

It appears that some of the concern about this issue was generated by the language in the preamble, which referred to transit facilities ''necessary for the transportation of air passengers, airport visitors and airport employees to and from the airport.'' The preamble offered a maintenance/repair facility as an example of facilities that would not qualify. The FAA is not convinced that the benefits to the airport of having such facilities on the airport is sufficient to justify less-than-FMV rental rates. However, as noted, the FAA does not construe the policy language ''facilities directly related the transportation of [airport passengers]'' to require that the facilities be used exclusively by airport passengers.

8. Military Base Conversions Issues

In its comments to the Proposed Policy, one airport operator argued that using airport revenue to assist in development of revenue-generating properties on former military bases that are converted to civil airports should not be considered a prohibited use of revenue.

In addition, ACI–NA/AAAE state that a base closure and conversion to civilian use often results in the existence of significant recreational facilities on property owned by an airport. In regard to these facilities on converted military bases, ACI/AAAE stated, ''[a] leasing

arrangement whereby a municipality assumes all liability and operating expenses in exchange for a no-revenue lease is beneficial to the airport and should not be prohibited.''

Final Policy: The Final Policy provides for no special treatment of converted military bases with respect to airport revenue use, and no special provisions are included in the final policy.

The FAA policy on the use of public and recreational use of property will be consistently applied to airports whether or not they are former military bases. Ordinarily, airport revenue may not be used to finance the costs of public and recreational facilities at the airport, just as airport revenue may not be used to develop other facilities not needed for the airport, even if those facilities will generate revenue for the airport. In addition, unless the recreational facilities qualify under the community-use exception, the airport operator would be expected to receive FMV-based rental payments for the recreational or public property. Operational costs borne by a municipality as a result of a base conversion can be considered in the analysis of whether a reduced rent is justified by tangible or intangible benefits to the airport.

9. Enforcement Policy, Whether to Impose Civil Penalty Even if Funds are Returned

The Proposed Policy provided that if the FAA received information that improper use of airport revenue had occurred, the FAA would investigate the matter and attempt to resolve the issue informally. The matter could be resolved if the sponsor persuaded the FAA that the use of airport revenue was not improper, or if the sponsor took corrective action (which usually would involve crediting the diverted amount to the airport account with interest). The proposed policy provided that the FAA would propose enforcement action only if the FAA made a preliminary finding of noncompliance and the sponsor had failed to take corrective action. The Proposed Policy outlined the enforcement actions available to the FAA as of the date of publication. The actions included: (1) withholding of new AIP grants and payments under existing grants (49 USC §§ 47111(e) and (d), respectively); (2) withholding of new authority to impose PFCs (49 USC 47111(e)); (3) withholding of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995 (as provided in the Department of Transportation appropriation legislation for those years); (4) assessment of civil penalties not to exceed $50,000 (49 USC § 46301); and (5) initiation of a civil action to compel compliance with the grant assurances (49 USC § 47111(f)).

The Proposed Policy outlined the administrative procedural rules applicable to airport compliance matters at the time of publication, 14 C.F.R., Part 13 ''Investigation and Enforcement Procedures.''

Airport operators: ACI–NA and AAAE strongly urged the FAA to provide in the final policy that remittance of any diverted amounts, together with associated interest, should be sufficient to ''cure'' instances of revenue diversion, regardless of how those instances come to the attention of the FAA. In particular, a non-airport party should not be given the capacity, through the filing of a formal compliant, to eliminate an airport's ability to cure the problem.

Air carriers: ATA suggested that the proposed policy should be strengthened, backed up by a stronger enforcement policy and aggressive monitoring and vigorous enforcement action. ATA additionally argued that FAA should promulgate one rule that sets forth in detail the substantive requirements regarding revenue retention and diversion and a separate compliance and enforcement policy document.

ATA objected that the proposed policy continues to provide a passive monitoring procedure and this approach is not sufficient to provide prompt and efficient enforcement. IATA objected that the Proposed Policy does not promote prompt or effective enforcement.

ATA suggested that the FAA establish a formal compliance monitoring and inspection program that includes compliance monitoring and audits/inspections similar to those it conducts at certificated airlines, such as for drug and alcohol testing. Further, ATA stated that FAA's enforcement policy should result in civil penalties being assessed with the same vigor with which they are assessed against airlines for alleged regulatory violations. In addition, ATA urged that FAA should maintain the threat of assessing civil penalties for each day an airport or sponsor is in violation of the revenue-use requirement and for each day a sponsor fails to repay amounts determined to have been diverted unlawfully. IATA similarly supported assessment of the maximum civil penalty for each instance of unlawful revenue use.

The Final Policy: After publication of the Proposed Policy, the FAA Reauthorization Act of 1996 mandated new remedies for improper use of airport revenues and new compliance monitoring programs. The Final Policy has been modified to reflect the new requirements. Implementation of the requirements will result in more active and systematic monitoring of airport revenue use and more systematic resolution of questionable airport practices, as requested by the ATA and the IATA. It should be noted that the FAA had already assumed a more active role in monitoring through the implementation of the financial reporting requirements of the 1994 FAA Authorization Act.

In accordance with the requirements of the 1996 FAA Reauthorization Act, the Final Policy reflects the clear congressional intent that the FAA focus compliance efforts on the lawful use of airport revenue. The FAA will use all means at its disposal to monitor and enforce the revenue-use requirements and will take appropriate action when a potential violation is brought to the FAA's attention by any means. To detect whether airport revenue has been diverted from an airport, the FAA will use four primary sources of information: (1) the annual airport financial reports submitted by the sponsor; (2) findings from a single audit conducted in accordance with OMB Circular A–133 (including the audit review and opinion required by the 1996 Reauthorization Act); (3) investigation following a third-party complaint, and, (4) DOT Office of Inspector General audits.

The FAA will seek penalties for the diversion of airport funds if the airport sponsor is not willing to correct the diversion and make restitution, with interest, in a timely manner. This approach is consistent with the FAA's objective of achieving compliance with a sponsor's obligations. Moreover, it is consistent with section 805 of the 1996 Reauthorization Act, which provides for imposition of administrative and civil penalties only after a sponsor has been given an opportunity to take corrective action and failed to do so.

10. Form of Policy

As is reflected in the Proposed Policy and Supplemental Notice, the FAA proposed to implement section 112 of the 1994 Act by publishing a policy statement, rather than adopting a regulation.

The Comments: The ATA argued that the FAA should promulgate a regulation establishing substantive requirements for use of airport revenue and a separate enforcement policy. The ATA argued that a substantive regulation will provide more clarity on prohibited and permitted practices and be less

susceptible to conflicts over interpretation.

The AOPA also raised concerns over the prompt and effective enforcement of airport revenue diversion within the terms of this Proposed Policy.

The Final Policy: The FAA will publish policy guidance on airport revenue use and enforcement as a policy rather than as a regulation. Section 112 of the 1994 FAA Authorization Act directs the Secretary to ''establish policies and procedures'' to assure ''prompt and effective enforcement'' of the revenue retention grant assurances, which clearly contemplates the issuance of a policy statement for this purpose.

As discussed in connection with specific issues, the wide variation in airport situations makes it impractical for the FAA to promulgate standards with the specificity and inflexibility urged by ATA. Moreover, a regulation is not required to obtain compliance with the revenue-use requirement. Airports are obligated by the statutory assurance in AIP grant agreements pursuant to § 47107(b)(2), or directly under § 47133, and rulemaking is not required to implement those statutes.

On the issue raised by ATA and AOPA concerning the prompt and effective enforcement mechanism to address specific revenue diversion issues, the FAA had been using 14 CFR Part 13. However, on December 16, 1996, 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Proceedings, took effect. Part 16 established new investigation and enforcement procedures for airport compliance matters, including compliance with the revenue-use requirement. Part 16 includes time deadlines and processes to assure that FAA promptly and effectively investigates and adjudicates specific airport compliance matters involving Federally Assisted Airports. The FAA considers the procedural requirements of the Reauthorization Act of 1996 to be self-executing and will apply the statutory provisions in the case of any conflict with Part 16. However, the FAA is in the process of revising Part 16 to incorporate those new procedural requirements.

Paperwork Reduction Act Requirements

The Office of Management and Budget (OMB) has previously approved, pursuant to the Paperwork Reduction Act, the annual airport financial reports described in Section VIII.A of the Final Policy under OMB Number 2120–0569.

Policy Statement

For the reasons discussed above, the Federal Aviation Administration adopts the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the Use of Airport Revenue

Table of Contents

Section I.—Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103–305, 108 Stat. 1569 (August 23, 1994), 49 USC 47107(l), and Federal Aviation Administration Reauthorization Act of 1996, Public Law 104–264, 110 Stat. 3213 (October 9, 1996), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue-use requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 USC §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving Federal financial assistance will use airport revenues only for purposes related to the airport. The Policy Statement implements requirements adopted by Congress in the FAA Reauthorization Acts of 1994 and 1996, and takes into consideration comments received on the interim policy statements issued on February 26, 1996, and December 18, 1996.

Section II—Definitions

A. Federal Financial Assistance

Title 49 USC § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of § 47107(b) to any airport that has received ''Federal assistance.'' The FAA considers the term ''Federal assistance'' in § 47133 to apply to the following Federal actions:

1. Airport development grants issued under the Airport Improvement Program and predecessor Federal grant programs;

2. Airport planning grants that relate to a specific airport;

3. Airport noise mitigation grants received by an airport operator;

4. The transfer of Federal property under the Surplus Property Act, now codified at 49 USC § 47151 *et seq.*; and

5. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Improvement Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

B. Airport Revenue

1. All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:

a. Revenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

i. For the right to conduct an activity on the airport or to use or occupy airport property;

ii. For the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

iii. For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

iv. For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (e.g., a downtown duty-free shop).

b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

i. From any activity conducted by the sponsor on airport property acquired with Federal assistance;

ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or

iii. From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

2. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs or for noise mitigation purposes, on or off the airport.

3. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

C. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, when the use is not ''grandfathered'' under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is considered lawful revenue diversion. See Section VI, Prohibited Uses of Airport Revenue.

D. Airport Sponsor

The airport sponsor is the owner or operator of the airport that accepts Federal assistance and executes grant agreements or other documents required for the receipt of Federal assistance.

Section III—Applicability of the Policy

A. Policy and Procedures on the Use of Airport Revenue and State or Local Taxes on Aviation Fuel

1. With respect to the use of airport revenue, the policies and procedures in the Policy Statement are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, recodified without substantive change by Public Law 103–272 (July 5, 1994) at 49 § U.S.C. 47101, et seq., and which had grant obligations regarding the use of airport revenue in effect on October 1, 1996 (the effective date of the FAA Authorization Act of 1996). Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants. The Policy Statement applies to revenue uses at such airports even if the sponsor has not received an AIP grant since October 1, 1996.

2. With respect to the use of state and local taxes on aviation fuel, this Policy Statement is applicable to all public agencies that have received an AIP development grant since December 30, 1987, and which had grant obligations regarding the use of state and local taxes on aviation fuel in effect of October 1, 1996.

3. Pursuant to 49 U.S.C. § 47133, this Policy Statement applies to any airport for which Federal assistance has been received after October 1, 1996, whether or not the airport owner is subject to the airport revenue-use grant assurance, and applies to any airport for which the airport revenue-use grant obligation is in effect on or after October 1, 1996. Section 47133 does not apply to an airport that has received Federal assistance prior to October 1, 1996, and does not have AIP airport development grant assurances in effect on that date.

4. Requirements regarding the use of airport revenue applicable to a particular airport or airport operator on or after October 1, 1996, as a result of the provisions of 49 U.S.C. § 47133, do not expire.

5. The FAA will not reconsider agency determinations and adjudications dated prior to the date of this Policy Statement, based on the issuance of this Policy Statement.

B. Policies and Procedures on the Requirement for a Self-Sustaining Airport Rate Structure

1. These policies and procedures apply to the operators of publicly owned airports that have received an AIP development grant and that have grant obligations in effect on or after the effective date of this policy.

2. Grant assurance obligations regarding maintenance of a self-sustaining airport rate structure in effect on or after the effective date of this policy apply until the end of the useful life of each airport development project or 20 years, whichever is less, except obligations under a grant for land acquisition, which do not expire.

C. Application of the Policy to Airport Privatization

1. The Airport Privatization Pilot Program, codified at 49 U.S.C. § 47134, provides for the sale or lease of general aviation airports and the lease of air carrier airports. Under the program, the FAA is authorized to exempt up to five airports from Federal statutory and regulatory requirements governing the use of airport revenue. The FAA can exempt an airport sponsor from its obligations to repay Federal grants, in the event of a sale, to return property acquired with Federal assistance and to use the proceeds of the sale or lease exclusively for airport purposes. The exemptions are subject to a number of conditions.

2. Except as specifically provided by the terms of an exemption granted under the Airport Privatization Pilot

Program, this policy statement applies to a privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the Pilot Program:

FAA approval of the sale or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes permitted by the revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes permitted by the revenue-use requirements may need to be adapted to the special circumstances of the transaction. Accordingly, the disposition of the proceeds would need to be structured to meet the revenue-use requirements, given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.

4. It is not the intention of the FAA to effectively bar airport privatization initiatives outside of the pilot program through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale or lease of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Section IV—Statutory Requirements for the Use of Airport Revenue

A. General Requirements, 49 U.S.C. §§ 47107(b) and 47133

1. The current provisions restricting the use of airport revenue are found at 49 U.S.C. §§ 47107(b), and 47133. Section 47107(b) requires the Secretary, prior to approving a project grant application for airport development, to obtain written assurances regarding the use of airport revenue and state and local taxes on aviation fuel. Section 47107(b)(1) requires the airport owner or operator to provide assurances that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

a. The airport;

b. The local airport system; or

c. Other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

B. Exception for Certain Preexisting Arrangements (Grandfather Provisions)

Section 47107(b)(2) provides an exception to the requirements of Section 47107(b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the ''grandfather'' provision. It states:

> Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

C. Application of 49 U.S.C. § 47133

1. Section 47133 imposes the same requirements on all airports, privately-owned or publicly-owned, that are the subject of Federal assistance. Subsection 47133(a) states that:

Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

(a) the airport;

(b) The local airport system; or

(c) Other local facilities owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of persons or property.

2. Section 47133(b) contains the same grandfather provisions as section 47107(b).

3. Enactment of section 47133 resulted in three fundamental changes to the revenue-use obligation, as reflected in the applicability section of this policy statement.

a. Privately owned airports receiving Federal assistance (as defined in this policy statement) after October 1, 1996, are subject to the revenue-use requirement.

b. In addition to airports receiving AIP grants, airports receiving Federal assistance in the form of gifts of property after October 1, 1996, are subject to the revenue-use requirement.

c. For any airport or airport operator that is subject to the revenue-use requirement on or after October 1, 1996, the revenue-use requirement applies indefinitely.

4. This section of the policy refers to the date of October 1, 1996, because the FAA Authorization Act of 1996 is by its terms effective on that date.

D. Specific Statutory Requirements for the Use of Airport Revenue

1. In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A–D), Congress expressly prohibited the diversion of airport revenues through:

a. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

b. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

c. Payments in lieu of taxes or other assessments that exceed the value of services provided; or

d. Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Authorization Act of 1996, provides that:

(A) Any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) Any amount of airport funds that are used to make a payment or

reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a State, political subdivision of a State or authority acting for a State or a political subdivision may not: ''(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes.''

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as ''airport revenue'' for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, ''Passenger Facility Fees,'' and 14 CFR Part 158, ''Passenger Facility Charges.'' (For purposes of this policy, the terms ''passenger facility fees'' and ''passenger facility charges'' are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, ''Monitoring and Compliance,'' a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V—Permitted Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a ''friends of the airport'' committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was $250.

9. Airport revenue may be used for the capital or operating costs of those

portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station and the nearest mass transit rail line, where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

B. Allocation of Indirect Costs

1. Indirect costs of sponsor services may be allocated to the airport in accordance with this policy, but the allocation must result in an allocation to the airport only of those costs that would otherwise be allowable under 49 U.S.C. § 47107(b). In addition, the documentation for the costs must meet the standards of documentation stated in this policy.

2. The costs must be allocated under a cost allocation plan that meets the following requirements:

a. The cost is allocated under a cost allocation plan that is consistent with Attachment A to OMB Circular A–87, except that the phrase ''airport revenue'' should be substituted for the phrase ''grant award,'' wherever the latter phrase occurs in Attachment A;

b. The allocation method does not result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport;

c. Costs allocated indirectly under the cost allocation plan are not billed directly to the airport; and

d. Costs billed to the airport under the cost allocation plan must be similarly billed to other comparable units of the airport owner or operator.

3. A portion of the general costs of government, such as the costs of the legislative branch and executive offices, may be allocated to the airport as an indirect cost under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

4. Central service costs, such as accounting, budgeting, data processing, procurement, legal services, disbursing and payroll services, may also be allocated to the airport as indirect costs under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

C. Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports

1. Reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, must be supported by adequate documentary evidence. Documentary evidence includes, but is not limited to:

a. Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or

b. Audited financial statements which show the specific expenditures to be reimbursed by the airport. Such expenditures should be clearly identifiable on the audited financial statements as being consistent with section VIII of this policy statement.

2. Documentary evidence to support direct and indirect charges to the airport must show that the amounts claimed were actually expended. Budget estimates are not sufficient to establish a claim for reimbursement. Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates should, however, be adjusted to actual expenses in the subsequent accounting period.

D. Expenditures of Airport Revenue by Grandfathered Airports

1. Airport revenue may be used for purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the ''grandfather'' provisions of 49 U.S.C. § 47107(b)(2) are applicable to the sponsor and the particular use. Based on previous DOT interpretations, examples of grandfathered airport sponsors may include, but are not limited to the following:

a. A port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

b. Bond obligations and city ordinances requiring a five percent ''gross receipts'' fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

c. A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

d. City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

e. A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all ''taxes, fees, charges, and revenues'' collected or received by the state department of transportation.

f. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

2. Under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds, the fact that a sponsor has exercised its rights to use airport revenue for nonairport purposes under the grandfather clause, when in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban

Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Section VI—Prohibited Uses of Airport Revenue

A. Lawful and Unlawful Revenue Diversion

Revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion. Unless the revenue diversion is grandfathered, the diversion is unlawful and prohibited by the revenue-use restrictions.

B. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value.
2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.
3. Use of airport revenues for general economic development.
4. Marketing and promotional activities unrelated to airports or airport systems. Examples of prohibited expenses in this category include participation in program to provide hospitality training to taxi drivers and funding an airport operator's float containing no reference to the airport, in a New Years Day parade.
5. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;
6. Payments to compensate non-sponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport;
7. Loans to or investment of airport funds in a state or local agency at less than the prevailing rate of interest.
8. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than fair rental/market value, except to the extent permitted by SectionVII.D of this policy.
9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy.
10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport. However, airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue. Payments of impact fees must meet the general requirement that airport revenue be expended only for actual documented costs of items eligible for use of airport revenue under this Policy Statement. In determining appropriate corrective action for an impact fee payment that is not consistent with this policy, the FAA will consider whether the impact fee was imposed by a non-sponsoring governmental entity and the sponsor's ability under local law to avoid paying the fee.
11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property except to the extent permitted by this policy. See Section V, Uses of Airport Revenue. Examples of prohibited expenditures in this category include expenditure of $50,000 to sponsor a local film society's annual film festival; and contribution of $6,000 to a community cultural heritage festival.
12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.

Section VII—Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure

A. Statutory Requirements

49 U.S.C. § 47107(a)(13) requires airport operators to maintain a schedule of charges for use of the airport: ''(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection.''

The requirement is generally referred to as the ''self-sustaining assurance.''

B. General Policies Governing the Self-Sustaining Rate Structure Assurance

1. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. In considering whether a particular contract or lease is consistent with this requirement, the FAA and the Office of the Inspector General (OIG) generally evaluate the individual contract or lease to determine whether the fee or rate charged generates sufficient income for the airport property or service provided, rather than looking at the financial status of the entire airport.
2. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.
3. At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve a self-sustaining income in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.
4. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self sustaining as possible in the circumstances existing at such airports.
5. Under 49 U.S.C. § 47107(a)(1) and the implementing grant assurance, charges to aeronautical users must be reasonable and not unjustly discriminatory. Because of the limiting effect of the reasonableness requirement, the FAA does not consider the self-sustaining requirement to require airport sponsors

to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure.

