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WASHINGTON, DC

WHEN: February 20, 2001, from 9:00 a.m. to Noon (E.S.T.)

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

Contents

Federal Register

Vol. 66, No. 25

Tuesday, February 6, 2001

Agriculture Department
See Farm Service Agency

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Georgia Pacific Corp. et al., 9096–9107

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9065–9066

Centers for Disease Control and Prevention
NOTICES
Meetings:
Guide to Community Preventive Services Task Force, 9086

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Delaware, 9065
Montana, 9065

Commerce Department
See Census Bureau
See Export Administration Bureau
See International Trade Administration

Commission of Fine Arts
NOTICES
Meetings, 9068

Defense Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9068–9071
Grants and cooperative agreements; availability, etc.:
National Security Education Program; institutional grants, 9071–9072
Meetings:
Interim payment requests, 9072

Employment and Training Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Registered Apprenticeship Federal Committee, 9109

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9072–9073

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Opacity continuous emission monitoring system equipment; effective date delay, 9034
PROPOSED RULES
Water pollution; effluent guidelines for point source categories:
Metal products and machinery facilities
Meeting, 9058
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9079–9080
Meetings:
Environmental Financial Advisory Board, 9080

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Imports:
Iron ore and semi-finished steel; national security investigation, 9067

Farm Service Agency
NOTICES
Meetings:
President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health, 9064–9065

Federal Aviation Administration
RULES
Airworthiness directives:
Bell, 9031–9034
Cessna, 9027–9029
Pratt & Whitney, 9029–9031

Federal Communications Commission
RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Wireline services offering advanced telecommunications capability; deployment and local competition provisions; petitions granted or denied, 9035–9036
Wireless telecommunications services—
746-764 and 776-794 MHz bands; service rules; reconsideration petition, 9035
Digital television stations; table of assignments:
California, 9039
Indiana, 9036
Nevada, 9038
New York, 9037
Pennsylvania, 9038
Texas, 9036–9037
Virginia, 9038–9039
Wyoming, 9037
Television broadcasting:
Satellite stations; review of policy and rules, 9039–9048

PROPOSED RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Wireline services offering advanced telecommunications capability; deployment and local competition provisions, 9058–9061
Digital television stations; table of assignments:
California, 9061
Montana, 9062–9063
New Mexico, 9061–9062
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9080–9081
Submission for OMB review; comment request, 9081–9082
Common carrier services:
Wireless telecommunications services—
700 MHz guard bands; licenses auction; applications status, 9082–9084

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Southern Company Services, Inc., et al., 9075–9077
Environmental statements; availability, etc.:
Georgia Power Co., 9078
Nekoosa Packaging Corp., 9078
Hydroelectric applications, 9078–9079
Applications, hearings, determinations, etc.:
Natural Gas Pipeline Co. of America, 9073–9074
South Carolina Public Service Authority, 9074–9075

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9084–9085
Banks and bank holding companies:
Change in bank control, 9085
Formations, acquisitions, and mergers, 9085
Permissible nonbanking activities, 9085–9086
Meetings; Sunshine Act, 9086

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Endangered and threatened species:
Critical habitat designations—
Spectacled eider, 9145–9185

Food and Drug Administration
NOTICES
Biological product licenses:
Ashford Blood Bank, Inc.; hearing on proposal to revoke, 9087–9088
Food additive petitions:
National Fisheries Institute, 9086–9087

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Missouri, 9088–9089

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes:
Recognition of gain on stock or securities distribution; correction, 9034
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9138–9142
Privacy Act:
Systems of records, 9142–9143

International Trade Administration
NOTICES
Antidumping:
Preserved mushrooms from—
China, 9067–9068 9068

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Berks Associates et al., 9095
CENCO Refining Co., 9095–9096
Dalton Utilities et al., 9096
Michael's Furniture Co., 9096

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 9107–9109

Land Management Bureau
NOTICES
Meetings:
Gila Box Riparian National Conservation Area Advisory Committee, 9092–9093
Science Advisory Board, 9093

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 9109

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9089–9090
Meetings:
National Heart, Lung, and Blood Institute, 9090
National Institute of Neurological Disorders and Stroke, 9090
Scientific Review Center, 9091–9092

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 9093–9094

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Prairie Island Coalition; denied, 9055–9058
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9109–9110
Meetings:
Nuclear power reactor steam generator tube issues; workshop, 9111–9112
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 9110–9111
Connecticut Yankee Atomic Power Co., 9111

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidio Trust
NOTICES
Meetings:
Board of Directors, 9112

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Resource management plans, etc.:
Grant County, WA; Potholes Reservoir Study Area, 9094–9095

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 9113–9115
Chicago Board Options Exchange, Inc., et al., 9112–9113
National Association of Securities Dealers, Inc., 9115–9117

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 9117
Disaster loan areas:
Texas, 9117

Surface Transportation Board
NOTICES
Applications, hearings, determinations, etc.:
North Coast Railway Authority et al., 9135–9136

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Competitive need limitations; import statistics; comment request, 9117–9135

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Over-the-road buses, 9048–9054

Treasury Department
See Internal Revenue Service
NOTICES
Privacy Act:
Systems of records, 9136–9138

Separate Parts In This Issue

Part II
Department of the Interior, Fish and Wildlife Service, 9145–9185

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.

10 CFR
Proposed Rules:
72.....9055

14 CFR
39 (3 documents) ...9027, 9029, 9031

26 CFR
1.....9034

40 CFR
60.....9034
Proposed Rules:
438.....9058

47 CFR
27.....9035
51.....9035
73 (9 documents) ...9036, 9037, 9038, 9039
Proposed Rules:
51.....9058
73 (4 documents) 9061, 9062

49 CFR
37.....9048

50 CFR
17.....9146

Rules and Regulations

Federal Register
Vol. 66, No. 25
Tuesday, February 6, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–71–AD; Amendment 39–12099; AD 2001–02–13]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Model 525 (CitationJet 1) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The Cessna Aircraft Company (Cessna) Model 525 (CitationJet 1) airplanes. This AD requires you to replace certain direct current (DC) power battery switches. This AD is the result of reports of the potential for a certain 8-pole battery switch to fail during flight. The actions specified by this AD are intended to prevent this battery switch from failing while the airplane is in-flight, which is a latent failure. This could result in the pilot's inability to select ''EMER'' power or the inability to disconnect an overheated main ship's battery. On a battery overheat indication, the Airplane Flight Manual (AFM) instructs the pilot to disconnect the battery and, if the problem cannot be fixed, the pilot should immediately land the airplane. The main ship's battery that remains powered in an overheated condition may become hot enough to damage adjacent components and structure and may interfere with continued flight and a safe landing.

DATES: This AD becomes effective on February 28, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of February 28, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before March 21, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–71–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–71–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clyde Erwin, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4149; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received reports of a potential problem with 8-pole direct current (DC) battery switches that were installed on Cessna Model 525 (CitationJet 1) airplanes. Eaton (located in Sarosota, Florida) is the original equipment manufacturer (OEM) of the affected switch (Eaton part number A3–205–01/P).

Analysis of the problem shows that the switch could fail to make contact or may make intermittent contact. Certain manufacturing lots were assembled using components that were out-of-tolerance. The application of the switch from this lot, as used in the Cessna Model 525 (CitationJet 1) airplanes, could result in any or all of the following failure conditions:

—The pilot could lose power to the ''AVN EMER'' bus;

—The pilot could become unable to disconnect an overheated ship's NICAD battery. On a battery overheat indication, the AFM instructs the pilot to disconnect the battery and, if the problem cannot be fixed, the pilot should immediately land the airplane. The main ship's battery that remains powered in an overheated condition may become hot enough to damage adjacent components and structure and may interfere with continued flight and a safe landing. The FAA classifies this condition as catastrophic; and

—The pilot could lose power to the ''EMER'' bus.

There is no annunciation feature for these failures and they are only detectable in flight while the pilot requires the use of the applicable function.

What are the consequences if the condition is not corrected? This latent failure could result in the battery switch failing while the airplane is in-flight. This could result in the pilot's inability to select ''EMER'' power or the inability to disconnect an overheated main ship's battery.