6. In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users are not subject to the reasonableness requirement or the Department of Transportation Policy on airport rates and charges, the surplus funds accumulated from those fees must be used in accordance with 49 U.S.C. § 47107(b).

C. Policy on Charges for Nonaeronautical Facilities and Services

Subject to the general guidance set forth above and the specific exceptions noted below, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.

D. Providing Property for Public Community Purposes

Making airport property available at less than fair market rental value for public recreational and other community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes will not be considered a violation of the self-sustaining requirement. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The contribution of the airport property enhances public acceptance of the airport in a community in the immediate area of the airport; the property is put to a general public use desired by the local community; and the public use does not adversely affect the capacity, security, safety or operations of the airport. Examples of acceptable uses include public parks, recreation facilities, and bike or jogging paths. Examples of uses that would not be eligible are road maintenance equipment storage; and police, fire department, and other government facilities if they do not directly support the operation of the airport.

2. The property involved would not reasonably be expected to produce more than *de minimis* revenue at the time the community use is contemplated, and the property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future. When airport property reasonably may be expected to earn more than minimal revenue, it still may be used for community purposes at less than FMV if the revenue earned from the community use approximates the revenue that could otherwise be generated, provided that the other provisions of VII. D. are met.

3. The community use does not preclude reuse of the property for airport purposes if, in the opinion of the airport sponsor, such reuse will provide greater benefits to the airport than continuation of the community use.

4. Airport revenue is not to be used to support the capital or operating costs associated with the community use.

E. Use of Property by Not-for-Profit Aviation Organizations

1. An airport operator may charge reduced rental rates and fees to the following not-for-profit aviation organizations, to the extent that the reduction is reasonably justified by the tangible or intangible benefits to the airport or to civil aviation:

a. Aviation museums;

b. Aeronautical secondary and post-secondary education programs conducted by accredited educational institutions; or

c. Civil Air Patrol units operating aircraft at the airport;

2. Police or fire-fighting units operating aircraft at the airport generally will be expected to pay a reasonable rate for aeronautical use of airport property, but the value of any services provided by the unit to the airport may be offset against the applicable reasonable rate.

F. Use of Property by Military Units

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Air Force Reserve, and Naval Reserve air units operating aircraft at the airport. Reserve and Guard units typically have an historical presence at the airport that precedes the Airport and Airway Improvement Act of 1982, and provide services that directly benefit airport operations and safety, such as snow removal and supplementary ARFF capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market rental for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the self-sustaining requirement.

H. Private Transit Systems

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly-owned transit services are extremely limited and where a private transit service (i.e., bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market rental to this private service would not be considered inconsistent with 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13).

Section VIII—Reporting and Audit Requirements

The Federal Aviation Administration Authorization Act of 1994 established a new requirement for airports to submit annual financial reports to the Secretary, and the Act required the Secretary to compile the reports and to submit a summary report to Congress. The Federal Aviation Reauthorization Act of 1996 established a new requirement for airports to include, as part of their audits under the Single Audit Act, a review and opinion on the use of airport revenue.

A. Annual Financial Reports

Section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

and to make available to the public an annual financial report listing in detail (1) all amounts the airport paid to other government units and the purposes for which each payment was made, (2) all services and property the airport provided to other government units and compensation received for each service or unit of property provided. Additionally, Section 111(b) of the 1994 Authorization Act requires a report, for each fiscal year, in an uniform simplified format, of the airport's sources and uses of funds, net surplus/loss and other information which the Secretary may require.

FAA Forms 5100–125 and 126 have been developed to satisfy the above reporting requirements. The forms must be filed with the FAA 120 days after the end of the sponsor's fiscal year. Extensions of the filing date may be granted if audited financial information is not available within 120 days of the end of the local fiscal year. Requests for extension should be filed in writing with the FAA Airport Compliance Division, AAS–400.

B. Single Audit Review and Opinion

1. General requirement and applicability. The Federal Aviation Reauthorization Act of 1996, Section 805; 49 U.S.C. § 47107(m) requires public agencies that are subject to the Single Audit Act, 31 U.S.C. § 7501–7505, and that have received Federal financial assistance for airports to include, as part of their single audit, a review and opinion of the public agency's funding activities with respect to their airport or local airport system.

2. Federal Financial Assistance. For the purpose of complying with 49 U.S.C. § 47107(m), Federal financial assistance for airports includes any interest in property received, by a public agency since October 1, 1996, for the purpose of developing, improving, operating, or maintaining a public airport, or an AIP grant which was in force and effect on or after October 1, 1996, either directly or through a state block grant program.

3. Frequency. The opinion will be required whenever the auditor under OMB Circular A–133 selects an airport improvement program grant as a major program. In those cases where the airport improvement program grant is selected as a major program the requirements of 49 U.S.C. § 47107(m) will apply.

4. Major Program. For the purposes of complying with 49 U.S.C. § 47107(m), major program means an airport improvement program grant determined to be a major program in accordance with OMB Circular A–133, § 520 or an airport improvement program grant identified by FAA as a major program in accordance with OMB A–133 § 215(c); except additional audit costs resulting from FAA designating an airport improvement program grant as a major program are discussed at paragraph 9 below.

5. FAA Notification. When FAA designates an airport improvement program grant as a major program, FAA will generally notify the sponsor in writing at least 180 days prior to the end of the sponsor's fiscal year to have the grant included as a major program in its next Single Audit.

6. Audit Findings. The auditor will report audit findings in accordance with OMB Circular A–133.

7. Opinion. The statutory requirement for an opinion will be considered to be satisfied by the auditor's reporting under OMB Circular A–133. Consequently when an airport improvement program grant is designated as a major program, and the audit is conducted in accordance with OMB Circular A–133, FAA will accept the audit to meet the requirements of 49 USC § 47107(m) and this policy.

8. Reporting Package. The Single Audit reporting package will be distributed in accordance with the requirements of OMB Circular A–133. In addition when an airport improvement program grant is a major program, the sponsor will supply, within 30 days after receipt by the sponsor, a copy of the reporting package directly to the FAA, Airport Compliance Division (AAS–400), 800 Independence Ave. SW 20591. The FAA regional offices may continue to request the sponsor to provide separate copies of the reporting package to support their administration of airport improvement program grants.

9. Audit Cost. When an opinion is issued in accordance with 47107(m) and this policy, the costs associated with the opinion will be allocated in accordance with the sponsor's established practice for allocating the cost of its Single Audit, regardless of how the airport improvement program grant is selected as a major program.

10. Compliance Supplement. Additional information about this requirement is contained in OMB Circular A–133 Compliance Supplement for DOT programs.

11. Applicability. This requirement is not applicable to (a) privately-owned, public-use airports, including airports accepted into the airport privatization program (the Single Audit Act governs only states, local governments and non-profit organizations receiving Federal assistance); (b) public agencies that do not have a requirement for the single audit; (c) public agencies that do not satisfy the criteria of paragraph B.1 and 2; above; and Public Agencies that did not execute an AIP grant agreement on or after June 2, 1997.

Section IX—Monitoring and Compliance

A. Detection of Airport Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. § 47107(a)(19), as amended.

2. Single audit reports submitted, pursuant to 49 U.S.C. § 47107(m), with annual single audits conducted under 31 U.S.C. §§ 7501–7505. The requirement for these reports is discussed in Part IX of this policy.

3. Investigation following a third party complaint filed under 14 CFR. Part 16, FAA Rules of Practice for Federally Assisted Airport Proceedings.

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion Initiated Without Formal Complaint

1. When no formal complaint has been filed, but the FAA has an indication from one or more sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. If, after information and arguments submitted by the sponsor, the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action. If the FAA makes a preliminary finding that there has been unlawful diversion of airport revenue, and the sponsor has not taken corrective action (or agreed to take corrective action), the FAA may issue a notice of investigation under 14 CFR § 16.103.

If, after further investigation, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order under 14 CFR § 16.109 proposing enforcement action. However, such action will cease if the airport sponsor agrees to return the diverted amount plus interest.

2. Audit or investigation by the Office of the Inspector General. An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG)

will be handled in accordance with paragraph B.1 above.

C. Investigation of Revenue Diversion Precipitated by Formal Complaint

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in 14 CFR Part 16 for notice to the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

If the airport sponsor takes the corrective action specified in the order, the complaint will be dismissed.

D. The Administrative Enforcement Process

1. Enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 16. Under part 16, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator.

2. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 CFR 16.109. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

1. As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action, the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after a hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

a. Withhold future grants. The Secretary may withhold approval of an application in accordance with 49 USC § 47106(d) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

b. Withhold approval of the modification of existing grant agreements that would increase the amount of funds available. A supplementary provision in section 112 of the 1994 Authorization Act, 49 USC § 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

c. Withhold payments under existing grants. The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 USC § 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

d. Withhold approval of an application to impose a passenger facility charge. Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 USC § 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

e. File suit in United States district court. Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

f. Withhold, under 49 USC § 47107(n)(3), any amount from funds that would otherwise be available to a sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multi-modal transportation agency or transit agency of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor has failed to reimburse the airport after receiving notification of the requirement to do so.

g. Assess civil penalties.

(1) Under section 112(c) of Public Law 103–305, codified at 49 USC § 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. Any civil penalty action under this section would be adjudicated under 14 CFR Part 13, Subpart G.

(2) Under section 804 of Public Law 104–264, codified at 49 USC § 46301((a)(5), the Secretary has statutory authority to obtain civil penalties of up to three times the amount of airport revenues that are used in violation of 49 USC §§ 47107(b) and 47133. An action for civil penalties in excess of $50,000 must be brought in a United States District Court.

(3) The Secretary may, under 49 USC § 47107(n)(4), initiate a civil action for civil penalties in the amount equal to the illegal diversion in question plus interest calculated in accordance with 49 USC § 47107(o), if the airport sponsor has failed to take corrective action specified by the Secretary and the Secretary is unable to withhold sufficient grant funds, as set forth above.

(4) An action for civil penalties under this provision must be brought in a United States District Court. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance.

F. Compliance With Reporting and Audit Requirements

The FAA will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements described in this Policy Statement. The failure to comply with these requirements can result in the withholding of future AIP grant awards and further payments under existing AIP grants.

Issued in Washington, DC on February 8, 1999.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 99–3529 Filed 2–11–99; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday
February 16, 1999

Part III

Department of Housing and Urban Development

24 CFR Part 203

Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4411–P–01]

RIN 2502–AH30

Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is publishing this proposed rule to implement a recent statutory amendment to HUD's FHA Single Family Mortgage Insurance Program. The statutory amendment requires the original lender to disclose certain information, in the form of a notice, to each prospective borrower who has applied for an FHA-insured home mortgage; and HUD to develop this disclosure notice. Specifically, through the disclosure notice, the lender must provide the borrower with an analysis comparing the mortgage costs of the FHA-insured mortgage to the mortgage costs of other similar conventional mortgage products that the lender offers and for which the borrower might qualify. The disclosure notice must also provide information about when the borrower's requirement to pay FHA mortgage insurance premiums terminates.

DATES: Submit comments on or before March 18, 1999.

ADDRESSES: Submit your comments about this proposed rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Your comments should refer to the above docket number and title. We do not accept facsimile (FAX) comments. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern time) at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, Room 9270; Telephone: (202) 708–2121 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

Section 225(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (HUD FY 1999 Appropriations Act), Pub. L. 105–276, 112 Stat. 2461, amended sec. 203(b)(2) of the National Housing Act by adding at the end of the section the following language:

> In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a one page analysis of mortgage products offered by that lender and for which the borrower would qualify. This notice shall include: (i) a generic analysis comparing note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under this subsection with note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgagor obtained instead other mortgage products offered by the lender and for which the borrower would qualify with similar loan-to-value ratio in connection with a conventional mortgage . . . assuming prevailing interest rates; and (ii) a statement regarding when the mortgagor's requirement to pay mortgage insurance premiums for a mortgage insured under this section would terminate or a statement that the requirement will terminate only if the mortgage is refinanced, paid off, or otherwise terminated.

This amendment requires original lenders to provide each prospective FHA-insured mortgage borrower with an analysis comparing the mortgage costs of the FHA-insured mortgage to the mortgage costs of other similar conventional mortgage products that the lender offers and for which the borrower might qualify. The amendment also requires the lender to provide information to the borrower about when the borrower's requirement to pay FHA mortgage insurance premiums terminates.

Section 225(b) of the FY 1999 HUD Appropriations Act directs HUD to develop the disclosure notice document, through which the lender must disclose this information. Section 225(b) also directs HUD to develop this notice within 150 days of enactment of the FY 1999 HUD Appropriations Act and to develop the notice through notice and comment rulemaking.

This proposed rule includes, for comment, a model disclosure notice that contains the consumer information required to be disclosed by section 225(a). The proposed rule also provides a model format for the notice. The proposed rule includes an amendment to HUD's regulations at 24 CFR part 203 that would add a new section, § 203.10. Section 203.10 would conform HUD's regulations to the statutory lender disclosure requirement.

II. Proposed Informed Consumer Choice Disclosure Notice

The following provides HUD's proposal for the informed consumer choice disclosure notice. HUD specifically solicits comments and recommendations on the format of the proposed disclosure notice. FHA anticipates that lenders will develop generic disclosure notices that compare a typical FHA mortgage in the marketplace with typical conventional mortgages offered by that lender, using a $100,000 sales price (or other such amount as may be typical within the lender's market) and using the suggested format and instructions shown below for guidance.

As conventional mortgage offerings and pricing change over time, lenders will be required to modify their disclosure notices accordingly. HUD believes that a generic disclosure notice (similar to those provided on ARMs) reflects the intent of Congress in enacting sec. 225(a) and does not impose an unreasonable burden on lenders. Therefore, HUD will not require a case-specific disclosure notice for each borrower who may qualify for both a FHA-insured mortgage and conventional financing. To do otherwise would significantly increase mortgage origination costs and be counter to the intent of the Paperwork Reduction Act of 1995.

To complete the generic disclosure format shown below, lenders should use the following instructions. At the lenders discretion, lenders may add additional line items to the disclosure format, shown below, if the conventional financing is so unique or creative that such additions are necessary to make a meaningful comparison.

BILLING CODE 4210–27–P

Line No.	Field Name	Instruction
1	Sales Price	Show $100,000 Sales Price (or such other amount the lender may wish to use to be more reflective of the market).
2	Mortgage Amount	Compute the mortgage amount in accordance with FHA requirements and in accordance with the investor or lender requirements for the conventional financing.
3	Closing Costs	Show the same amount of closing costs for the FHA financing and the conventional financing. Lenders should use Good Faith Estimates to develop typical costs for the various mortgage programs being offered.
4	Downpayment Needed	Show downpayment amounts exclusive of prepaid expenses.
5	Interest Rate and Term of Loan in Years	Show interest rate and term of loan in years.
6	Monthly Payment (Principal and Interest only)	Show monthly principal and interest only.
7	Loan-to-Value	Compute loan-to-value by dividing mortgage amount exclusive of any upfront mortgage insurance premiums by the lesser of the sales price or appraised value.
8	Monthly Mortgage Insurance Premium (First Year)	Show the monthly mortgage insurance premium, if applicable, based on FHA and private mortgage insurance company fee schedule.
9	Maximum Number of Years of Monthly Insurance Premium Payments	Show the maximum number of years that the monthly mortgage insurance premiums, if applicable, must be paid based on FHA requirements and lender/investor requirements for the conventional financing. (If monthly insurance premiums terminate when the loan balance declines to a certain loan-to-value (LTV) ratio, show the estimated number of years it will take to reach that LTV.)
10	Upfront Mortgage Insurance Premium (if applicable)	Show any upfront mortgage insurance premium charged on either the FHA mortgage, or the conventional mortgage.

Model of Completed Notice:

INFORMED CONSUMER CHOICE DISCLOSURE NOTICE

In addition to a FHA mortgage, there may be other mortgage products offered by the lender for which you may also qualify. As such, your lender has prepared a comparison of the typical costs of alternative conventional mortgage product(s) for your review (the actual loan amounts and associated costs will vary from your own mortgage loan transaction). You should study the comparison carefully, ask questions, and determine which product is best for you.

Neither the lender nor FHA warrants that you actually qualify for any of the mortgage products listed. However, in your lender's judgment, you may have the credit standing to qualify for more than one mortgage product. This disclosure is not a contract and does not constitute loan approval. Actual mortgage approval can only be made following a full underwriting analysis by your mortgage lender.

		FHA Financing 203(b) Fixed Rate	Conventional Financing 97% with MI
1	**Sales Price**	$100,000	$100,000
2	**Mortgage Amount**	$97,750 ($99,460 w/ Upfront Mortgage Insurance Premium)	$97,000
3	**Closing Costs**	$2000	$2000
4	**Downpayment Needed**	$4250	$5000
5	**Interest Rate and Term of Loan in Years**	7.00%/30 Year Loan	7.00%/30 Year Loan
6	**Monthly Payment (Principal and Interest only)**	$661	$645
7	**Loan-to-Value**	97.75%	97%
8	**Monthly Mortgage Insurance Premium (First Year)***	$41.44	$76.63
9	**Maximum Number of Years of Monthly Insurance Premium Payments**	30 Years	Approx. 13 Years
10	**Upfront Mortgage Insurance Premium (if applicable)**	$1710 (Included in Mortgage Amount, line 2)	n/a

*Monthly mortgage insurance premiums are calculated on the average annual principal balance, i.e., as the amount you owe on the loan decreases each year, so does the amount of the monthly premium.

FHA Mortgage Insurance Premium Information:

If you paid an upfront mortgage insurance premium, you will also be charged a monthly mortgage insurance premium for the amount of time shown below, based on the initial loan-to-value and term of your mortgage. You are required to make these payments on your FHA-insured loan for the time shown unless you refinance or the mortgage is otherwise paid in full. (If you were *not* charged an upfront premium, as for example on condominiums, you will pay the monthly premium for the life of the mortgage.)

If the term of your mortgage will be greater than 15 years and with a:	**You will make payments for:**
Loan-to-Value of 89.99 or Less	7 Years
Loan to Value between 90 and 95.00	12 Years
Loan to Value 95.01 and Greater	30 Years

If the term of your mortgage will be 15 years or less and with a:	**You will make payments for:**
Loan-to-Value of 89.99 or Less	None Required
Loan to Value between 90 and 95.00	4 Years
Loan to Value 95.01 and Greater	8 Years

BILLING CODE 4210–27–C

II. Findings and Certifications

Justification for Shortened Comment Period

Generally, HUD provides a 60-day public comment period on all rules in accordance with 24 CFR part 10. Section 225(b) of the HUD FY 1999 Appropriations Act directs HUD to develop this rule within 150 days of the date of enactment. The HUD FY 1999 Appropriations Act was enacted on October 21, 1998. The deadline to develop this rule, therefore, is March 20, 1999. To assist us in meeting this deadline, we have shortened the public comment period to 30 days.

Paperwork Reduction Act Statement

The proposed information collection requirements contained at § 203.10 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under sec. 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), HUD is setting forth the following concerning the proposed collection of information:

(1) *Title of the information collection proposal:* Single Family Mortgage Insurance; Informed Consumer Choice Disclosure Notice

(2) *Summary of the collection of information:* The information collection requires lenders to provide prospective borrowers with a disclosure notice that contains an analysis of the costs of an FHA-insured mortgage compared with the costs of other conventional mortgage products that a lender offers and for which the borrower might qualify. In order to produce this notice, the lender would be required to collect information about any applicable mortgage products, such as interest rates, insurance premiums, and other costs and fees that would be due over the life of the particular mortgage product.

(3) *Description of the need for the information and its proposed use:* The need for the disclosure notice was mandated by Congress. The notice would be provided to prospective borrowers who have applied for an FHA-insured mortgage so that they would be able to evaluate the overall costs of an FHA-insured mortgage versus a similar conventional mortgage for which the mortgagor might also qualify.

(4) *Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:* Respondents would be HUD-approved lenders participating in the Single Family Mortgage Insurance Program. The estimated number of respondents is described in paragraph (5). The proposed frequency of responses would be variable as lenders would revise their disclosure notices only when their mortgage product offerings change.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING BURDEN:

Reference	Number of respondents	Freq. of response	Est. Avg. response time (hours)	Est. annual burden (Hrs.)
§ 203.10	9000	Varies	½ Hour	4500

RECORDKEEPING BURDEN

Recordkeepers	Hours per recordkeeper	Total annual responses
There are no recordkeeping burdens associated with this disclosure notice.		

(b) In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance HUD's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of HUD's estimate of the proposed collection of information's burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the proposed collection of information's burden on respondents, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the proposed information collection requirements. Comments must be received within 60 days from the date of this proposal. Comments must refer to this proposed rule by name and docket number (FR–4411–P–01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410

Environmental Impact

In accordance with 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321–4347.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule simply

implements a statutory disclosure requirement and provides a proposed format for that notice. While HUD does not anticipate that this proposed rule would have a significant economic impact on a substantial number of small entities, HUD specifically requests comments regarding alternatives to compliance that may be less burdensome for small entities.

Federalism

The General Counsel, as the Designated Official under sec. 6(a) of Executive Order 12612 (Federalism) has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for part 203 is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 is proposed to be amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Add § 203.10 to read as follows:

§ 203.10 Informed consumer choice disclosure notice.

(a) *Applicability.* Before making a mortgage insured under this part, the mortgagee must provide a prospective mortgagor with an informed consumer choice disclosure notice, in a format prescribed by the Commissioner.

(b) *Contents of notice.* The informed consumer choice disclosure notice must provide a generic analysis of the costs of conventional mortgage products, offered by the mortgagee and for which the mortgagor might qualify, that have similar loan-to-value ratios as the prospective FHA-insured mortgage.

(c) *Timing.* The informed consumer choice disclosure notice must be provided to the prospective mortgagor within three days of signing the mortgage loan application for the prospective FHA-insured mortgage.

(d) *Effective date.* This section applies to any application for FHA-insured mortgage insurance under § 203(b) of the National Housing Act (12 U.S.C. 1709) that the mortgagee receives on or after [Insert effective date of the final rule].

Dated: January 29, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–3562 Filed 2–12–99; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday
February 16, 1999

Part IV

Department of Education

Office of Postsecondary Education; Leveraging Educational Assistance Partnership Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.069]

Office of Postsecondary Education; Leveraging Educational Assistance Partnership Program

AGENCY: Department of Education.

ACTION: Notice of the Closing Date for Receipt of State Applications for Fiscal Year 1999.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1999 funds under the Leveraging Educational Assistance Partnership (LEAP) Program. This program was formerly known as the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States, provides grant aid to students with substantial financial need to help them pay for their postsecondary education costs. The LEAP Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

Under section 415C(a) of the Higher Education Act of 1965, as amended (HEA), the State must submit an application through the State agency that administered its LEAP (SSIG) Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Secretary has approved, a different State agency to administer the program.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands. Authority for this program is contained in sections 415A through 415F of the HEA.

Closing Date for Transmittal of Applications: An application for fiscal year 1999 LEAP funds must be mailed or hand-delivered by March 31, 1999.

Application Form: The Office of Student Financial Assistance Programs will mail the required application form for receiving LEAP funds to officials of the appropriate State agency in each State or territory at least 30 days before the closing date.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Harold McCullough, Chief, Grants Branch, U.S. Department of Education, Office of Student Financial Assistance Programs, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447.

The Secretary will accept the following proof of mailing:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

The Department of Education encourages applicants to use certified or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1999 funding.

Applications Delivered by Hand: An application that is hand-delivered must be taken to Mr. Harold McCullough, Chief, Grants Branch, U.S. Department of Education, Office of Student Financial Assistance Programs, 7th and D Streets, SW, ROB–3, Room 3045, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State or territory to receive LEAP funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds. In fiscal year 1998, 47 States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the Trust Territory (Palau), and the Virgin Islands received funds under the LEAP (SSIG) Program.

Applicable Regulations: The following regulations are applicable to the LEAP Program:

(1) The LEAP Program regulations in 34 CFR part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The Student Assistance General Provisions in 34 CFR part 668.

FOR FURTHER INFORMATION CONTACT: For further information contact Mrs. Jackie Butler, Program Specialist, Grants Branch, U.S. Department of Education, Office of Student Financial Assistance Programs, 400 Maryland Avenue, SW, ROB–3, Room 3045, Washington, DC 20202–5447; telephone (202) 707–8242.

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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The

documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(Authority: 20 U.S.C. 1070c *et seq.*)

Dated: February 9, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance Programs.

[FR Doc. 99–3603 Filed 2–12–99; 8:45 am]

BILLING CODE 4000–01–P

Tuesday
February 16, 1999

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 47 and 52

Federal Acquisition Regulation; Contractor Liability for Loss of and/or Damages to Household Goods; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 47 and 52

[FAR Case 98–603]

RIN 9000–AI28

Federal Acquisition Regulation; Contractor Liability for Loss of and/or Damages to Household Goods

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to standardize the method of calculating contractor liability for loss of and/or damage to shipments of household goods to conform to International Through Government Bill of Lading (ITGBL) procedures.

DATES: Comments should be submitted on or before April 19, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–603@gsa.gov. Please cite FAR case 98–603 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501–3775. Please cite FAR case 98–603.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the clause at FAR 52.247–23 with regard to the method of calculating contractor liability for loss of and/or damage to shipments of household goods. Presently, when contracting for the transportation of household goods, the contracting officer inserts the FAR clause at 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods, in solicitations and contracts. This clause requires the contractor to indemnify the owner of the goods at a rate per pound determined to be appropriate to the specific situation. To provide standardization for liability on shipments of household goods and a more equitable compensation for loss of individual items that conforms with commercial industry standards, this rule calculates liability as found in the ITGBL, at a rate of $5.00 per pound times the total net shipment weight.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely standardizes the method calculating contractor liability for lost or damaged goods to conform with corporate practice offered to national accounts today. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 47 and 52

Government procurement.

Dated: February 8, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 47 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 47 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 47—TRANSPORTATION

2. Section 47.207–7 is amended by revising paragraph (e) to read as follows:

47.207–7 Liability and insurance.

* * * * *

(e) The contracting officer shall insert the clause at 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods, in solicitations and contracts for the transportation of household goods. The contracting officer may decide to revise paragraph (c) of the clause by stipulating the rate of liability using the metric equivalent in local currency in lieu of U.S. dollars and pound weight.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.247–23 is amended by revising the clause date and paragraph (c) to read as follows:

52.247–23 Contractor Liability for Loss of and/or Damage to Household Goods.

* * * * *

Contractor Liability for Loss of and/or Damage to Household Goods (Date)

* * * * *

(c) The Contractor shall be liable at a rate of $5.00 per pound times the total net shipment weight.

[FR Doc. 99–3615 Filed 2–12–99; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday
February 16, 1999

Part VI

Department of Education

34 CFR Parts 655, 656, 658, 660, and 669

International Education Programs: General Provisions, National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies, Undergraduate International Studies and Foreign Language Program; Final Rule

Undergraduate International Studies and Foreign Language Program (84.016); International Research and Studies Program (84.017) and Language Resource Centers Program (84.229); Inviting Applications for New Awards for Fiscal Year (FY) 1999; Notice

DEPARTMENT OF EDUCATION

34 CFR Parts 655, 656, 658, 660, and 669

International Education Programs: General Provisions, National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies, Undergraduate International Studies and Foreign Language Program, The International Research and Studies Program, and Language Resource Centers Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the International Education Programs to incorporate changes made by the Higher Education Amendments of 1998. These final regulations are needed to reflect changes made by recently enacted legislation.

EFFECTIVE DATE: These regulations take effect March 18, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph Hines, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 600 Portals Building, Washington, DC 20202–5247. Telephone: (202) 401–9798. 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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: These final regulations incorporate statutory changes made by the Higher Education Amendments of 1998 (Pub. L. 105–244, enacted October 7, 1998). The changes include, as appropriate, revised program descriptions, eligibility criteria, and activities. The cost-sharing requirements under the Undergraduate International Studies and Foreign Language Program in 34 CFR 658.41 have also been revised.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing programs that improve and develop foreign language, area and international studies throughout the educational structure of the United States.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is customary for the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the changes in this document do not establish any new substantive rules, but simply incorporate recent statutory amendments affecting the International Education Programs. Therefore, the Secretary has determined that publication of a notice of proposed rulemaking is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Regulatory Flexibility Act

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected are small institutions of higher education participating in these programs. However, these regulations incorporate only statutory amendments and will not have a significant economic impact on any of the entities affected.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Intergovernmental Review

Except for 34 CFR parts 660 and 669, these programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

The Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects

34 CFR Part 655

Colleges and universities, Cultural exchange programs, Educational research, Educational study programs, Grant programs-education, Scholarships and fellowships.

34 CFR Part 656

Colleges and universities, Cultural exchange programs, Educational study programs, Grant programs-education, Reporting and recordkeeping requirements.

34 CFR Part 658

Colleges and universities, Cultural exchange programs, Educational study programs, Grant programs-education.

34 CFR Part 660

Colleges and universities, Cultural exchange programs, Educational research, Educational study programs, Grant programs-education.

34 CFR Part 669

Colleges and universities, Educational research, Educational study programs, Grant programs-education, Reporting

and recordkeeping requirements, Teachers.

Dated: February 9, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.015 National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies; 84.016 Undergraduate International Studies and Foreign Language Program; 84.017 The International Research and Studies Program; and 84.229 Language Resource Centers Program)

The Secretary amends title 34 of the Code of Federal Regulations by amending parts 655, 656, 658, 660, and 669 as follows:

PART 655—INTERNATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 20 U.S.C. 112l–1130b, unless otherwise noted.

§ 655.1 [Amended]

2. Section 655.1 is amended by removing ''(section 606);'' in paragraph (d), and adding, in its place, ''(section 605); and''; by removing paragraph (e); and by redesignating paragraph (f) as paragraph (e).

§ 655.3 [Amended]

3. Section 655.3 is amended by adding the word ''and'' at the end of paragraph (c)(5); by removing ''; and'' at the end of paragraph (c)(6), and adding a period in its place; and by removing paragraph (c)(7).

§ 655.4 [Amended]

4. Section 655.4 is amended by adding the word ''and'' before ''669'' and removing '', and 671'' in paragraph (a); and by removing ''1201(a)'' and adding ''101(a)'' in its place wherever it appears in paragraph (b).

§ 655.10 [Amended]

5. Section 655.10 is amended by adding the word ''and'' before ''669'' and removing '', and 671''.

6. Section 655.30 is revised to read as follows:

§ 655.30 How does the Secretary evaluate an application?

The Secretary evaluates an applications for International Education Programs on the basis of—

(a) The general criteria in § 655.31; and

(b) The specific criteria in, as applicable, subpart D of 34 CFR parts 658, 660, 661, and 669.

(Authority: 20 U.S.C. 1121–1127)

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

7. The authority citation for part 656 continues to read as follows:

Authority: 20 U.S.C. 1122, unless otherwise noted.

8. Section 656.1 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 656.1 What is the National Resource Centers Program?

* * * * *

(a) Teaching of any modern foreign language;

(b) Instruction in fields needed to provide full understanding of areas, regions, or countries in which the modern foreign language is commonly used;

* * * * *

(d) Instruction and research on issues in world affairs that concern one or more countries.

9. Section 656.3 is revised to read as follows:

§ 656.3 What activities define a comprehensive or undergraduate National Resource Center?

A comprehensive or undergraduate National Resource Center—

(a) Teaches at least one modern foreign language;

(b) Provides—

(1) Instruction in fields necessary to provide a full understanding of the areas, regions, or countries in which the modern foreign language taught is commonly used;

(2) Resources for research and training in international studies, and the international and foreign language aspects of professional and other fields of study; or

(3) Instruction and research on issues in world affairs that concern one or more countries;

(c) Provides outreach and consultative services on a national, regional, and local basis;

(d) Maintains linkages with overseas institutions of higher education and other organizations that may contribute to the teaching and research of the Center;

(e) Maintains important library collections;

(f) Employs faculty engaged in training and research that relates to the subject area of the Center;

(g) Conducts projects in cooperation with other centers addressing themes of world, regional, cross-regional, international, or global importance; and

(h) Conducts summer institutes in the United States or abroad designed to provide language and area training in the Center's field or topic.

(Authority: 20 U.S.C. 1122)

§ 656.5 [Amended]

10. Section 656.5 is amended by removing the word ''comprehensive'' in the introductory text of paragraph (b); and by adding '', foreign language,'' after ''area'' in paragraph (b)(5).

11. Section 656.30 is amended by removing the word ''and'' at the end of paragraph (a)(5); removing the period at the end of paragraph (a)(6), and adding, in its place, a semicolon; and by adding new paragraphs (a) (7) and (8) to read as follows:

§ 656.30 What are allowable costs and limitations on allowable costs?

(a)* * *

(7) Projects conducted in cooperation with other centers addressing themes of world, regional, cross-regional, international, or global importance; and

(8) Summer institutes in the United States or abroad designed to provide language and area training in the Center's field or topic.

* * * * *

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

12. The authority citation for part 658 continues to read as follows:

Authority: 20 U.S.C. 1124, unless otherwise noted.

13. Section 658.1 is revised to read as follows:

§ 658.1 What is the Undergraduate International Studies and Foreign Language Program?

The Undergraduate International Studies and Foreign Language Program is designed to provide assistance to institutions of higher education, combinations of those institutions, or partnerships between nonprofit educational organizations and institutions of higher education, to assist those institutions, combinations, or partnerships in planning, developing, and carrying out programs to improve undergraduate instruction in international studies and foreign languages.

(Authority: 20 U.S.C. 1124)

14. Section 658.2 is amended by redesignating paragraph (c) as paragraph (d); and adding a new paragraph (c) to read as follows:

§ 658.2 Who is eligible to apply for assistance under this program?

* * * * *

(c) Partnerships between nonprofit educational organizations and institutions of higher education.

* * * * *

15. Section 658.10 is amended by revising paragraphs (a), (b)(1), and (c) to read as follows:

§ 658.10 For what kinds of projects does the Secretary assist institutions of higher education?

(a) The Secretary may provide assistance to an institution of higher education, a combination of institutions of higher education, or a partnership between a nonprofit educational organization and an institution of higher education to plan, develop, and carry out a program to improve undergraduate instruction in international studies and foreign languages. Those grants must be awarded to institutions, combinations, or partnerships seeking to create new programs or to strengthen existing programs in foreign languages, area studies, and other international fields.

(b)* * *

(1) Initiates new or revised courses in international or area studies;

* * * * *

(c) The program shall focus on—

(1) International or global studies;

(2) One or more world areas and their languages; or

(3) Issues or topics, such as international environmental studies or international health.

16. Section 658.11 is revised to read as follows:

§ 658.11 What projects and activities may a grantee conduct under this program?

The Secretary awards grants under this part to assist in carrying out projects and activities that are an integral part of a program to improve undergraduate instruction in international studies and foreign languages. These include projects such as—

(a) Planning for the development and expansion of undergraduate programs in international studies and foreign languages;

(b) Teaching, research, curriculum development, faculty training in the United States or abroad, and other related activities, including—

(1) Expanding library and teaching resources;

(2) Conducting faculty workshops, conferences, and special lectures;

(3) Developing and testing new curricular materials, including self-instructional materials in foreign languages, or specialized language materials dealing with a particular subject (such as health or the environment);

(4) Initiating new and revised courses in international studies or area studies and foreign languages; and

(5) Conducting preservice and inservice teacher training;

(c) Expanding the opportunities for learning foreign languages, including less commonly taught languages;

(d) Providing opportunities for which foreign faculty and scholars may visit institutions as visiting faculty;

(e) Placing U.S. faculty members in internships with international associations or with governmental or nongovernmental organizations in the U.S. or abroad to improve their understanding of international affairs;

(f) Developing international education programs designed to develop or enhance linkages between 2-and 4-year institutions of higher education, or baccalaureate and post-baccalaureate programs or institutions;

(g) Developing undergraduate educational programs—

(1) In locations abroad where those opportunities are not otherwise available or that serve students for whom those opportunities are not otherwise available; and

(2) That provide courses that are closely related to on-campus foreign language and international curricula;

(h) Integrating new and continuing education abroad opportunities for undergraduate students into curricula of specific degree programs;

(i) Developing model programs to enrich or enhance the effectiveness of educational programs abroad, including pre-departure and post-return programs, and integrating educational programs abroad into the curriculum of the home institution;

(j) Developing programs designed to integrate professional and technical education with foreign languages, area studies, and other international fields;

(k) Establishing linkages overseas with institutions of higher education and organizations that contribute to the educational programs assisted under this part;

(l) Developing partnerships between—

(1) Institutions of higher education; and

(2) The private sector, government, or elementary and secondary education institutions in order to enhance international knowledge and skills; and

(m) Using innovative technology to increase access to international education programs.

(Authority: 20 U.S.C. 1124)

17. Section 658.41 is amended by revising paragraphs (a) and (b), and by adding a new paragraph (d) to read as follows:

§ 658.41 What are the cost-sharing requirements?

(a) The grantee's share may be derived from cash contributions from private sector corporations or foundations in the amount of one-third of the total cost of the project.

(b) The grantee's share may be derived from cash or in-kind contributions from institutional and noninstitutional funds, including State and private sector corporation or foundation contributions, equal to one-half of the total cost of the project.

* * * * *

(d) The Secretary may waive or reduce the required non-Federal share for institutions that—

(1) Are eligible to receive assistance under part A or B of title III or under title V of the Higher Education Act of 1965, as amended; and

(2) Have submitted a grant application under this part.

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

18. The authority citation for part 660 continues to read as follows:

Authority: 20 U.S.C. 1125, unless otherwise noted.

19. Section 660.1 is amended by adding ‘‘, area studies, or other international fields’’ before the semicolon at the end of paragraph (b); by removing the word ‘‘and’’ at the end of paragraph (e); by removing the period at the end of paragraph (f), and adding, in its place, a semicolon; and by adding new paragraphs (g), (h), and (i) to read as follows:

§ 660.1 What is the International Research and Studies Program?

* * * * *

(g) Evaluations of the extent to which programs assisted under title VI of the HEA that address national needs would not otherwise be offered;

(h) Studies and surveys of the use of technologies in foreign language, area studies, and international studies programs; and

(i) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques throughout the educational community, including elementary and secondary schools.

20. Section 660.10 is amended by adding the words ‘‘and achieving competency’’ after the word ‘‘instruction’’ in paragraph (b)(1); and by adding new paragraphs (h), (i), and (j) to read as follows:

§ 660.10 What activities does the Secretary assist?

* * * * *

(h) Evaluations of the extent to which programs assisted under title VI of the HEA that address national needs would not otherwise be offered.

(i) Studies and surveys of the uses of technology in foreign language, area studies, and international studies programs.

(j) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques through the education community, including elementary and secondary schools.

PART 669—LANGUAGE RESOURCE CENTERS PROGRAM

21. The authority citation for part 669 continues to read as follows:

Authority: 20 U.S.C. 1123, unless otherwise noted.

22. Section 669.3 is revised to read as follows:

§ 669.3 What activities may the Secretary fund?

Centers funded under this part must carry out activities to improve the teaching and learning of foreign languages. These activities must include effective dissemination efforts, whenever appropriate, and may include—

(a) The conduct and dissemination of research on new and improved methods for teaching foreign languages, including the use of advanced educational technology;

(b) The development and dissemination of new materials for teaching foreign languages, to reflect the results of research on effective teaching strategies;

(c) The development, application, and dissemination of performance testing that is appropriate for use in an educational setting to be used as a standard and comparable measurement of skill levels in foreign languages;

(d) The training of teachers in the administration and interpretation of foreign language performance tests, the use of effective teaching strategies, and the use of new technologies;

(e) A significant focus on the teaching and learning needs of the less commonly taught languages, including an assessment of the strategic needs of the United States, the determination of ways to meet those needs nationally, and the publication and dissemination of instructional materials in the less commonly taught languages;

(f) The development and dissemination of materials designed to serve as a resource for foreign language teachers at the elementary and secondary school levels; and

(g) The operation of intensive summer language institutes to train advanced foreign language students, to provide professional development, and to improve language instruction through preservice and inservice language training for teachers.