Is there service information that applies to this subject? Cessna has issued Service Bulletin No. SB525–24–20, dated November 16, 2000. This service bulletin includes procedures for replacing both the DC power battery switch (Eaton part number A3–205–01/P) and the windshield anti-ice bleed air control switch (Eaton part number A3–204–01).

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Model 525 (CitationJet 1) airplanes of the same type design;

—The DC power battery switch replacement specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD requires you to replace the DC power battery switch (Eaton part number A3–205–01/P with a manufacturer's date code of 9926 through 0039). Accomplishment of this action is required in accordance with Cessna

Service Bulletin No. SB525–24–20, dated November 16, 2000.

Are there differences between this AD and the service information? Cessna Service Bulletin No. SB525–24–20, dated November 16, 2000, includes procedures for replacing both the DC power battery switch (Eaton part number A3–205–01/P) and the windshield anti-ice bleed air control switch (Eaton part number A3–204–01).

Failure of the DC power battery switch is latent; the switch can only be tested during a phase check or other maintenance event; and the failure is a safety of flight issue. The anti-ice bleed air control switches are currently checked during preflight and the AFM contains normal emergency procedures should a failure occur in flight. For these reasons, we are only requiring replacement of the DC power battery switch in this AD.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in the pilot not having power to critical flight components, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, we invite your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

We are reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clear, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–71–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2001–02–13 The Cessna Aircraft Company: Amendment 39–12099; Docket No. 2000–CE–71–AD.

(a) *What airplanes are affected by this AD?* This AD applies to Model 525 (CitationJet 1) airplanes, serial numbers 525–0360 through 525–0400, that:

(1) incorporate a direct current (DC) power battery switch, Eaton part number A3–205–01/P; and

(2) are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent this battery switch from failing while the airplane is in-flight, which is a latent failure. This could result in the pilot's inability to select ''EMER'' power or the inability to disconnect an overheated main ship's battery. On a battery overheat indication, the Airplane Flight Manual (AFM) instructs the pilot to disconnect the battery and, if the problem cannot be fixed, the pilot should immediately land the airplane. The main ship's battery that remains powered in an overheated condition may become hot enough to damage adjacent components and structure and may interfere with continued flight and a safe landing.

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

Action	Compliance time	Procedures
(1) Inspect the airplane to determine whether a DC power battery switch, Eaton part number A3–205–01/P with a manufacturer's date code of 9926 through 0039, is installed.	During the next phase check that occurs 30 calendar days or more after February 28, 2001 (the effective date of this AD) or within the next 60 calendar days after February 28, 2001 (the effective date of this AD), whichever occurs first.	Not Applicable.
(2) If, by inspecting the airplane, you can positively show that one of the affected DC power battery switches is not installed, then the replacement requirement of this AD does not apply. Make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Prior to further flight after the inspection	Not Applicable.
(3) If, by inspecting the airplane, you find that one of the affected DC power battery switches is installed or you cannot positively show that one of the affected DC power battery switches is not installed, replace with a new switch of the same part number that has a manufacturer's date code of 0040 or later, or FAA-approved equivalent part number.	Prior to further flight after the inspection, unless already accomplished.	In accordance with the Accomplishment Instructions section of Cessna Service Bulletin SB525–24–20, dated November 16, 2000.
(4) Do not install, on any affected airplane, a DC power battery switch, Eaton part-number A3–205–01/P with a manufacturer's date code of 9926 through 0039.	As of February 28, 2001 (the effective date of this AD).	Not Applicable.

Note 1: Cessna Service Bulletin No. SB525–24–20, dated November 16, 2000, includes procedures for replacing both the DC power battery switch (Eaton part number A3–205–01/P) and the windshield anti-ice bleed air control switch (Eaton part number A3–204–01). Failure of the DC power battery switch is latent, the switch can only be tested during a phase check or other maintenance event, and the failure is a safety of flight issue. The anti-ice bleed air control switches are currently checked during preflight and the AFM contains normal emergency procedures should a failure occur in flight. For this reason, we are only requiring replacement of the DC power battery switch in this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Clyde Erwin, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4149; facsimile: (316) 946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Service Bulletin No. SB525–24–20, dated November 16, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on February 28, 2001.