(Authority: 20 U.S.C. 1123)

[FR Doc. 99–3631 Filed 2–12–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.016, 84.017 and 84.229]

Undergraduate International Studies and Foreign Language Program (84.016), International Research and Studies Program (84.017) and Language Resource Centers Program (84.229); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program

(a) The *Undergraduate International Studies and Foreign Language Program* provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

(b) The *International Research and Studies Program* provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of the places in which the foreign languages are commonly used.

(c) The *Language Resource Centers Program* awards grants to centers at institutions of higher education to help improve the nation's capacity to teach and learn foreign languages through teacher training, research, materials development, and dissemination projects.

Eligible Applicants

(a) For a grant under the *Undergraduate International Studies and Foreign Language Program*—institutions of higher education; combinations of institutions of higher education; partnerships between nonprofit educational organizations and institutions of higher education; and public and private agencies and organizations, including professional and scholarly associations.

(b) For a grant under the *International Research and Studies Program*—public and private agencies, organizations, and institutions; and individuals.

(c) For a grant under the *Language Resource Centers Program*—institutions of higher education; and combinations of institutions of higher education.

DATES AND FISCAL INFORMATION

CFDA No. and name of program	Applications available	Deadline for transmittal of applications	Deadline for inter-governmental review	Available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards	Project period
84.016, Undergraduate International Studies and Foreign Language Program.	2/17/99	3/19/99	5/18/99	$2,498,901	$ 40,000–$90,000 Single institutions.	$ 65,761	38	24 months Single institutions.
	.....	.....	.....	.....	$70,000–$100,000 Consortia, partnerships and associations.	.....	.....	Up to 36 months Consortia, partnerships and associations
84.017, International Research and Studies Program.	2/17/99	3/31/99	NA	2,059,118	$40,000–$150,000.	108,375	19	Up to 36 months.
84.229, Language Resource Centers Program.	2/17/99	3/31/99	NA	2,450,000	$300,000–$400,000.	350,000	7	36 months.

Note: The Department is not bound by any estimates in this notice.

SUPPLEMENTARY INFORMATION: (This information applies only to the Undergraduate International Studies and Foreign Language Program (84.016)).

The grantee's required matching funds may be obtained in either of the following ways: (a) cash from the private sector equal to one-third of the total funds for the project period; or (b) a combination of institutional and non-institutional cash or in-kind contributions equal to one-half of the total funds for the project period.

The Secretary may waive or reduce the required matching share for institutions that: (1) Are eligible to receive assistance under part A or B of title III or under title V of the Higher Education Act of 1965, as amended; and (2) Have submitted a grant application under this program.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79 (applies to part 658 only), 80 (applies to parts 660 and 669 only), 82, 85, and 86; and (b) the regulations for these programs in 34 CFR parts 655, 658, 660, and 669 (see amendments to these regulations published elsewhere in this issue of the **Federal Register**).

Competitive Priority

(This competitive priority applies only to the Undergraduate International Studies and Foreign Language Program (84.016))

Under 34 CFR 75.105(c)(2)(i), 34 CFR 658.35, and section 604(a)(5) of title VI of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application depending upon how well the application meets the priority. These points are in addition to any points the application earns under the selection criteria for the program:

Applications from institutions of higher education or combinations of institutions that:

(a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction;

(b) Require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language; or

(c) In the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

For Applications or Information Contact

For Undergraduate International Studies and Foreign Language Program: Christine M. Corey, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW, Suite 600, Portals Building, Washington, D.C. 20202–5332. Telephone (202) 401–9774.

For International Research and Studies Program and *Language Resource Centers Program:* Jose L. Martinez, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW, Suite 600, Portals Building, Washington, D.C. 20202–5331. Telephone (202) 401–9784.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1123–1125.

Dated: February 9, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–3632 Filed 2–12–99; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Tuesday
February 16, 1999

Part VII

Federal Communications Commission

47 CFR Part 64

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Unauthorized Changes of Consumers' Long Distance Carriers; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94–129; FCC 98–334]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Second Report and Order which establishes new rules and policies governing the unauthorized switching of subscribers telecommunications, an activity more commonly known as ''slamming.'' The Commission's decision is intended to deter and ultimately eliminate unauthorized changes in subscribers telecommunications carriers.

DATES: The effective date of the rules adopted in this Order is April 29, 1999, except for 47 CFR 64.1100(c), 64.1100(d), 64.1170, and 64.1180, which contain information collection requirements which have not been approved by OMB and which will be effective 90 days after publication in the **Federal Register** to enable carriers to develop and implement an alternative carrier dispute resolution mechanism involving an independent administrator. The Commission will publish a document announcing the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Kimberly Parker, Enforcement Division, Common Carrier Bureau (202) 418–7393. For additional information concerning the information collections contained in this Order contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order in CC Docket No. 94–129 [FCC 98–334], adopted on December 17, 1998 and released on December 23, 1998. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C.

Paperwork Reduction Act: This Report and Order contains a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the following information collections contained in the Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due 60 days from the date of publication of the Report and Order in the **Federal Register**. Comments should address: (a) whether the new or modified information collection is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129.

Form No.: N/A.

Type of Review: Revised collections.

Respondents: Business or other for-profit.

Section/title	No. of Respondents	Est. time per response (hours)	Total annual burden (hours)
.			
a. Section 64.1100	1800	1.5	2,700
b. Section 64.1150	675	1.5	844
c. Section 64.1160	1800	1.5	2,700
d. Section 64.1170	1800	5	9,000
e. Section 64.1180	1800	4	7,200
f. Section 64.1190	1800	2	3,600

Total Annual Burden: 26,044 hours.

Estimated Costs Per Respondent: N/A.

Needs and Uses: Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The section further provides that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber, shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation. The information collections contained within the Report and Order are necessary to accommodate the Commission's implementation of Section 258.

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration (*Further Notice and Order*) in Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carrier. The Commission sought written public comment on the proposals in the *Further Notice and Order,* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

i. Need for and Objectives of This *Order* and the Rules Adopted Herein

2. Section 258 of the Act makes it unlawful for any telecommunications carrier ''to submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' Accordingly, the Commission adopts rules to implement this provision.

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

3. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by 5 U.S.C. 601(3). The IRFA solicited comment on the number of small businesses that would be affected by the proposed regulations and on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.

4. America's Carriers Telecommunications Association (ACTA) has submitted comments directly in response to the IRFA. ACTA states that the Commission violated the RFA in its IRFA by not addressing sufficiently the ''impact of the vague and standardless environment surrounding enforcement of the anti-slamming campaign on small carriers.'' ACTA asserts that because the proposed rules define slamming to include unintentional acts, small carriers will suffer disproportionately. ACTA states that the only proposal the Commission made to minimize the impact of its proposed rules on small carriers was the proposal to require private settlement negotiations regarding the transfer of charges arising due to section 258 liability. ACTA states that this proposal is inadequate because liability for inadvertent slams should not be imposed in the first place. ACTA submits that imposing liability for inadvertent slams will allow dishonest customers to claim falsely that they were slammed in order to avoid payment for legitimate services. Even when a complaint is not prosecuted to a formal decision, ACTA states, handling allegations of slamming are expensive and time-consuming for small carriers. ACTA also claims that the Commission is prejudiced against small carriers and that this attitude is reflected in unbalanced proposals that will allow large carriers and the Commission to subject small carriers to misdirected enforcement efforts and monetary losses and fines, as well as skew competition. ACTA also objects to the following as being harmful to small carriers: (1) elimination of the welcome package because it is an economical verification method for small carriers; (2) imposing the same verification procedures for in-bound and out-bound calls because that would overburden small carriers; (3) non-preemption of state regulation because small carriers would have difficulty in meeting the requirements of different states.

5. We disagree with ACTA's contentions. We believe that imposing liability for all intentional and unintentional unauthorized changes is not vague, but rather that it is so clear as to eliminate any doubts as to the circumstances that would constitute a slam. The bright-line standard that we adopt in this *Order* should help all carriers, including small carriers, to avoid making unauthorized changes to a subscriber's selection of telecommunications provider. We also disagree with ACTA's contention that defining slamming to include accidental slams would disproportionately affect small carriers. Section 258 prohibits slamming by any telecommunications carrier and does not distinguish between intentional and inadvertent conduct. Regardless of its size, no carrier has the right to commit unlawful acts. We believe that holding carriers liable for intentional and inadvertent unauthorized changes to subscribers' preferred carriers will reduce the overall incidence of slamming.

We also disagree with ACTA's allegation that the Commission is biased against small carriers and that this bias is evident in the rules we proposed in the Further Notice and Order. The rules we adopt require all carriers, regardless of size, to take precautions to guard against the harm to consumers that is caused by slamming. Finally, regarding the preemption of state law, we decline to exercise our preemption authority at this time because the commenters have failed to establish a record upon which a specific preemption finding could be made.

iii. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in the *Order* in CC Docket No. 94–129 Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

7. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

8. The SBA has defined establishments engaged in providing ''Radiotelephone Communications'' and ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

9. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by the SBA as ''small business concerns.''

10. Total Number of Telephone Companies Affected. The U.S. Bureau of the Census (''Census Bureau'') reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

11. Wireline Carriers and Service Providers. We estimate that fewer than 2,295 small telephone communications

companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.[1]

12. Local Exchange Carriers. We estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

13. Interexchange Carriers. We estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

14. Competitive Access Providers. We estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

15. Resellers (including debit card providers). We estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

16. Cellular Licensees. We estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

iv. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that may affect small entities and small incumbent LECs.

18. *Verification rules.* The Commission's verification rules shall apply to all carriers, excluding for the present time CMRS carriers, that submit or execute carrier changes on behalf of a subscriber.

19. *Elimination of the welcome package.* Carriers may not use the welcome package as a verification method.

20. *Verification of in-bound telemarketing sales.* Carriers must comply with our verification rules for all calls that result in carrier changes that are submitted on behalf of subscribers, whether those calls are consumer-initiated or carrier-initiated.

21. *Third Party Administrator for Dispute Resolution.* The effective date of the Commission's liability rules (47 CFR 64.1100(c), 64.1100(d), 64.1170, and 64.1180) is delayed until 90 days after publication in the **Federal Register** to enable carriers to develop and implement an alternative carrier dispute resolution mechanism involving an independent administrator. If carriers successfully implement such a plan, the Commission will entertain carriers' requests for waiver of the administrative requirements of our liability rules where such carriers voluntarily agree to use the independent administrator.

22. *Preferred Carrier Freeze Procedures.* The Commission's rules require carriers who offer preferred carrier freeze protection to follow certain procedures.

v. Steps Taken To Minimize the Significant Economic Impact of This *Order* on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered

23. *Verification rules.* Ameritech, SBC, and U S WEST propose systems that would impose fines or more stringent verification requirements on carriers with a history of slamming, as determined by the LEC or otherwise. We decline to adopt such proposals because they would impose more stringent verification requirements on carriers only after such carriers have slammed significant numbers of consumers. Furthermore, we find such proposals to be problematic because they could permit LECs to target certain carriers for ''punishment.''

24. *Elimination of the welcome package.* Several commenters propose modifications to the welcome package, rather than elimination of it entirely, because the welcome package is an inexpensive verification option that is suitable for use by smaller carriers. We conclude that it is better to eliminate the welcome package entirely, rather than attempt to ''fix'' it with modifications that fail to provide adequate protection against fraud or curtail its usefulness.

25. *Verification of in-bound telemarketing.* Several commenters propose that less burdensome verification procedures apply to in-bound telemarketing. We decline to adopt these proposals because we feel that they offer little protection to a consumer against an unscrupulous carrier.

26. *Independent Third Party Verification.* Several commenters submitted proposals for determining the independence of a third party verifier. These commenters support the criteria that the Commission has adopted in this *Order*.

27. *Verification Records.* Several commenters, including NAAG and NYSDPS, support a requirement that carriers retain verification records for a certain period of time. We choose a retention period of two years because any person desiring to file a complaint with the Commission alleging a violation of the Act must do so within two years of the alleged violation.

28. *Liability rules.* To address concerns that smaller carriers may suffer from the imposition of our liability rules, we note that a carrier accused of slamming has the opportunity to provide evidence of verification, in order to prove that it did not slam a subscriber, before having to remit any revenues to an authorized carrier.

29. *Third Party Administrator for Dispute Resolution.* This provision will benefit smaller carriers by providing them with an alternative means of compliance with our liability rules. Carriers are given a choice of complying with our liability rules in whole by administering the requirements themselves, or of complying by using an independent third party to administer the requirements.

30. *Preferred Carrier Freeze Procedures.* States are free to impose restrictions on the use of preferred carrier freezes for local exchange and intraLATA toll services if they determine that such steps are necessary in light of the availability of local competition in a particular market. Furthermore, we impose certain requirements that will prevent carriers from using preferred carrier freezes in an anticompetitive manner, such as easy procedures to lift freezes. In this way, the existence of preferred carrier freeze programs will not impede carriers wishing to compete in local services, especially smaller carriers.

31. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

I. Introduction

32. In this Second Report and Order and Second Further Notice of Proposed Rulemaking (*Order*), we adopt rules proposed in the First Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration (*Further Notice and Order*) to implement section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). Section 258 makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the

[1] The proposed rule referenced in paragraphs 10–16 are published in the same separate part of this issue.

Commission shall prescribe.'' The goal of section 258 and this *Order* is to eliminate the practice of ''slamming.'' Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization.

33. Despite the Commission's existing slamming rules, our records indicate that slamming has increased at an alarming rate. In 1997, the Commission processed approximately 20,500 slamming complaints and inquiries, which is an increase of approximately 61% over 1996 and an increase of approximately 135% over 1995. From January to the beginning of December 1998, the Commission processed 19,769 slamming complaints. Furthermore, the number of slamming complaints filed with the Commission is a mere fraction of the actual number of slamming incidents that occur.

34. The Commission recently has increased its enforcement actions to impose severe financial penalties on slamming carriers. Since April 1994, the Commission has imposed final forfeitures totaling $5,961,500 against five companies, entered into consent decrees with eleven companies with combined payments of $2,460,000, and has proposed $8,120,000 in penalties against six carriers. Additionally, the Commission may sanction a carrier by revoking its operating authority under section 214 of the Act.

35. The new rules we adopt in this *Order* operate to establish a new comprehensive framework to combat aggressively and deter slamming in the future. Our new rules absolve subscribers of liability for some slamming charges in order to ensure that carriers do not profit from slamming activities, as well as to compensate subscribers for the confusion and inconvenience they experience as a result of being slammed. As an additional deterrent, we strengthen our verification procedures and broaden the scope of our slamming rules.

II. Background

36. The Commission's current slamming rules, which apply only to long distance carriers, require such carriers to first obtain authorization from subscribers for preferred carrier changes and then to verify that authorization. The current rules also require IXCs to verify all PIC changes using either a written letter of agency (LOA) or, if the carrier has used telemarketing to solicit the customer, one of the following four procedures: (1) obtain an LOA from the subscriber; (2) receive confirmation from the subscriber via a call from the subscriber to a toll-free number provided exclusively for the purpose of confirming change orders electronically; (3) use an independent third party to verify the subscriber's order; or (4) send an information package, also known as the ''welcome package,'' that includes a postage-paid postcard which the subscriber can use to deny, cancel, or confirm a service order, and wait 14 days after mailing the packet before submitting the PIC change order. A carrier that makes unauthorized changes to a subscriber's selection of telecommunications provider and charges rates higher than that of the authorized carrier must re-rate that subscriber's bill to ensure that the subscriber pays no more than what he or she would have paid the authorized carrier. The unauthorized carrier must also pay for any carrier-change charges assessed by the LEC.

III. Discussion

A. Section 258(b) Liability

i. Liability of the Slammed Subscriber

37. We adopt a rule absolving consumers of liability for unpaid charges assessed by unauthorized carriers for 30 days after an unauthorized carrier change has occurred. Any carrier that the subscriber calls to report the unauthorized change, whether that entity is the subscriber's LEC, unauthorized carrier, or authorized carrier, is required to inform the subscriber that he or she is not required to pay for any slamming charges incurred for the first 30 days after the unauthorized change. If a subscriber pays charges to his or her unauthorized carrier, however, such subscriber's liability will be limited to the amount he or she would have paid the authorized carrier. We note that, as explained fully in the discussion on Third Party Administrator for Dispute Resolution, we delay the effective date of the liability rules for 90 days to provide interested carriers an opportunity to implement a dispute resolution mechanism involving an independent administrator.

38. Many state commissions and consumer protection organizations support absolving the consumer of liability for charges incurred after being slammed. Our liability rules that provide for limited absolution for slamming charges will deter slamming by minimizing the opportunity for unauthorized carriers to physically take control of slamming profits for any period of time. Even though section 258(b) requires the unauthorized carrier to remit to the authorized carrier all charges collected from the subscriber, several commenters state that absolution is preferable to using the remedy in section 258(b) because the slamming carrier is likely to refuse to remit revenues to the authorized carrier.

39. This rule also makes slamming unprofitable because it provides consumers with incentive to scrutinize their monthly telephone bills early and carefully. By providing subscribers with a remedy that is easy to administer, *i.e.*, consumers simply refuse to pay telephone bills containing slamming charges, we provide a quick and simple process to stop slamming. We also choose to absolve consumers of liability for a limited time because it provides some compensation to consumers for the time, effort, and frustration they experience as a result of being slammed, as well as for the loss of choice and privacy.

40. We balance this need to compensate the consumer, however, against the possibility of consumers improperly reporting that they were slammed in order to obtain free telephone service. To address such concerns about fraud, we point out that subscribers may only be absolved of liability if they have in fact been slammed. Carriers can, as described below, produce proof of valid verification to refute a subscriber's claim that he or she was slammed. This approach has the added benefit of strengthening carriers' incentive to comply strictly with our verification procedures in order to protect themselves from inappropriate claims by consumers that they have been slammed.

41. We limit the absolution period to 30 days after an unauthorized change has occurred. Several carriers support a 30-day limit to absolution. To the extent that the subscriber receives additional charges from the slamming carrier after the 30-day absolution period, the subscriber shall pay such charges to the authorized carrier at the authorized carrier's rates after the authorized carrier has re-rated such charges. In most cases, the consumer will discover the unauthorized change upon receipt of the first monthly bill after the unauthorized change occurs, because that bill generally provides the consumer with the first notice that a carrier change has been made. The limitation on absolution for the first 30 days after an unauthorized change may be waived by the Commission in circumstances where it is necessary to extend the period of absolution in order to provide a subscriber with a fair and equitable resolution. The special circumstances that may affect this period of absolution would likely be

practices used to delay the subscriber's realization of the carrier change. For example, a waiver of the 30-day limit might be appropriate if the subscriber's telephone bill failed to provide reasonable notice to the subscriber of a carrier change, or if the slamming carrier did not have a monthly billing cycle.

42. A limited absolution rule does not substantially harm the authorized carrier, who has not provided service to the slammed consumer during the period of absolution. We conclude that, although the authorized carrier is deprived of profits that it would have received but for the unauthorized change, it also has not actually provided any service to the subscriber and it appears that the authorized carrier is not out of pocket for most costs that it would have borne if it had in fact provided service. We emphasize that, should the authorized carrier conclude that it is entitled to any compensation from the slamming carrier that it does not receive under our rules, such as lost profits or other damages, the authorized carrier has recourse against the slamming carrier in the appropriate forum, such as before the Commission or in a state or federal court.

43. Several commenters, including AT&T and GTE, state that consumers should pay for services received in order to give effect to the remedy in section 258(b), which requires unauthorized carriers to give authorized carriers all charges collected from slammed subscribers. By its terms, that remedy applies only when the consumer has in fact made payment to the unauthorized carrier. Section 258(b) *does not require* the consumer to pay either the authorized carrier or the unauthorized carrier. As discussed in the following section, if a subscriber does pay his or her unauthorized carrier, the authorized carrier will be entitled to collect that amount from the unauthorized carrier in accordance with section 258(b).

44. We do recognize that by absolving the consumer of liability for a certain period of time, our remedy goes beyond the specific statutory remedy that is explicitly set forth in section 258(b) of the Act. Section 258(b) also states, however, that ''the remedies provided by this section are in addition to any other remedies available by law.'' Absolving slammed subscribers of liability for a limited period of time is within the Commission's authority under section 201(b) to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the] Act,'' as well as under section 4(i) to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions.'' Pursuant to such authority, we have determined that the most effective method of deterring slamming is to deprive carriers of revenue from slamming by absolving consumers of liability for 30 days after the unauthorized change. As we have already stated, by enabling the consumer to forgo payment to the slamming carrier, we limit the opportunities for slamming carriers to profit from slamming. Furthermore, the absolution remedy we adopt is not inconsistent with section 258 because the section 258(b) remedy only applies to charges that have been paid to the slamming carrier and does not reference charges that have not been paid.

45. We also recognize that, to the extent that our rules permit authorized carriers to collect some charges, at their rates, for services provided by slamming carriers beyond the 30-day absolution period, these requirements are not in accordance with Section 203(c), which requires carriers to collect charges in accordance with their filed tariffs. Because tariffs only permit carriers to collect charges for service they actually provide, our new rule requiring authorized carriers to collect charges for service provided by slamming carriers would not be in accordance with their tariffs. Section 10 of the Act, however, permits the Commission to forbear from applying section 203 tariff requirements to interstate, domestic, interexchange carriers if the Commission determines that three statutory forbearance criteria are satisfied. We conclude that these criteria are met.

46. First, we find that enforcement of section 203(c) in this instance is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that carrier or service are just and reasonable and are not unjustly or unreasonably discriminatory. The circumstances under which we permit the authorized carrier to collect charges that are not in accordance with its tariff are very limited. In fact, by requiring the subscriber to pay the authorized carrier rather than the slamming carrier, our rule helps to deter the unlawful, unjust, and unreasonable practices of slamming carriers by preventing them from making profits from slammed consumers. Under these limited circumstances, our rule is not necessary to ensure that the authorized carrier's charges, practices, classifications, or regulations from being just and reasonable, and not unjustly or unreasonably discriminatory.

47. Second, enforcement of section 203(c) under these circumstances is not necessary for the protection of consumers. On the contrary, requiring subscribers to pay their slamming carriers rather than their authorized carriers would be harmful to consumers. Our rule operates to protect consumers from the abusive practices of slamming carriers by depriving such carriers of slamming profits. Therefore enforcement of section 203(c) in this particular situation is not necessary to protect consumers.

48. Third, forbearance from applying section 203(c) in this instance is consistent with the public interest. In making this determination, section 10(b) also requires us to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. We conclude that permitting the subscriber to pay the authorized carrier for charges imposed by slamming carriers after the 30-day absolution period is consistent with the public interest. Slamming distorts competition in the marketplace because it rewards carriers who employ fraud and deceit over carriers that are conducting lawful activities. Slamming also deprives a consumer of choice. Because our rule deters slamming by making slamming unprofitable, it promotes the public interest, including enhancing competition for telecommunications services.

ii. When the Slammed Subscriber Pays the Unauthorized Carrier

49. We concluded above that a slammed subscriber is not liable for charges incurred during the first 30 days after an unauthorized carrier change. In the event that a subscriber nevertheless pays the unauthorized carrier for slamming charges, two rules shall govern. First, the unauthorized carrier is obligated to remit to the authorized carrier all charges paid by the subscriber. Second, after receiving this amount from the unauthorized carrier, the authorized carrier shall provide the subscriber with a refund or credit for any amounts the subscriber paid in excess of what he or she would have paid the authorized carrier absent the unauthorized change.

a. Liability of the Unauthorized Carrier

50. We adopt the rule proposed in the *Further Notice and Order* to provide that any telecommunications carrier that violates the Commission's verification procedures and that collects charges for

telecommunications service from a subscriber shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by such subscriber after such violation. This remedy is directed specifically by the language in section 258(b) of the Act.

51. We also impose certain additional penalties on unauthorized carriers. We also require the unauthorized carrier to pay for reasonable billing and collection expenses, including attorneys' fees, incurred by the authorized carrier in collecting charges from the unauthorized carrier. Requiring the unauthorized carrier to pay for expenses incurred by the authorized carrier in collecting charges from the unauthorized carrier ensures that the authorized carrier does not suffer further economic loss because of the unauthorized change, and adds an economic incentive for the authorized carrier to seek reimbursement for slamming. Additionally, since the rule increases the penalty for slamming, the unauthorized carrier may facilitate reimbursement to the authorized carrier in order to avoid payment of any additional expenses for billing and collection.

52. We also require the unauthorized carrier to pay for the expenses of restoring the subscriber to his or her authorized carrier. By requiring the unauthorized carrier to pay the change charge to the authorized carrier, we ensure that neither the authorized carrier nor the subscriber incurs additional expenses in restoring the subscriber to his or her preferred carrier. Furthermore, requiring the unauthorized carrier to pay these additional charges will serve as a further deterrent to unauthorized changes.

b. Subscriber Refunds or Credits

53. Our new rules will enable subscribers to prevent carriers from profiting by absolving them of liability for the first 30 days after an unauthorized change. We conclude, however, that the specific provisions of section 258(b) appear to prevent us from absolving consumers of liability to the extent that they have already made payments to their unauthorized carriers. We conclude that Congress intended that subscribers who pay for slamming charges should pay no more than they would have paid to their authorized carriers for the same service had they not been slammed. Indeed, the legislative history reflects Congressional intent that ''the Commission's rules should also provide that consumers be made whole.'' Therefore our rules will require the authorized carrier to refund or credit the subscriber for any charges collected from the unauthorized carrier in excess of what the subscriber would have paid the authorized carrier absent the switch. This approach is consistent with the Commission's current rules that ensure that the slammed subscriber pays no more for service than he or she would have paid before the unauthorized switch. Furthermore, we conclude that requiring a refund of the excess amounts paid by the subscriber does not harm the authorized carrier who has in fact received payment for service that it did not provide to the subscriber. Should the authorized carrier conclude that it is suffering some financial harm, nothing in our rules would preclude the carrier from filing a claim against the unauthorized carrier for lost profits or other damages.

54. If the authorized carrier fails to collect the charges paid by the subscriber from the unauthorized carrier, the authorized carrier is not required to provide a refund or credit to the subscriber. The authorized carrier, who has done no wrong, should not be penalized by having to provide the subscriber with a refund paid out of the authorized carrier's pocket. We require the authorized carrier, however, to notify the subscriber within 60 days after the subscriber has notified the authorized carrier of an unauthorized change, if the authorized carrier has failed to collect from the unauthorized carrier the charges paid by the slammed subscriber. Upon receipt of the notification, the subscriber will have the opportunity to pursue a claim against the slamming carrier for a full refund of all amounts paid to the slamming carrier. The subscriber is entitled to the entire amount paid, rather than merely a refund or credit of charges paid in excess of the authorized carrier's rates. This is because it is the subscriber who is collecting the charges from the slamming carrier rather than the authorized carrier. The language of section 258(b) generally prevents the subscriber from being absolved of liability for charges paid because it indicates that the authorized carrier may make a claim for, and keep, amounts paid to the slamming carrier. Where the authorized carrier has failed in collecting charges from the slamming carrier, however, the language of section 258(b) would not apply. Therefore the subscriber, who is not bound by the carrier remedy in section 258(b), would be entitled to a refund from the slamming carrier of all slamming charges paid. If the subscriber has difficulty in obtaining this refund from the slamming carrier, the subscriber has the option of filing a complaint with the Commission pursuant to section 208.

iii. Investigation and Reimbursement Procedures

a. When the Subscriber Has Not Paid the Unauthorized Carrier

55. A subscriber may refuse to pay any charges imposed by the slamming carrier for 30 days after the unauthorized change occurred. The record supports, however, giving the carrier who has been deprived of charges the opportunity to refute a subscriber's slamming claim. We therefore impose the following mechanism to limit the ability of subscribers to fraudulently claim that they have been slammed.

56. After the subscriber has reported an allegedly unauthorized change and requested to be switched back to the authorized carrier, the slamming carrier shall remove from the subscriber's bill, whether billed through a LEC or otherwise, all charges that were incurred for the first 30 days after the unauthorized change occurred. If the allegedly unauthorized carrier has proof of the consumer's valid verification of authorization to change to it, however, then the allegedly unauthorized carrier shall, within 30 days of the subscriber's return to the originally authorized carrier, submit to the originally authorized carrier a claim for the amount of charges for which the consumer was absolved, along with proof of the subscriber's verification of the disputed carrier change. The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim. Within 60 days after receipt of the claim and the proof of verification, the originally authorized carrier shall issue a decision to the subscriber and the carrier making the claim. If the originally authorized carrier decides that the subscriber did in fact authorize a carrier change to the carrier making the claim, it shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously absolved. Upon receiving this amount, the originally authorized carrier shall forward this amount to the carrier making the claim. If the authorized carrier determines that the subscriber was slammed by the carrier filing the claim, the subscriber shall not be required to make any payments for the charges for which he or she was absolved. If either the subscriber or the carrier making the claim believes that the authorized carrier's investigation or

adjudication of the dispute was in any way improper or wrong, then it has the option of filing a section 208 complaint.

b. When the Subscriber Has Paid the Unauthorized Carrier

57. When the subscriber has paid charges to the slamming carrier, the following procedures shall apply. First, we require the authorized carrier to submit to the allegedly unauthorized carrier, within 30 days of notification of an unauthorized change, a request for proof of verification of the subscriber's requested carrier change. Second, we require the allegedly unauthorized carrier to provide proof of verification to the authorized carrier within ten days of the authorized carrier's request. If the allegedly unauthorized carrier does provide proof of verification, consistent with the Commission's verification procedures, of the disputed carrier change request, then the burden shifts to the authorized carrier to prove that an unauthorized change occurred. The proof of verification must provide clear and convincing evidence that the subscriber provided knowing authorization of a carrier change.

58. If the allegedly unauthorized carrier cannot provide proof of verification, then it must provide to the authorized carrier, also within ten days of the authorized carrier's request for proof of verification, a copy of the subscriber's bill, an amount equal to any charge required to return the subscriber to his or her authorized carrier, and an amount equal to any charges paid by the subscriber, if applicable. In the event that the authorized carrier is unable to obtain an appropriate response from the slamming carrier, the authorized carrier may bring an action in federal or state court, where appropriate, or before the Commission, against the slamming carrier.

iv. Restoration of Premiums

59. Premiums are bonuses, such as frequent flier miles, that are given to subscribers as rewards for each dollar spent on telecommunications services. The legislative history of the 1996 Act states that ''the Commission's rules should require that carriers guilty of 'slamming' should be liable for premiums, including travel bonuses, that would otherwise have been earned by telephone subscribers but were not earned due to the violation of the Commission's rules. * * *'' Therefore we require an authorized carrier to reinstate the subscriber in any premium program in which the subscriber was enrolled prior to being slammed, if that subscriber's participation in the premium program was terminated because of the unauthorized change. We also require the authorized carrier restore to the subscriber any premiums that the subscriber lost due to slamming if a subscriber has paid the unauthorized carrier for slamming charges. We emphasize that the authorized carrier is entitled to receive from the slamming carrier charges paid by the slammed subscriber, and we expect that authorized carriers will make every effort to pursue their claims against slamming carriers. In the event that an authorized carrier is unable to recover from the unauthorized carrier charges that were paid by the subscriber, however, the authorized carrier is still required to restore the subscriber's premiums. On the other hand, an authorized carrier is not required to restore any premiums lost by that subscriber if the subscriber has not paid for the charges incurred after being slammed.

60. Although the Commission proposed in the *Further Notice and Order* to require the unauthorized carrier to remit to the properly authorized carrier an amount equal to the value of premiums to be restored to the subscriber, we find that this is not necessary to enable the authorized carrier to restore premiums to its subscribers. If the unauthorized change had never occurred, the authorized carrier would have provided the premium to the subscriber on the basis of the subscriber's payment to the authorized carrier. Therefore the authorized carrier is no worse off than it would have been if it is required to restore subscriber premiums upon receipt of the amount paid by the subscriber to the unauthorized carrier.

v. Liability for Inadvertent Unauthorized Changes

61. We reiterate that the statute and our rules impose liability for any unauthorized change in a subscriber's preferred carrier, whether intentional or inadvertent. Section 258 of the Act makes it illegal for a carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' Although several commenters assert that our rules should apply only to intentional acts that result in slamming, the statutory language does not establish an intent element for a violation of section 258. Several commenters, such as Ameritech, BellSouth, and the North Carolina Commission, support the application of a strict liability standard, in which a carrier would be liable for slamming if it was responsible for an unauthorized change, regardless of whether the unauthorized carrier did so intentionally. We agree that such a strict liability standard is required by the statute. We also find that the rights of the consumer and the authorized carrier to remedies for slamming should not be affected by whether the slam was an intentional or accidental act. Regardless of the intent, or lack thereof, behind the unauthorized change, the consumer and the authorized carrier have suffered injury. We recognize, however, that even with the greatest care, innocent mistakes will occur and may result in unauthorized changes. In such cases, we will take into consideration in any enforcement action the willfulness of the carriers involved.

vi. Determining Liability Between Carriers

62. In order to avoid or minimize disputes over the source or cause of unauthorized carrier changes, or over liability for such carrier changes, we delineate the duties and obligations of the submitting and executing carriers.

63. As proposed in the *Further Notice and Order*, we adopt the following ''but for'' liability test: (1) where the submitting carrier submits a carrier change request that fails to comply with our rules and the executing carrier performs the change in accordance with the submission, only the submitting carrier is liable as an unauthorized carrier; (2) where the submitting carrier submits a change request that conforms with our rules and the executing carrier fails to execute the change in conformance with the submission, only the executing carrier is liable for the unauthorized change; and (3) finally, where the submitting carrier submits a carrier change request that fails to comply with our rules and the executing carrier fails to perform the change in accordance with the submission, only the submitting carrier is liable as an unauthorized carrier.

B. Third Party Administrator for Dispute Resolution

64. We have formulated several mechanisms in this *Order* that rely on the authorized carrier to provide relief to its slammed subscribers and to determine whether its subscriber was slammed. We recognize, however, that some carriers may find it to be in their interest to make other mutually agreeable arrangements that might better serve to address our concerns. For instance, several carriers, particularly MCI, have indicated that they are willing and able to create quickly a system using an independent third party

administrator to discharge carrier obligations for resolving disputes among carriers and subscribers with regard to slamming, including re-rating subscriber telephone bills and returning the subscriber to the proper carrier. We agree that this concept has merit. Consumers would benefit by having one point of contact to resolve slamming problems. Carriers would benefit by having a neutral body to resolve disputes regarding slamming liability. LECs would no longer be the recipients of angry phone calls from consumers who have been slammed by long distance carriers, while IXCs would be able to divert their resources to preventing slamming rather than resolving slamming disputes. Although this approach holds promise, we do not believe that we should abandon the rules adopted herein because they provide an appropriate mechanism for all carriers to render appropriate relief and dispute resolution to slammed consumers and carriers. We do, however, encourage carriers to work out such arrangements and we will be open to receiving requests for waiver of the liability provisions of our rules for carriers that agree to implement an acceptable alternative.

65. To afford carriers time to develop and implement an industry-funded independent dispute resolution mechanism and to file waiver requests as described above, we delay the effective date of the liability rules set forth above until 90 days after **Federal Register** publication of this Order. Any waiver request must be filed in a timely manner so that the Commission may evaluate and grant or deny such request in enough time to enable carriers to implement and utilize the mechanism by the effective date of the liability rules. In submitting waiver requests, carriers should bear in mind that we would be inclined to grant a waiver only if we are satisfied that any such neutral entity would fulfill the obligations imposed by our rules with regard to liability, in the timeframes specified in the rules. We note that nothing in the Commission's liability rules or the use of the third party administrator shall preclude a consumer or carrier from filing a section 208 complaint or other action in state or federal court.

C. Verification Rules

i. The Welcome Package

66. One of the verification procedures available to carriers under the Commission's rules is the ''welcome package.'' As set forth in section 64.1100(d), after obtaining the subscriber's authorization to make a carrier change, the IXC may send the consumer a welcome package containing information and a prepaid postcard, which the customer can use to deny, cancel, or confirm the change order. Section 64.1100(d)(8) provides that the package must contain a statement that if the subscriber does not return the postcard, the subscriber's long distance service will be switched within 14 days after the date the package was mailed. In the *Further Notice and Order*, the Commission sought comment on whether the welcome package verification option should be eliminated because it could be used in the same manner as a negative-option LOA.

b. Discussion

67. The record, as well as our experience with consumer complaints, supports our decision to eliminate the welcome package as a verification option. The welcome package has been a significant source of consumer complaints regarding slamming. As many of the commenters note, consumers often fail to receive the welcome package, or they throw it away as junk mail, or they have their service switched despite the fact that they returned postcards requesting that their service not be changed. The welcome package becomes a particularly ineffective verification method when used in combination with a misleading telemarketing script. If a subscriber does not even realize that he or she has agreed to change his or her service because the telemarketing solicitation was so misleading, that subscriber would reasonably conclude that the welcome package is a solicitation, not a confirmation, and thus discard it without examination. In all instances, however, we find that the welcome package is an ineffective verification method because it does not provide evidence, such as a written signature or recording, that the subscriber has in fact authorized a carrier change. Moreover, even where the subscriber actually receives and reads the information in a welcome package, this approach places an affirmative burden on the subscriber to avoid having his or her preferred carrier switched. As with negative-option LOAs, we do not think consumers should have to take affirmative action to avoid being slammed.

ii. Application of the Verification Rules to In-Bound Calls

68. The Commission concluded in the *1995 Report and Order* that it should extend our verification procedures to consumer-initiated ''in-bound'' calls. On its own motion the Commission stayed the application of the verification rules to in-bound calls pending its decision on several petitions for reconsideration by AT&T, MCI, and Sprint. We now find that verification of in-bound calls is necessary to deter slamming and, accordingly, we lift the stay imposed in the *In-bound Stay Order*. We apply the same verification requirements to in-bound and out-bound calls. This will enable carriers to adopt uniform verification procedures for all calls. We agree with the state commissions and some IXCs that the opportunity for slamming is as great with in-bound calls as with out-bound calls. Equally important, we recognize that excluding in-bound calls from our verification requirements would open a loophole for slammers. Through this loophole, unscrupulous carriers could slam not only consumers who initiate calls for reasons other than to change carriers, but also consumers who have simply never called in. Consumers slammed in this way would have difficulty proving that they had never initiated calls to a carrier.

69. U S WEST included in its comments a Petition for Reconsideration of that portion of the *1995 Report and Order* that applied the Commission's verification rules to in-bound calls. U S WEST states that because the *1995 Report and Order* pertained only to interexchange services and IXCs, a LEC such as U S WEST would not have been expected to seek reconsideration of those rules at that time. We find that U S WEST's Petition for Reconsideration of the Commission's *1995 Report and Order* is untimely filed. Nevertheless, in making our decision regarding in-bound verification in this *Order*, we have taken into consideration the comments regarding in-bound verification submitted by U S WEST in its Petition for Reconsideration. Based on the evidence in the record, the additional comments sought and received, and the anticipated competitive climate, we conclude that imposing verification rules on in-bound calls is in the public interest and that U S WEST's request to the contrary should be denied.

iii. Independent Third Party Verification

70. Our existing rules provide for verification by using an ''appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative'' who obtained the carrier change request. We now set forth the following specific criteria to determine a third party verifier's independence. These criteria are not intended to be exhaustive, but rather the Commission

will evaluate the particular circumstances of each case. First, the third party verifier should not be owned, managed, controlled, or directed by the carrier. Ownership by the carrier would give the third party verifier incentive to affirm carrier changes, rather than to determine whether the consumer has given authorization for a carrier change. Second, the third party verifier should not be given financial incentives to approve carrier changes. For example, an independent third party verifier should not receive commissions for telemarketing sales that are confirmed because such a compensation scheme provides the third party verifier with incentive to falsely confirm sales. As another example, a carrier should not require an independent third party verifier to agree to an exclusive contract with the carrier, such that the independent verifier is wholly dependent on that particular carrier for revenue. Third, we reiterate that the third party verifier must operate in a location physically separate from the carrier. We note that our rules already require this, but we highlight this requirement because we find it to be an important one. Requiring third party verifiers to be in different physical locations from carriers reinforces the arms-length nature of their relationship.