Issued in Kansas City, Missouri, on January 24, 2001.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–2743 Filed 2–5–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–51–AD; Amendment 39–12103; AD 2001–03–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Models PW306A and PW306B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada (PWC) models PW306A and PW306B turbofan engines. This amendment requires removing compressor rotor 2nd, 3rd, and 4th stage drum assemblies and impellers from service before exceeding new, lower cyclic life limits. This amendment is prompted by the results of test analyses that indicate certain compressor rotor 2nd, 3rd, and 4th stage drum assemblies and impellers do not have full published life. The actions specified in this AD are intended to prevent premature cracking of compressor rotor 2nd, 3rd, and 4th stage drum assemblies and impellers which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective February 21, 2001. Comments for inclusion in the rules docket must be received on or before April 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–51–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9–ane–adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781 238–7152; fax: 781 238–7199.

SUPPLEMENTARY INFORMATION: Transport Canada (TC), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on PWC models PW306A and PW306B turbofan engines. PWC conducted testing and found indications of crack initiations that occurred earlier than expected. As a result of this testing, the manufacturer advises that there is a possibility of premature failure of compressor rotor 2nd, 3rd, and 4th stage drum assemblies part numbers (P/N's) 30B4149–01, 30B4539–01, and 30B4725–01, and impellers P/N's 30B4183–01, 30B4494–01, and 30B4564–01. TC has issued Airworthiness Directive No. CF–2000–27, dated August 29, 2000, in order to ensure the continued airworthiness of these engines in Canada.

Bilateral Airworthiness Agreement

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

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design that are used on airplanes registered in the United States, this AD is being issued to prevent premature cracking of compressor rotor 2nd, 3rd, and 4th stage drums and impellers. This AD requires a decrease in the current life limit of compressor rotor 2nd, 3rd, and 4th stage drum assemblies and impellers from 6,000 to 3,000 cycles, and replacement of the drums and impellers with serviceable parts. The new life limits are based on the manufacturer's test results that indicate that compressor rotor 2nd, 3rd, and 4th stage drum assemblies and impellers do not have full published lives.

Immediate Adoption

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted 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. 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–51–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This action does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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 Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–03–02 Pratt & Whitney Canada: Amendment 39–12103. Docket No. 2000–NE–51–AD.

Applicability

Pratt & Whitney Canada (PWC) models PW306A and PW306B turbofan engines with compressor rotor 2nd, 3rd, and 4th stage drum assembly part numbers (P/N's) 30B4149–01, 30B4539–01, and 30B4725–01, and impellers P/N's 30B4183–01, 30B4494–01, and 30B4564–01 installed. These engines are installed on but not limited to Dornier Luftfahrt GmbH 328–300 Jet, and Israel Aircraft Industries, LTD. Galaxy airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent premature cracking of compressor rotor 2nd, 3rd, and 4th stage drum assemblies and impellers which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Compressor Rotor 2nd, 3rd, and 4th Stage Drum Assembly, and Impeller New Life Limit

(a) Remove compressor rotor 2nd, 3rd, and 4th stage drum assembly P/N's 30B4149–01, 30B4539–01, or 30B4725–01, and impeller P/N's 30B4183–01, 30B4494–01, or 30B4564–01 before exceeding their new life limits in Table 1, and replace with serviceable parts.

TABLE 1.—NEW LIFE LIMITS

Engine model	Part name	Part numbers	Flight count factor	Life limit cycles
PW306A	Compressor Rotor 2nd, 3rd, and 4th Stage Drum Assembly.	30B4149–01	0.9	3,000
		30B4539–01	0.9	3,000
		30B4725–01	0.9	3,000
	Impeller	30B4183–01	0.9	3,000
		30B4494–01	0.9	3,000
		30B4564–01	0.9	3,000
PW306B	Compressor Rotor 2nd, 3rd, and 4th Stage Drum Assembly.	30B4149–01	1.0	3,000
		30B4539–01	1.0	3,000
		30B4725–01	1.0	3,000
	Impeller	30B4183–01	1.0	3,000
		30B4494–01	1.0	3,000
		30B4564–01	1.0	3,000

Use of Flight Count Factor

(b) For PW306A engines only, multiply number of flights (takeoffs and landings) by 0.9 to determine cycles.