71. Several commenters also propose disclosure requirements for the scripts used by third party verifiers. Based on the record, we conclude that the scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change. The script should not mirror any carrier's particular marketing pitch, nor should it market the carrier's services. Instead, it should clearly verify the subscriber's decision to change carriers. We note that we seek additional comment on proposals for script requirements in the Further Notice of Proposed Rulemaking.

iv. Other Verification Mechanisms

72. The Commission sought comment in the *Further Notice and Order* on additional mechanisms for reducing slamming. We received multiple proposals and have evaluated them accordingly. We adopt a rule requiring carriers to retain LOAs and other verification records for two years. We choose a retention period of two years because any person desiring to file a complaint with the Commission alleging a violation of the Act must do so within two years of the alleged violation. We reject remaining proposals made by the commenters because, although they might be helpful in preventing slamming, they would be impractical to implement. These proposals include, for example, ideas for assigning subscribers personal identification numbers (PINs). Several commenters suggest limiting our verification options to only written LOAs or to independent third party verification, while others propose to add more options, such as audio recording. We decline to further limit the verification options because we find that a range of verification options is necessary to continue to give carriers the maximum flexibility to choose a verification method appropriate for their needs. Furthermore, the verification rules, as we have modified them in this *Order* will provide consumers with protection against slamming while still providing them with the ability to change carriers without unnecessary burdens.

73. We clarify that, regardless of the solicitation method used, all carrier changes must be verified. We modify our rules to make clear that a carrier must use of one of our three verification options (written LOA, electronic author ization, and independent third party verification) to verify any carrier change. Specifically, the current rules appear to create a dichotomy between verification methods to be used when a carrier change is obtained through telemarketing, and when other marketing methods are used. A strict reading of the rules would indicate that, pursuant to current section 64.1100, a telemarketing carrier has several verification options, but that a carrier that does not telemarket must obtain a written LOA pursuant to current section 64.1150. This would seem to penalize carriers that use methods other than telemarketing, such as in-person solicitations or Internet sign ups, by denying them flexibility in their verification methods. We are also aware that some carriers have interpreted the difference between current sections 64.1100 and 64.1150 to argue that they are not required to verify their carrier change requests because such changes were not obtained through telemarketing. This is incorrect, as the Commission's previous orders have clearly stated that *all* carrier changes must be authorized and verified. Because some confusion appears to exist among carriers regarding this subject, we modify our rules accordingly.

v. Use of the Term ''Subscriber''

74. We modify current section 64.1100 to use the term ''subscriber'' in place of ''customer,'' as proposed in the Further Notice and Order. We also amend current section 64.1150(e)(4) to change the word ''consumer'' to ''subscriber.'' Because section 258 uses the term ''subscriber'' rather than ''customer,'' this will make the language in our rules consistent with the statutory language.

D. Extension of the Commission's Verification Rules to the Local Market

i. Application of the Verification Rules to the Local Market

75. In the *Further Notice and Order,* the Commission sought comment on whether the current verification rules, which apply only to IXCs, should be applied to the local market (*i.e.,* local exchange service and intraLATA toll service). We adopt a rule requiring that all changes to a subscriber's preferred carrier, including local exchange, intraLATA toll, and interLATA toll services, must be authorized by that subscriber and verified in accordance with our procedures. With the advent of competition in the provision of local exchange and intraLATA toll services we anticipate a greater incidence of slamming generally if effective rules are not put into place.

76. We also require carriers to identify specifically the types of service or services being offered (*e.g.,* interLATA toll, intraLATA toll, local exchange) in any preferred carrier solicitation or letter of agency, and to obtain separate authorization and verification for each service that is being changed. The separate authorization and verification may be received and conducted during the same telemarketing solicitation or obtained in separate statements on the same LOA form. By requiring carriers to describe fully the services they offer, and obtain separate authorization and verification for different services, carriers will be prevented from taking advantage of consumer confusion and changing the preferred carriers for all of a subscriber's telecommunications services where the subscriber merely intended to change one. Several commenters support more targeted proposals, rather than the general application of more rigorous verification rules, purportedly to avoid unnecessary costs and harm to competition. For example, Ameritech, SBC, and U S WEST propose systems that would impose fines or more stringent verification requirements on carriers with a history of slamming, as determined by the LEC or otherwise. In light of the high incidence of slamming violations we currently face, we prefer to adopt the approach taken in the rules in this *Order* because they will help to prevent carriers from slamming consumers in the first place. Furthermore, such proposals could

permit LECs to target certain carriers, including those that are offering competing services.

ii. Application of the Verification Rules to All Telecommunications Carriers

77. We adopt a rule requiring that no telecommunications carrier shall submit or execute a change on behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the Commission's verification procedures, consistent with the language of section 258. Based on the record, however, we create an exception for CMRS providers. We conclude that CMRS providers should not be subject to our verification rules at this time because slamming does not occur in the present CMRS market. CMRS providers are not currently subject to equal access requirements. In other words, a CMRS provider is free to designate any toll carrier for its subscribers unless it has voluntarily chosen not to do so. It is our understanding that the CMRS carrier, which has made contractual arrangements with the toll carriers, is in control of this selection process and must be contacted by the subscriber in order for any change in toll carriers to occur. Furthermore, Bell Atlantic Mobile and CTIA state that, at this time, a CMRS carrier cannot change a customer's wireless local exchange service without that customer's express approval, because the customer must typically physically reprogram the handset to initiate service with a new carrier. In light of these considerations, we believe that unauthorized changes are much less likely to occur and we are not aware of any slamming complaints in this area. We may revisit this issue should slamming become a problem in the CMRS market.

iii. The States' Role

78. Section 258 charges the Commission with the responsibility for establishing verification procedures for carriers who ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.'' Therefore, section 258 explicitly grants the Commission authority to create verification procedures for both interstate and intrastate services, and our rules here indeed apply to both sets of services. Many carriers urge us generally to preempt state regulation of slamming by local exchange and intrastate interexchange carriers in order to create uniform rules.

79. We decline to preempt generally state regulation of carrier changes. The states and the Commission have a long history of working together to combat slamming, and we conclude that state involvement is of greater importance than ever before. We find that, although a state must accept the same verification procedures as prescribed by the Commission, a state may accept additional verification procedures for changes to intrastate service if such state concludes that such action is necessary based on its local experiences. We further note that nothing in our rules prohibits states from deterring slamming through means other than regulation of verification procedures, such as general consumer protection requirements or direct regulation of telemarketing sales. States must, however, write and interpret their statutes and regulations in a manner that is consistent with our rules and orders, as well as section 258. For example, a state may not adopt the welcome package as an additional verification method because we have determined that the welcome package fails to protect consumers.

80. Furthermore, we are obligated and willing to examine state rules on a case-by-case basis if it appears that they conflict with the purpose of our rules, for instance, by prohibiting or having the effect of prohibiting the ability of any entity to provide telecommunications service. With regard to the issue of preemption of state verification procedures, the Commission will not make a preemption determination in the absence of an adequate record clearly describing the state law or action to be preempted and precisely how that state law or action conflicts with federal law or obstructs federal objectives. The record in this proceeding does not contain any comprehensive identification or analysis of which particular state laws would be inconsistent with our verification rules or would obstruct federal objectives. Accordingly, the record does not contain sufficient information about various state requirements to allow us to assess the ability of carriers to comply with both federal and state anti-slamming mechanisms.

81. Section 258 expressly grants to the states authority to enforce the Commission's verification procedure rules with respect to intrastate services. A state therefore may commence proceedings against a carrier for violation of the Commission's rules governing changes to a subscriber's intrastate service. We conclude that enforcement is another area in which the states and the Commission may work together to eradicate slamming. A single unauthorized change may result in the switching of both a subscriber's intrastate and interstate service in violation of the Commission's verification procedures. In the case of an unauthorized change that results in changes to intrastate and interstate service, a state's proceeding to enforce the Commission's rules with respect to the intrastate violation will yield factual findings regarding the interstate violation as well. The state's factual finding in such a case will be given great weight in the Commission's proceeding to determine whether the carrier violated the Commission's interstate verification procedures.

E. Submitting and Executing Carriers

i. Definition of ''Submitting'' and ''Executing'' Carriers

82. A submitting carrier will be generally any carrier that (1) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed; and (2) seeks to provide retail services to the end user subscriber. We have modified the rule proposed in the *Further Notice and Order* to take into account the roles of underlying carriers and their resellers. We note, however, that either the reseller or the facilities-based carrier may be treated as a submitting carrier if it is responsible for any unreasonable delays in the submission of carrier change requests or if it is responsible for submitting unauthorized carrier change requests, including fraudulent authorizations.

83. We note that in situations in which a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer's choice would not need to be verified by either the LEC or the chosen IXC. In this situation, neither the LEC nor the IXC is the submitting carrier as we have defined it. The LEC is not providing interexchange service to that subscriber. The IXC has not made any requests—it has merely been chosen by the consumer. Furthermore, because the subscriber has personally requested the change from the executing carrier, the IXC is not requesting a change on the subscriber's behalf. If a LEC's actions in this situation resulted in the subscriber being assigned to a different interexchange carrier than the one originally chosen by the subscriber, however, then that LEC could be liable for violations of its duties as an executing carrier.

84. We adopt the definition proposed in the *Further Notice and Order* for an executing carrier, so that an executing carrier is generally any carrier that effects a request that a subscriber's telecommunications carrier be changed.

This rule will apply even where a reseller competitive local exchange company (CLEC) receives carrier changes and submits such changes to its underlying facilities-based LEC. We conclude that the executing carrier should be the carrier who has actual physical responsibility for making the change to the subscriber's service, rather than a carrier that is merely forwarding a carrier change request on behalf of a subscriber. We also emphasize, however, that either the reseller or the facilities-based carrier may be treated as an executing carrier if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

85. We also note that our definition of an executing carrier could also include an IXC in the current environment. When a facilities-based IXC resells service to a switchless reseller, the switchless reseller uses the same carrier identification code (CIC) as the facilities-based IXC. Subscribers of both the facilities-based IXC and the switchless reseller would therefore be on the network of the facilities-based IXC, with the same CIC. CICs are used by LECs to identify different IXCs so that LECs will know to which carrier they should route a subscriber's interexchange traffic. Where a subscriber changes from a facilities-based IXC to a reseller of that facilities-based IXC's services, the reseller submits a carrier change order to the facilities-based IXC. That facilities-based IXC does not submit that change order to the subscriber's LEC because, as far as the LEC is concerned, the routing of calls for that subscriber has not changed due to the fact that the CIC remains the same (i.e., the LEC will still send interexchange calls from that subscriber to the same facilities-based carrier). The facilities-based IXC uses the carrier change request to process the change in its own system, which enables the reseller to begin billing the subscriber. Therefore, in this very limited situation, the executing carrier is the facilities-based IXC, not the LEC. In fact, the facilities-based IXC would be the executing carrier for all carrier changes in which the subscriber remains on the facilities-based IXC's network, regardless of whether the subscriber has changed from a switchless reseller to the reseller's facilities-based IXC, from the facilities-based IXC to a switchless reseller of that IXC's service, or from a switchless reseller of the facilities-based IXC's service to another switchless reseller of that same IXC's service.

86. Based on BellSouth's recommendation, we clarify that a billing agent has no liability under our verification rules if it is neither an executing or submitting carrier, as defined by our rules.

ii. Application of Verification Rules to Submitting and Executing Carriers

87. In the *Further Notice and Order*, the Commission tentatively concluded that the submitting carrier's compliance with our verification rules would facilitate timely and accurate execution of any carrier change, and that an executing carrier would not be required to duplicate the carrier change verification efforts of the submitting carrier. We conclude that executing carriers should not verify carrier changes prior to executing the change. We agree with several commenters that requiring such verification would be expensive, unnecessary, and duplicative of the submitting carrier's verification. Although executing carriers do not have verification obligations under our rules, they do have a responsibility to ensure that subscribers' carrier changes are executed as soon and as accurately as possible, using the most technologically efficient means available. Executing carriers are required to execute promptly and without any unreasonable delay changes that have been verified by the submitting carrier.

88. Some LECs believe that additional verification of carrier changes by executing carriers would further reduce the incidence of slamming. We find that permitting executing carriers to verify independently carrier changes that have already been verified by submitting carriers could have anticompetitive effects. We have concerns that executing carriers would have both the incentive and ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates. Furthermore, we find that an executing carrier that attempts to verify a carrier change request would be acting in violation of section 222(b), which states that a carrier that ''receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose[.]'' The information contained in a submitting carrier's change request is proprietary information because it must submit that information to the executing carrier in order to obtain provisioning of service for a new subscriber. Therefore, pursuant to section 222(b), the executing carrier may only use such information to provide service to the submitting carrier, *i.e.*, changing the subscriber's carrier, and may not attempt to verify that subscriber's decision to change carriers.

89. Notwithstanding our prohibition on verification of carrier changes by executing carriers, we find that executing carriers may still provide a similar level of protection to their customers in ways that do not raise anticompetitive concerns, by making preferred carrier freezes available for subscribers who have concerns about slamming. Executing carriers also have a variety of methods to notify their subscribers that their carriers have changed. For example, as discussed in the *Truth-in-Billing NPRM*, carriers may choose to include a separate section in their subscriber bills to highlight any changes that have occurred on a subscriber's account, including changes to preferred carriers.

iii. Concerns With Certain Executing Carriers

a. Interference With the Execution Process

90. The Commission sought comment in the *Further Notice and Order* on whether ILECs should be subject to different requirements and prohibitions because they may have the incentive and the ability to delay or refuse to process carrier change orders in order to avoid losing local customers, or in order to favor an affiliated IXC. Although we find that ILECs may very well have incentive to act anticompetitively, their ability to do so is limited by several statutory provisions in the Act. For example, section 251 requires incumbent LECs to provide facilities and services to requesting telecommunications carriers in a nondiscriminatory manner, section 201(b) prohibits unjust and unreasonable practices, and section 202(a) prohibits unjust and unreasonable discrimination. Furthermore, any carrier that imposes unreasonable delays in executing carrier changes, both for itself and others, will be in violation of our verification procedures or acting unreasonably in violation of section 201(b), even if it is not acting in violation of a non-discrimination requirement.

b. Timeframe for Execution of Carrier Changes

91. We decline at this time to adopt any deadlines for execution of carrier changes. Mandating a specific deadline for execution of all carrier changes could be problematic because there may be many legitimate reasons for a delay

in the execution of a carrier change, such as a consumer request for a delay in implementation, or the administrative burden of processing a large number of change orders. We also find that it would not be feasible to establish a specific deadline for execution of changes that would accommodate the needs of the wide variety of carriers in the marketplace, including smaller carriers. We believe, however, that subscribers should be informed of how long it will take for a carrier change to become effective and therefore we strongly encourage a submitting carrier to inform subscribers of the expected timeframe for implementing the carrier change, if it is able to obtain such information from the executing carrier.

c. Marketing Use of Carrier Change Information

92. In the *Further Notice and Order*, the Commission voiced concern that an incumbent LEC might attempt to engage in conduct that would blur the distinction between its role as a neutral executing carrier and its objectives as a marketplace competitor. Specifically, the Commission stated that an example of this type of conduct could occur if an incumbent executing carrier sends a subscriber who has chosen a new carrier a promotional letter (winback letter) in an attempt to change the subscriber's decision to switch to another carrier. We conclude that this is a valid concern and therefore find that an executing carrier may not use information gained from a carrier change request for any marketing purposes, including any attempts to change a subscriber's decision to switch to another carrier. Many commenters support this decision. As explained above, we find that carrier change information is carrier proprietary information and, therefore, pursuant to section 222(b), the executing carrier is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier. The executing carrier otherwise would have no knowledge at that time of a consumer's decision to change carriers, were it not for the executing carrier's position as a provider of switched access services. Therefore, when an executing carrier receives a carrier change request, section 222(b) prohibits the executing carrier from using that information to market services to that consumer.

F. Use of Preferred Carrier Freezes

i. Background

93. In the *Further Notice and Order*, the Commission sought comment on whether it should adopt rules to address preferred carrier freeze practices. The Commission noted that, although neither the Act nor its rules and orders specifically address preferred carrier freeze practices, concerns about carrier freeze solicitations have been raised with the Commission. The Commission noted, moreover, that MCI filed a Petition for Rulemaking on March 18, 1997, requesting that the Commission institute a rulemaking to regulate the solicitation, by any carrier or its agent, of carrier freezes or other carrier restrictions on a consumer's ability to switch his or her choice of interexchange (interLATA or intraLATA toll) and local exchange carrier. The Commission determined that it was appropriate to consider MCI's petition in the *Further Notice and Order* and, therefore, incorporated MCI's petition and all responsive pleadings into the record of this proceeding.

ii. Overview and Jurisdiction

94. We adopt rules to clarify the appropriate use of preferred carrier freezes because we believe that, although preferred carrier freezes offer consumers an additional and beneficial level of protection against slamming, they also create the potential for unreasonable and anticompetitive behavior that might affect negatively efforts to foster competition in all markets. While we are confident that our carrier change verification rules, as modified in this *Order*, will provide considerable protection for consumers against unauthorized carrier changes, we recognize that many consumers wish to utilize preferred carrier freezes as an additional level of protection against slamming. As noted in the *Further Notice and Order*, a carrier freeze prevents a change in a subscriber's preferred carrier selection until the subscriber gives the carrier from whom the freeze was requested his or her written or oral consent.

95. In the *Further Notice and Order*, however, we stated that preferred carrier freezes may have the effect of limiting competition among carriers. We share commenters' concerns that in some instances preferred carrier freezes are being, or have the potential to be, implemented in an unreasonable or anticompetitive manner. By definition, preferred carrier freezes create an additional step (namely, that subscribers contact directly the LEC that administers the preferred carrier freeze program) that customers must take before they are able to obtain a change in their carrier selection. Incumbent LECs may have incentives to market preferred carrier freezes aggressively to their customers and to use different standards for placing and removing freezes depending on the identity of the subscriber's carrier. It also appears that, at this time, facilities-based LECs—most of which are incumbent LECs—are uniquely situated to administer preferred carrier freeze programs.

96. We conclude, contrary to the assertions of Bell Atlantic, that we have authority under section 258 to address concerns about anticompetitive preferred carrier freeze practices for intrastate, as well as interstate, services. Congress, in section 258 of the Act, has granted this Commission authority to adopt verification rules applicable to both submission and execution of changes in a subscriber's selection of a provider of local exchange or telephone toll services. Preferred carrier freezes directly impact the verification procedures which Congress instructed the Commission to adopt because they require subscribers to take additional steps beyond those described in the Commission's verification rules to effectuate a carrier change. Moreover, where a preferred carrier freeze is in place, a submitting carrier that complies with our verification rules may find that its otherwise valid carrier change order is rejected by the LEC administering the freeze program. Since preferred carrier freeze mechanisms can essentially frustrate the Commission's statutorily authorized procedures for effectuating carrier changes, we conclude that the Commission has authority to set standards for the use of preferred carrier freeze mechanisms.

iii. Nondiscrimination and Application of Rules to All Local Exchange Carriers

97. We conclude that preferred carrier freezes should be implemented on a nondiscriminatory basis so that LECs do not use freezes as a tool to gain an unreasonable competitive advantage. Accordingly, local exchange carriers must make available any preferred carrier freeze mechanism to all subscribers, under the same terms and conditions, regardless of the subscribers' carrier selection. We also conclude that our rules for preferred carrier freezes should apply to all local exchange carriers and reject those proposals to place additional requirements on incumbent LECs, to the exclusion of competitive LECs.

iv. Solicitation and Implementation of Preferred Carrier Freezes

98. We find that the most effective way to ensure that preferred carrier freezes are used to protect consumers, rather than as a barrier to competition, is to ensure that subscribers fully

understand the nature of the freeze, including how to remove a freeze if they chose to employ one. We thus conclude that any solicitation and other carrier-provided information concerning a preferred carrier freeze program should be clear and not misleading. We specifically decide that, at a minimum, carriers soliciting preferred carrier freezes must provide: (1) an explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a preferred carrier freeze; (2) a description of the specific procedures necessary to lift a preferred carrier freeze and an explanation that these steps are in addition to the Commission's regular verification rules for changing subscribers' carrier selections and that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and (3) an explanation of any charges associated with the preferred carrier freeze service. We also conclude that preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services subject to a freeze, i.e., between local, intraLATA toll, interLATA toll, and international toll services. We do this to reduce consumer confusion about the differences among telecommunications services and to prevent unscrupulous carriers from placing freezes on all of a subscriber's services when the subscriber only intended to authorize a freeze for a particular service or services.

99. We adopt our proposal to extend our carrier change verification procedures to preferred carrier freeze solicitations and note that this proposal was supported by a wide range of carriers, state commissions, and consumer organizations. This will reduce customer confusion about preferred carrier freezes and prevent unscrupulous carriers from imposing preferred carrier freezes without the consent of subscribers.

v. Procedures for Lifting Preferred Carrier Freezes

100. We conclude that a LEC administering a preferred carrier freeze program must accept the subscriber's written and signed authorization stating an intent to lift a preferred carrier freeze. Such written authorization—like the LOAs authorized for use in carrier changes and to place a preferred carrier freeze—should state the subscriber's billing name and address and each telephone number to be affected. In addition, the written authorization should state the subscriber's intent to lift the preferred carrier freeze for the particular service in question. We also require that LECs must accept oral authorization from the customer to remove a freeze and must permit submitting carriers to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze. Three-way calling allows a submitting carrier to conduct a three-way conference call with the LEC administering the freeze program while the consumer is still on the line, *e.g.*, during the initial telemarketing session, so that the consumer can personally request that a particular freeze be lifted. We believe that three-way calling will effectively prevent fraud because a three-way call establishes direct contact between the LEC and the subscriber.

101. We decline to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encourage parties to develop new means of accurately confirming a subscriber's identity and intent to lift a preferred carrier freeze, in addition to offering written and oral authorization to lift preferred carrier freezes. Other methods should be secure, yet impose only the minimum burdens necessary on subscribers who wish to lift a preferred carrier freeze.

102. The essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze. We therefore disagree with MCI that third-party verification of a carrier change alone should be sufficient to lift a preferred carrier freeze because it does not offer the subscriber any additional protection from slamming.

103. We conclude that, depending on the circumstances, a carrier that is asked to lift a freeze should not be permitted to attempt to change the subscriber's decision to change carriers. This practice could violate the ''just and reasonable'' provisions of section 201(b). Much as in the context of executing carriers and carrier change requests, we think it is imperative to prevent anticompetitive conduct on the part of executing carriers and carriers that administer preferred carrier freeze programs. Carriers that administer freeze programs otherwise would have no knowledge at that time of a consumer's decision to change carriers, were it not for the carrier's position as a provider of switched access services. Therefore, LECs that receive requests to lift a preferred carrier freeze must act in a neutral and nondiscriminatory manner. To the extent that carriers use the opportunity with the customer to advantage themselves competitively, for example, through overt marketing, such conduct likely would be viewed as unreasonable under our rules.

vi. Information About Subscribers With Preferred Carrier Freezes

104. We do not require LECs administering preferred carrier freeze programs to make subscriber freeze information available to other carriers because we expect that, particularly in light of our new preferred carrier freeze solicitation requirements, more subscribers should know whether or not there is a preferred carrier freeze in place on their carrier selection. We encourage LECs, however, to consider whether preferred carrier freeze indicators might be a part of any operational support system that is made available to new providers of local telephone service.

vii. When Subscribers Change LECs

105. Based on the record developed on this issue, we conclude that when a subscriber switches LECs, he or she should request the new LEC to implement any desired preferred carrier freezes, even if the subscriber previously had placed a freeze with the original LEC. We are persuaded by the substantial number of LEC commenters asserting that it would be technically difficult or impossible to transfer information about existing preferred carrier freezes from the original LEC to the new LEC.

viii. Preferred Carrier Freezes of Local and IntraLATA Services

106. We decline the suggestion of a number of commenters that we prohibit incumbent LECs from soliciting or implementing preferred carrier freezes for local exchange or intraLATA services until competition develops in a LEC's service area. We remain convinced of the value of preferred carrier freezes as an anti-slamming tool and do not wish to limit consumer access to this consumer protection device. We do recognize, however, that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets soon to be or newly open to competition. We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.

107. We also make clear that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs

from engaging in anticompetitive conduct. We note that a number of states have imposed some form of moratorium on the implementation of preferred carrier freezes in their nascent markets for local exchange and intraLATA toll services. We find that states—based on their observation of the incidence of slamming in their regions and the development of competition in relevant markets, and their familiarity with those particular preferred carrier freeze mechanisms employed by LECs in their jurisdictions—may conclude that the negative impact of such freezes on the development of competition in local and intraLATA toll markets may outweigh the benefit to consumers.

IV. Ordering Clauses

108. Accordingly, *it is ordered* that pursuant to sections 1, 4, 201–205, and 258, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, and 258, the policies, rules, and requirements set forth herein *are adopted*.

109. *It is further ordered* that 47 CFR 64 is *Amended* as set forth below, effective 70 days after publication of the text thereof in the **Federal Register**, except that the following rules set forth below will not become effective until 90 days after publication of the text in the **Federal Register**: sections 64.1100(c), 64.1100(d), 64.1170, and 64.1180.

110. *It is further ordered* that the stay of the application of the Commission's verification rules to in-bound calls imposed in *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Order, 11 FCC Rcd 856 (1995) is lifted.

111. *It is further ordered* that pursuant to section 1.429(d) of the Commission's rules, 47 CFR 1.429(d), U S WEST's Petition for Reconsideration is dismissed as being untimely filed.

112. *It is further ordered* that a *further Notice of Proposed Rulemaking is issued*.[2]

113. *It is further ordered* that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

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

115. The *Order is adopted*, and the requirements contained herein will become effective 70 days after publication of a summary in the **Federal Register**, except §§ 64.1100(c), 64.1100(d), 64.1170, and 64.1180 which contain information that is contingent upon approval by OMB. The effective date of §§ 64.1100(c), 64.1100(d), 64.1170, and 64.1180 is delayed until 90 days after publication in the **Federal Register** to enable carriers to develop and implement an alternative carrier dispute resolution mechanism involving an independent administrator. The Commission will publish a document in the **Federal Register** announcing the effective date for §§ 64.1100(c), 64.1100(d), 64.1170, and 64.1180.

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 64 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. secs 201, 218, 226, 228, and 254(k) unless otherwise noted.

2. Revise § 64.1100 to read as follows:

§ 64.1100 Changes in subscriber carrier selections.

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this part. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

(i) authorization from the subscriber, and

(ii) verification of that authorization in accordance with the procedures prescribed in § 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this part shall be defined as compliance with sections (a) and (b) of this section, as well with § 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this part shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this part as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this part.

(c) *Carrier liability for charges.* Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170 of this part. The remedies provided in this part are in addition to any other remedies available by law.

(d) *Subscriber liability for charges.* Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this part is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being

[2] See the proposed rule published in the same separate part of this issue.

informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in § 64.1170 of this part.

(3) If the subscriber has been absolved of liability as prescribed by this section, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) *Definitions.* For the purposes of this part, the following definitions are applicable:

(1) *Submitting carrier.* A submitting carrier is generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) *Executing carrier.* An executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(3) *Authorized carrier.* An authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this part.

(4) *Unauthorized carrier.* An unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this part.

(5) *Unauthorized change.* An unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this part.

3. Revise § 64.1150 to read as follows:

§ 64.1150 Verification of orders for telecommunications service.

(a) No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

(b) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of § 64.1160; or

(c) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

(d) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(e) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

4. Add § 64.1160 to read as follows:

§ 64.1160 Letter of agency form and content.

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly

legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [insert the name of the submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

5. Add § 64.1170 to read as follows:

§ 64.1170 Reimbursement procedures.

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by § 64.1100(e)(5) of this part, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

(1) Proof of verification of the subscriber's authorization to change carriers; or

(2) The following:

(i) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(ii) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(iii) Copies of any telephone bill(s) issued from the unauthorized carrier to the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) *Subscriber refunds or credits.* Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(i), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) *Restoration of premium programs.* Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

6. Add § 64.1180 to read as follows:

§ 64.1180 Investigation procedures.

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with § 64.1100(d) of this part.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) of this section and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this part.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

(1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b) of this section. Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

(2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

7. Add § 64.1190 to read as follows:

§ 64.1190 Preferred carrier freezes.

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) *Solicitation and imposition of preferred carrier freezes.*

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(i) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(ii) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in §§ 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(iii) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(i) The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of § 64.1190(d)(3); or

(ii) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (*e.g.,* the subscriber's date of birth or social security number) and the information required in §§ 64.1190(d)(3)(ii)(A) through (D). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(iii) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (*e.g.,* the subscriber's date of birth or social security number) and the information required in § 64.1190(d)(3)(ii)(A) through (D). The independent third party must not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) *Written authorization to impose a preferred carrier freeze.* A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(i) The written authorization shall comply with §§ 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(ii) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(A) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(B) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (*e.g.,* for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be frozen;

(C) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(D) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) *Procedures for lifting preferred carrier freezes.* All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (*e.g.,* the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

[FR Doc. 99–3657 Filed 2–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94–129; FCC 98–334]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Further Notice of Proposed Rulemaking (*FNPRM*) portion of the Second Report and Order (*Order*), we seek comment on several proposals to further strengthen our slamming rules, including a proposal to require unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers, as well as proposals for preventing the confusion and slamming that results from resellers using the same carrier identification codes (CICs) as their facilities-based carriers.

DATES: Comments on proposed rules 47 CFR 64.1100, 64.1170 and 64.1195, which are contained in the *FNPRM*, and proposed information collections are due on or before March 18, 1999. Reply comments are due on or before April 2, 1999. Written comments by OMB on the proposed information collections are due on or before April 19, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

ADDRESSES: Comments and reply comments must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., TWA–325, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Strteet, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Kimberly Parker, Enforcement Division, Common Carrier Bureau (202) 418–7393. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *FNPRM* in CC Docket No. 94–129 [FCC 98–334], adopted on December 17, 1998 and released on December 23, 1998. The full text of the *FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, N.W., Washington, D.C.

Paperwork Reduction Act: This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 19, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129.

Form No.: N/A.

Type of Review: Revised collections.

Respondents: Business or other for-profit.

Annual proposed collections	Respondents	Estimated time per response (hours)	Total burden
1. Carrier Liability	1,800	2	3,600
2. Registration	1,800	2	3,600
3. Reporting	1,800	2	3,600

Total Annual Burden: 10,800 hours.

Estimated costs per respondent: N/A.

Needs and Uses: The information will enable the Commission to further deter slamming and track carriers.

Summary of Further Notice of Proposed Rulemaking

I. Background

1. The rules proposed in the *FNPRM* are aimed at eliminating slamming by attacking the problem on several fronts, including keeping profits out of the pockets of slamming carriers, imposing more rigorous verification procedures, and broadening the scope of our rules to encompass all carriers. We seek additional comment on several issues that either were not raised sufficiently in the *Order* or that require additional comment for resolution.

II. Discussion

A. Recovery of Additional Amounts From Unauthorized Carriers

2. We seek comment on whether the following proposals discussed below are within our jurisdiction and consistent with Congress' intent embodied in section 258 of the Act. Where a subscriber has paid charges to the unauthorized carrier, we propose that the authorized carrier collect from the unauthorized carrier double the amount of charges paid by the subscriber during the first 30 days after the unauthorized change. Where the subscriber has not paid charges to the unauthorized carrier, we propose to permit the authorized carrier to collect from the unauthorized carrier the amount that would have been billed to the subscriber during the first 30 days after the unauthorized change. Alternatively, we seek comment on whether the authorized carrier's recovery under this proposal should

equal the amount that the authorized carrier would have billed the subscriber during that 30-day time period absent the unauthorized change. We note that the rules adopted in the *Order* require that any charges imposed by the unauthorized carrier after the 30-day absolution period be paid by the subscriber to the authorized carrier at the authorized carrier's rates.

3. We tentatively conclude that the Commission has the authority to permit these additional payments by slamming carriers, based on the language of section 258, which provides that ''the remedies provided by this section are in addition to any other remedies available by law.'' The Commission has additional authority under section 201(b) to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the] Act,'' as well as under section 4(i) to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions.'' We tentatively conclude that permitting an authorized carrier to collect the above-described amounts from the unauthorized carrier would help to deter slamming by making slamming so unprofitable that carriers will cease practicing it. We seek comment on these tentative conclusions.

B. Resellers and CICs

4. Misunderstandings may arise due to the use of CICs, which are used by LECs to identify different IXCs. Because CICs are issued by the North American Numbering Plan Administrator (NANPA) to facilities-based IXCs only, switchless resellers do not have their own CICs, but rather use the CICs of their underlying facilities-based carriers. The fact that resellers do not have their own CICs results in two slamming-related problems: (1) the ''soft slam;'' and (2) the misidentification of a reseller as the underlying carrier.

5. A ''soft slam'' occurs when a subscriber is changed, without authorization, to a carrier that uses the same CIC as his or her authorized carrier. When a subscriber changes from a facilities-based IXC to a reseller of that facilities-based IXC's services, or in any situation in which a subscriber changes to another carrier that has the same CIC as the previous carrier, the execution of the change is performed by the facilities-based IXC, not the LEC. The soft slam is therefore particularly problematic because it bypasses the LEC and enables a slamming reseller to bypass a subscriber's preferred carrier freeze protection. Preferred carrier freeze protection, where the LEC will change a subscriber's carrier only after it receives express written or oral consent from that subscriber to lift the freeze, will not be triggered by a soft slam. Further complications arise because the name of the facilities-based carrier may continue to appear on the subscriber's bill, giving the subscriber no indication that his or her preferred carrier has been changed.

6. We seek comment on the issue of whether switchless resellers should be required to have their own CICs or some other identifier that would distinguish them from the underlying facilities-based carriers and allow the consumer to ensure that slamming has not occurred. We seek comment on three options: (1) require each reseller to obtain a CIC; (2) require the creation for each reseller of a ''pseudo-CIC,'' that is, digits that would be appended to the underlying carrier's own CIC for identification of the reseller; or (3) require underlying facilities-based carriers to modify their systems to prevent unauthorized changes from occurring if a subscriber has a freeze on the account and to allow identification of resellers on the consumer's bill. We also seek comment on other benefits, unrelated to slamming, that may result from adoption of any of these options. *See* the full text of the *FNPRM* for a more detailed discussion on CICs.

i. Jurisdiction

7. We tentatively conclude that Commission regulations requiring resellers to be identified on their subscribers' monthly bills would be consistent with our authority under sections 201(b) and 4(i). The Commission has authority under section 201(b) to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the] Act,'' as well as under section 4(i) to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions.'' Moreover, we tentatively conclude that the plain language of section 251(e)(1) gives the Commission authority to promulgate regulations of the type proposed below for changing the North American Numbering Plan (NANP). We also tentatively conclude that the Commission's authority to change the NANP includes changes to such documents as the CIC Assignment Guidelines as might be required by the Commission in this proceeding. We request comments on these tentative conclusions.

ii. Option 1: Require Resellers to Obtain Individual CICs

8. As our first option, we seek comment on requiring each reseller to obtain an individual CIC and on any changes to the NANP that would be required to make such a requirement effective. First, we request comment on whether we should make the purchase of translations access by resellers mandatory in order to deter slamming. We also ask commenting parties to address how effective this option would be in allowing consumers and carriers to detect slamming. Further, we seek comment on whether this option has advantages because it does not require facilities-based carriers to modify their existing billing and collection systems and will not cause a CIC shortage now that the Commission has ended the transition period to four-digit CICs. We request comment on the CIC Ad Hoc Working Group's recommendation to allow resellers to purchase translations access instead of Feature Group D trunk access.

9. We request further comment on this option's impact on the ''competitively neutral'' requirements of section 251(e)(2), in lieu of the fact that translations access is currently bundled together with Feature Group D trunk access. Specifically, should resellers pay the full Feature Group D trunk access rates for translations access in order to ''level the playing field'' with facilities-based carriers? How long of a transition period should we require? Should resellers be required to adhere to the same CIC Assignment Guidelines as facilities-based carriers? What will be the effect on CIC conservation if the Commission requires all resellers to obtain CICs? Commenting parties are encouraged to include empirical information with their comments.

iii. Option 2: Require the Use of ''Pseudo-CICs'' for Resellers

10. We seek comment on use of the pseudo-CIC to prevent switchless resellers from circumventing a subscriber's preferred carrier freeze protection through soft slams. We also request comment on the liability of the pseudo-CIC option as a method to identify particular resellers of a facilities-based carrier's services so that consumers can detect slamming if it occurs. We request comment on recovering the cost of implementing the pseudo-CIC option, which would be borne primarily by ILECs and other carriers or entities that provide billing and collection services to resellers. We request further comment on the need to standardize pseudo-CIC assignments,

particularly in cases where a reseller resells services from multiple facilities-based carriers. Should a single pseudo-CIC suffix be used by all facilities-based carriers to identify the same reseller, so that the 0001 suffix applies to reseller ''A'' regardless of the facilities-based carrier's CIC? Should the NANPA be required to administrate pseudo-CICs, to ensure uniformity? Finally, we request comment on the impact of pseudo-CIC implementation on section 251(e)(2)'s requirement for competitive neutrality, when determining the cost of its administration.

iv. Option 3: Require Facilities-Based Carriers To Modify Their Systems

11. We seek comment on requiring a facilities-based carrier to modify its system to enable it to execute preferred carrier freeze protection only for subscribers who are presubscribed to the services of either the facilities-based carrier or one of its switchless resellers. We propose that LECs be required to provide to each facilities-based IXC certain freeze information about subscribers of the facilities-based carrier or subscribers of any of the facilities-based carriers' resellers. We seek comment on this proposal. We also seek comment on how frequently the facilities-based IXC would need to receive information from the LEC in order to prevent soft slams, as well as undue delays in legitimate carrier changes. We seek comment on the burden this proposal would impose on both facilities-based IXCs and LECs.

12. We also seek comment on whether facilities-based carriers should be required to modify their billing records to allow identification of resellers on the consumer's bill, whether such bill is issued from the reseller, the LEC, or a billing agent. We also seek comment on whether, if the subscriber's carrier has been changed but the CIC remains the same, such subscriber's bill should include information on how to contact the underlying facilities-based carrier if the subscriber believes that an unauthorized change has occurred. We seek comment on whether facilities-based carriers possess the information needed to distinguish resellers of their services on subscribers' monthly telephone bills. We ask for comment on the cost and effort associated with placing on consumers' bills information based on the reseller usage information already maintained by facilities-based carriers. Specifically, how expensive and difficult would it be for facilities-based carriers to modify their existing billing records to provide the means to identify on the subscribers' monthly bills the specific resellers responsible for the service? Finally, we request comment on the impact of this proposed option on section 251(e)(2)'s requirement for competitive neutrality, when determining the cost of its administration.

13. We also seek comment on any other proposals that would help to distinguish the identities of resellers from their facilities-based carriers, both for purposes of identification on subscriber bills and to prevent soft slams. We seek comment on additional CIC proposals, as well as on methods that would not involve CICs, if such proposals would attain both goals of properly identifying resellers and preventing switchless resellers from slamming subscribers.

14. We also seek comment on other benefits unrelated to slamming remedies that may result from the adoption of any of these options. For example, we ask commenters to describe how the enhanced identification of resellers may allow more efficient billing or routing of calls. In addition, we seek comment on whether such identification would promote competition by giving greater emphasis to the identity of resellers that provide service.

C. Independent Third Party Verification

15. We tentatively conclude that we should revise our rules for independent third party verification. NAAG suggests in its comments that independent third party verification should be separated completely from the sales transaction, so that a carrier would not be permitted to conduct a three-way call to connect the subscriber to the third party verifier. NAAG argues that a verification call initiated by the carrier is not truly independent because the subscriber would remain under the influence of the carrier's telemarketer during the verification. We seek comment on whether, if a telemarketing carrier is present during the third party verification, such verification can be considered ''independent.''

16 We seek comment on the use of automated third party verification systems, as opposed to ''live'' operator verifiers. We seek comment on whether automated third party verification systems would comply with our rules concerning independent third party verification, as well as with the intent behind our rules to produce evidence independent of the telemarketing carrier that a subscriber wishes to change his or her carrier. We also note that one commenter, VoiceLog, offers an additional system called a ''live-scripted'' version. We seek comment on whether such a ''live-scripted'' automated verification system would be at odds with our rules because it permits the carrier itself, who is not an independent party located in a separate physical location, to solicit the subscriber's confirmation. We also seek comment on the advantages and disadvantages of using automated third party verification and live operator third party verification.

17. We seek comment on the content of the third party verification itself. For example, should the independent third party verifier be required or permitted to provide certain information in addition to confirming a subscriber's carrier change request? We also seek comment on whether independent third party verifiers should be permitted to dispense information on preferred carrier freeze procedures. We seek comment on any benefits that might be gained from permitting or requiring third party verifiers to provide additional information. We also seek comment on whether such a requirement would compromise the independent nature of the verification, or on whether such a requirement is necessary. Finally, we seek comment on any other proposals that would improve the quality of the third party verification.

D. Carrier Changes Using the Internet

18. As stated in the *Order,* all carrier changes must be confirmed in accordance with one of the three verification methods in our rules: written LOA, electronic authorization, or independent third party verification. We seek comment on whether a carrier change submitted over the Internet could be considered a valid LOA under our verification rules. We seek comment on the extent to which current carrier change requests submitted over the Internet contain all the required elements of a valid LOA in accordance with our rules. We have particular concerns about how an Internet sign-up system satisfies the signature requirement, which is one of the most important identification requirements of the written LOA. The electronic forms that we have seen generally contain a section called the ''electronic signature'' that serves as a substitute for the consumer's written signature. Some electronic signatures consist of the consumer typing his or her name into the box. Other electronic signatures consist of the consumer submitting the form electronically to the carrier. We tentatively conclude that electronic signatures used in Internet submissions of carrier changes would not comply with the signature requirement for LOAs. We believe that the electronic signature fails to identify the ''signer'' as

the actual individual whose name has been ''signed'' to the Internet form. We also believe that the electronic signature fails to identify the ''signer'' as an individual who is actually authorized to make telecommunications decisions. For example, there appear to be few safeguards to prevent someone from simply typing another person's name into the field for the electronic signature. There would be no telltale variations in handwriting to distinguish one electronic signature from another. We seek comment on these tentative conclusions, and seek comment generally on how carriers are dealing with the above-identified problems or how our rules should be modified to account for these differences.

19. We also seek comment on what additional information would provide sufficient consumer protection from an unscrupulous carrier. For example, some carriers will accept carrier changes using the Internet if subscribers submit their credit card numbers for billing purposes. We seek comment on whether obtaining a subscriber's credit card number would provide sufficient proof that a subscriber authorized a carrier change and that the submitting person is actually the subscriber. We seek comment on the extent to which a subscriber would be protected by the consumer protection aspects that accompany the use of credit cards. We also seek comment on whether carrier changes submitted over the Internet should require a subscriber to include certain personal information, such as social security number or mother's maiden name, to ensure that only the subscriber may change his or her own carrier. We seek comment on whether requiring the submission of these types of information would be sufficient to prevent slamming using the Internet, without jeopardizing the subscriber's privacy and other interests.

20. To the extent that a carrier change using the Internet is *not* a valid LOA, then at a minimum, a carrier using such a method of solicitation must verify in accordance with our rules. That is, the carrier must either obtain a valid written LOA, or confirm the sale with electronic authorization or independent third party verification. We seek comment on whether additional methods of verification might be particularly appropriate for use by carriers who solicit subscribers over the Internet.

21. We also have general concerns about the content of the solicitation using the Internet. For example, some IXC webpages state that in changing to that IXC's long distance service, the consumer also agrees to change to the IXC's intraLATA toll service where applicable. These carriers do not give consumers the option of choosing only interLATA service by that carrier, but instead require the consumer to accept both interLATA and intraLATA toll service from that IXC. We tentatively conclude that such statements would be in violation of our rule that requires LOAs to contain separate statements regarding choices of interLATA and intraLATA toll service. We seek comment on this tentative conclusion and on any other problems that may result from carrier use of the Internet to change subscribers' carriers.

22. Finally, we seek comment on the extent to which subscribers may use the Internet to request or lift preferred carrier freezes. We have the same general above-mentioned concerns about whether this method would identify the submitting party as the actual subscriber whose service would be affected by the imposition or lifting of the preferred carrier freeze. We also seek comment on the verification procedures that should apply. Should subscribers requesting preferred carrier freezes over the Internet verify their requests in the same manner as requests given directly by telephone to a LEC? LECs should, at a minimum, provide subscribers with the option to lift freezes using either a written LOA or a three-way call, but that they may offer additional options. Could LECs provide a simple and secure method for subscribers to impose and lift their freezes using the Internet? We seek comment on any other uses of the Internet that would promote efficiency and convenience for both carriers and consumers in changing telecommunications carriers and other related activities.

E. Definition of ''Subscriber''

23. Section 258 of the Act and our implementing rules require that the carrier obtain authorization from a subscriber before making a switch. Neither the Act nor our rules define the term ''subscriber'' for this purpose. We seek comment on how a subscriber should be defined, in light of our goals of consumer protection and promotion of competition. SBC suggests that the term ''subscriber'' should include ''any person, firm, partnership, corporation, or lawful entity that is authorized to order telecommunications services supplied by a telecommunications services provider,'' so that carriers could obtain authorization from whomever at the business or residence is authorized to make the purchasing decision. In the *1995 Report and Order,* we determined that the only individual qualified to authorize a change in carrier selection is the ''telephone line subscriber,'' although we did not specifically define the term. We believe that allowing the named party on the bill to designate additional persons in the household to make telecommunications decisions could promote competition because carriers would be able to solicit more than one person in a household. We also believe that consumers would find such an arrangement convenient because it would allow more than one person to make telecommunications decisions, while still giving the named party control over which members of the household may make changes to telecommunications service. A spouse named on the bill could therefore designate the other spouse as being authorized to make decisions regarding telecommunications service, although their minor children would not be authorized to make such decisions.

24. On the other hand, we are concerned that adoption of such a proposal could lead to an increase in slamming. It is unclear, for example, how a marketing carrier would know if the person who has authorized a carrier change is in fact authorized to order telecommunications services. We are concerned that a slamming carrier could simply submit changes requested by unauthorized persons and claim that it thought that those persons were authorized. Furthermore, such a proposal presumably would require executing carriers to not only maintain lists of persons other than the named party who are authorized to make telecommunications decisions, but also to check each carrier change request against these lists to determine if the person who authorized the carrier change is also authorized to make decisions. We believe that this could be an unreasonable burden on the executing carrier.

25. We also seek comment on the current practices of carriers with regard to which members of a household are permitted to make changes to telecommunications service. Carriers who submit proposals should include an explanation of how their present systems operate and the advantages and disadvantages of their proposals, as opposed to their current procedures. We seek comment on this and other proposals to define the term ''subscriber'' in order to maximize consumer protection, provide consumer convenience, and promote competition in telecommunications services.

F. Submission of Reports by Carriers

26. We seek comment on whether we should require each carrier to submit to the Commission a report on the number

of complaints of unauthorized changes in telecommunications providers that are submitted to the carrier by its subscribers. This concept is based on a provision in the Senate's anti-slamming bill. Early warning about slamming carriers will enable the Commission to take investigative action, where warranted, to stop slamming as soon as possible. We seek comment on the potential benefits of this reporting requirement and on whether such benefits outweigh the burdens on carriers. If the Commission were to adopt a reporting requirement, we seek comment on the frequency of filing such a report.

G. Registration Requirement

27. We seek comment on whether the Commission should impose a registration requirement on carriers who wish to provide interstate telecommunications service. Such a registration requirement could help to prevent entry into the telecommunications marketplace by entities that are either unqualified or that have the intent to commit fraud. We propose that any telecommunications carrier that provides or seeks to provide interstate telecommunications service should register with the Commission. We seek comment on the information that the registration should contain. We propose that the registration should contain, at a minimum, the carrier's business name(s); the names and addresses of all officers and principals; verification that such officers and principals have no prior history of committing fraud; and verification of the financial viability of the carrier. To the extent that the Commission already possesses some of this information, we seek comment on whether the Commission should consolidate the collection of the above-described information with other existing collection mechanisms, in order to lessen the burden on carriers. We tentatively propose that this registration requirement apply not just to new entrants but to all entities that offer telecommunications services. We also seek comment on the Commission's jurisdiction to require carriers to file a registration in order to provide interstate telecommunications service.

28. We tentatively conclude that the Commission should revoke or suspend, after appropriate notice and opportunity to respond, the operating authority of those carriers that fail to file a registration or that provide false or misleading information in their registration. Many states have authority to revoke carriers' operating licenses with regard to the provision of intrastate services. These states' revocation powers are limited to prohibiting carriers from operating within one state, which permits unscrupulous carriers to move to a different state to offer service. The revocation power proposed herein would enable the Commission to prevent an unscrupulous interstate interexchange carrier from operating nationwide. We seek comment on whether such penalty is appropriate in these situations, as well as in situations where the Commission finds that the provision of telecommunications service by a particular carrier would be contrary to the public interest. We also tentatively conclude that a carrier has an affirmative duty to ascertain whether another carrier has filed a registration with the Commission prior to offering service to that carrier. This would further check the ability of unscrupulous carriers to enter the marketplace. If we were to adopt this requirement, we would certainly facilitate the ability of a carrier to check the registration status of another carrier. We seek comment on what penalty the Commission should impose on carriers that fail to determine the registration status of other carriers before providing them with service. We believe that the penalty should not be as severe as the penalty to be imposed on carriers that fail to file valid registrations. We tentatively conclude that these penalties will protect consumers by ensuring that unqualified and unscrupulous carriers do not profit from the provision of telecommunications services. We seek comment on whether the consumer benefits of these proposals would outweigh the burden on carriers of filing registrations. We seek comment on these proposals and on other proposals that would prevent carriers that have a history of fraud or are otherwise unqualified from providing telecommunications services.

H. Third Party Administrator for Preferred Carrier Changes and Preferred Carrier Freezes

29. We seek further comment on the implementation by the industry of a comprehensive system in which an independent third party would administer carrier changes, verification, and preferred carrier freezes, as well as the dispute resolution functions mentioned above. In the *Further Notice and Order*, the Commission sought comment on the use of an independent third party to execute carrier changes neutrally in order to reduce carrier change disputes that might arise if ILECs continue to execute changes. Many commenters responded in support of an independent third party administrator for carrier changes and even verification because such a party would have incentive to administer carrier changes in a neutral and accurate manner. Although we agree that many of the commenters' contentions have merit, we conclude that the record before us is not fully developed to support the creation of a new and independent agent to handle execution functions at this time. Therefore we seek further comment on the development and implementation of a third party administrator for these functions. We note that any industry-supported neutral party must administer carrier change functions in accordance with the Commission's rules and seek comment on how to ensure that the industry's implementation of such a neutral third party for these functions would be consistent with the Commission's rules, policies, and practices.

30. An independent third party with broader responsibilities, such as administration of carrier changes, verification, and preferred carrier freezes, may be useful in addressing concerns raised by the commenters about potential anticompetitive practices in this area. Although we have concluded that the ability of the LECs to act anticompetitively while executing carrier changes is limited, we find that the concept of an independent third party for administration of carrier changes and preferred carrier freezes is potentially viable. Most of the commenters who support such a system, however, are not specific about how such a system might work, nor do they offer concrete proposals for funding such an administrative scheme. These comments fail to provide sufficient detail about the actual implementation and funding for a third party administrator system necessary for the Commission to mandate at this time. Furthermore, the commenters were unable to come to a consensus as to the actual duties of the independent third party administrator. Several carriers state that the third party administrator would need electronic interconnections with every carrier to be able to receive and process carrier changes and preferred carrier freezes. On the other hand, TRA suggests that the third party administrator should only monitor compliance and document execution of carrier changes and preferred carrier freezes, but that it should not actually execute carrier changes and preferred carrier freezes. We seek comment on concrete suggestions for the implementation of a third party administrator that are workable and cost-effective. Proposals for such third

party administration should include specific and detailed information regarding the cost of setting up such a system.

III. Conclusion

31. In the Further Notice of Proposed Rulemaking, we seek comment on several proposals to further strengthen our slamming rules, including a proposal to require unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers, as well as proposals for preventing the confusion and slamming that results from resellers using the same CICs as their facilities-based carriers.

IV. Procedural Matters

I. Initial Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Order and FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided below in the Comment Filing Procedures section. The Commission will send a copy of the *Order and FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Order and FNRPM and IRFA (or summaries thereof) will be published in the **Federal Register**.

i. Need for, and Objectives, of Proposed Rules.

33. The Commission, in its efforts to protect consumers from unauthorized switching of preferred carriers, and to implement provisions of the Telecommunications Act of 1996 pertaining to illegal changes in subscriber carrier selections, is issuing this Further Notice of Proposed Rulemaking. Under the Act and the proposed rules, a small entity that violates the Commission's carrier change verification rules may be liable to an authorized carrier for double the amount of charges paid to the slamming entity by a slammed subscriber or for the amount for which the slammed subscriber was absolved. Small entities may be affected by the proposals for modifying the independent third party verification process; verifying carrier changes made on the Internet; adopting a definition of ''subscriber;'' requiring carriers to submit to the Commission a report on the number of slamming complaints received by them; imposing a registration requirement; and modifications of the CIC process.

ii. Legal Basis

34. The *Order and FNPRM* are adopted pursuant to sections 1, 4(i), 4(j), 201–205, 258, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 258, 303(r).

iii. Description and Estimates of the Number of Small Entities to Which Rules Will Apply

35. In the FRFA, associated with the *Order,* we have provided a detailed description of small entities (*See* **Federal Register** Summary of *Order*).[1] Those entities include wireline carriers, local exchange carriers, small incumbent local exchange carriers, interexchange carriers, competitive access providers, resellers, and wireless carriers. We hereby incorporate those detailed descriptions by reference.

iv. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

36. *Liability.* The proposed rules would permit authorized carriers to recover from unauthorized carriers double the amount of charges paid by slammed subscribers, or the amount for which the subscriber was absolved. This would enable authorized carriers to provide a refund or credit to slammed subscribers while keeping the amount they would have received in the absence of an unauthorized change. This could affect small entities that engage in slamming.

37. *Resellers and CICs.* The Commission proposes to require switchless resellers to obtain their own CICs, to obtain pseudo-CICs, or to have the facilities-based reseller modify its billing systems. These proposals are intended to address the confusion that occurs because switchless resellers have the same CIC as their underlying facilities-based carriers. These proposals would probably impose additional costs on switchless resellers, most of whom are small entities.

38. *Independent Third Party Verification.* Although specific rules are not proposed to modify the independent third party verification process, which could be used by small carriers, the Commission seeks comment on the definition of an independent third party verifier and on the content of the independent third party verification.

39. *Internet Carrier Changes.* Although specific rules are not proposed, the Commission seeks comment on the extent to which the electronically-submitted Internet form could be considered a valid LOA in accordance with the verification procedures. The Commission also seeks comment on other procedures that might be appropriate to verify Internet carrier changes. This is in response to the need for standards among the widely varying Internet solicitation and verification practices being utilized by carriers, including small entities.

40. *Definition of ''Subscriber.''* Although no specific proposals were made, the Commission seeks comment on how the term ''subscriber'' should be defined, which may affect the marketing practices of small entities.

41. *Carrier Reports.* The proposed rules would also require each carrier to submit to the Commission a report on the number of slamming complaints that are submitted to that carrier by subscribers. Small carriers would not be exempt from filing this report. This would enable the Commission to learn about slamming entities as quickly as possible.

42. *Registration Requirement.* This rule proposes to require all interstate carriers to register with the Commission. The Commission seeks comment on requiring the registration to contain the carrier's business name(s); the names and addresses of all officers and principals; verification that such officers and principals have no prior history of committing fraud; and verification of the financial viability of the carrier. The Commission also proposes to revoke or suspend the operating authority of any carriers who fail to register or who provide false or misleading information in their registration. This would apply to all carriers, including small entities. The proposals are designed to prevent entry into the telecommunications marketplace by entities that are either unqualified or have the intent to commit fraud.

43. *Third Party Administrator for Preferred Carrier Changes and Preferred Carrier Freezes.* Although specific rules are not proposed, the Commission seeks comment on the implementation of a comprehensive system in which an independent third party would administer carrier changes, preferred carrier freezes, and verification. Several commenters support the use of an independent administrator, but failed to provide sufficient detail on the scope of its functions, how such a system would work, and how it would be funded.

[1] Published in the Rules section of this issue.

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

44. *Liability Proposal.* Permitting authorized carriers to recover the additional amounts proposed from slamming carriers will make slamming unprofitable for carriers. If the carrier provides proof that it did not violate the Commission's rules, then it is not required to pay any penalty. All carriers, including small carriers, will benefit by the reduction in slamming that will result from the implementation of our proposals.

45. *Carrier Reports.* In order to reduce the burden on carriers, we seek comment on requiring the report to be filed only when complaints reach a threshold level, rather than requiring the report to be filed on a regular basis. We believe that the resulting investigations into slamming will reduce slamming and be beneficial to all carriers, including those carriers that are small entities.

46. *Registration Requirement.* The registration requirement proposal is not overly burdensome. This requirement should only burden carriers who have a history of fraud, in order to keep them from offering telecommunications services. As such, the proposal is narrowly tailored to impose only minimal burdens on other carriers.

47. *Resellers and CICs.* The Commission offers several options to resolve the problems with identification between switchless resellers and their facilities-based carriers. They range in expense and burden on carriers, so small carriers will have the opportunity to endorse the option that best suits their needs.

48. We invite parties commenting on this regulatory analysis to provide information as to the number of small businesses that would be affected by our proposed regulations and identify alternatives that would reduce the burden on these entities while still ensuring that consumers' telecommunications carrier selections are not changed without their authorization. Furthermore, in the event of a dispute between carriers under our liability provisions, the carriers involved in such disputes must pursue private settlement negotiations prior to filing a formal complaint with the Commission. As we stated in the IRFA of the *FNPRM*, we believe that the adoption of such a dispute mechanism will lessen the economic impact of a dispute on small entities.

vi. Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

49. None.

J. Initial Paperwork Reduction Act of 1995 Analysis.

50. The Further Notice of Proposed Rulemaking portion of the *Order* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in the Further Notice of Proposed Rulemaking portion of the *Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on the Further Notice of Proposed Rulemaking; OMB comments are due April 19, 1999. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

K. Ex Parte Presentations

51. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.

L. Comment Filing Procedures

52. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 18, 1999, and reply comments on or before April 2, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

53. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

54. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., TWA–325, Washington, D.C. 20554.

55. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Kimberly Parker, Federal Communications Commission, Common Carrier Bureau, 2025 M Street, N.W., Sixth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 94–129); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

56. Written comments by the public on the proposed and/or modified information collections are due March 18, 1999. Written comments must be

submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before April 19, 1999. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th St., S.W., Room A1836, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

V. Conclusion.

57. In the *FNPRM,* we seek comment on several proposals to further strengthen our slamming rules, including a proposal to require unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers, as well as proposals for preventing the confusion and slamming that results from resellers using the same CICs as their facilities-based carriers.

VI. Ordering Clauses

58. *It is ordered* that a *further notice of proposed rulemaking is issued.*

59. *It is further ordered* that the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

List of Subjects in 47 CFR Part 64

Communications common carriers, Consumer protection, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3658 Filed 2–12–99; 8:45 am]

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Federal Register

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Tuesday, February 16, 1999

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

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