Examples:

3,333 (flights) × 0.9 (flight count factor) = 3,000 cycles.

2,850 (flights) × 0.9 (flight count factor) = 2,565 cycles.

(c) Except as provided for in paragraph (d) of this AD, do not install any part identified by P/N in paragraph (a) of this AD, that exceed the new life limit.

Alternative Method of Compliance

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

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

Special Flight Permits

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

Effective Date of This AD

(f) This amendment becomes effective on February 21, 2001.

Issued in Burlington, MA, on January 30, 2001.

David A. Downey,

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

[FR Doc. 01–3060 Filed 2–5–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–02–AD; Amendment 39–12100; AD 2001–01–52]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 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) 2001–01–52, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada (BHTC) Model 407 helicopters by individual letters. This AD requires, before further flight, reducing the maximum approved never exceed velocity (Vne); inserting a copy of this AD into the Rotorcraft Flight Manual (RFM); installing a temporary placard on the flight instrument panel to indicate the reduced Vne limit; and installing a new redline Vne limit on all airspeed indicators. This amendment is prompted by an accident resulting from a suspected tail rotor strike to the tailboom. The actions specified by this AD are intended to prevent tail rotor blades from striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter.

DATES: Effective February 21, 2001, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–01–52, issued on January 10, 2001, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–02–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 25, 1998, the FAA issued Priority Letter AD 98–20–41, Docket No. 98–SW–53–AD, for BHTC Model 407 helicopters, which restricted the airspeed to 25 knots indicated airspeed (KIAS) less than the Vne airspeeds indicated on the airspeed limitation placard. The priority letter also required installing an airspeed limitation placard; marking a redline at a Vne of 115 KIAS; applying a red arc from 115 to 140 KIAS on all airspeed indicators; and revising the Limitations section of the RFM that requires pilots to maintain yaw trim within one ball width of the centered position of the turn and bank (slip) indicator. That action was prompted by two accidents involving in-flight tail rotor blade strikes against the tailboom on BHTC Model 407 helicopters. Persons aboard both helicopters reported hearing a loud ''bang'' immediately before losing directional control of the helicopter. Subsequent inspection of the helicopters revealed that the aft section of the tailboom, including the tail rotor, the tail rotor gearbox, and the vertical fin, had separated from the helicopters in-flight. In both cases, inspection of the retrieved tailbooms confirmed that the tailbooms had been struck at least three times by the rotating tail rotor blades. The specific cause of these two in-flight tail rotor blade strikes against the tailboom has not been determined; however, flight test data indicated that tail rotor blade strikes were more likely to occur at higher airspeeds and altitudes. The data indicated that the cause of the tail rotor strikes may be excessive tail rotor blade flapping. Tail rotor blade flapping may be aggravated by left pedal input. Excessive tail rotor flapping, if not corrected, could result in the tail rotor blades striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter. Transport Canada, which is the airworthiness authority for Canada, issued AD CF–98–36, dated September 25, 1998, to require that the airspeed be reduced to minimize the risk of a tailboom strike during flight.

After issuing Priority Letter AD 98–20–41, BHTC issued Technical Bulletin No. 407–98–13, dated December 12, 1998 (TB), which recommended a reduction in Vne of only 15 KIAS with the installation of a left pedal stop to limit maximum tail rotor blade pitch. Transport Canada notified the FAA that an unsafe condition may continue to exist on BHTC Model 407 helicopters. Transport Canada advised that installing the tail rotor pitch-limiting left-pedal stop in accordance with the TB and further reducing the Vne were required to minimize the risk of a tailboom strike during flight. Transport Canada classified the TB as mandatory, and issued AD CF–98–36R3, dated March 5, 1999, to ensure the continued airworthiness of these helicopters in Canada. That action was prompted by a third accident involving an in-flight tail rotor blade strike against the tailboom on BHTC Model 407 helicopters. The pilot in that accident reported that the helicopter was in straight and level cruise flight at 110 KIAS in non-turbulent conditions when the helicopter experienced an uncommanded left pedal hardover. The pilot reported that this uncommanded full left pedal movement was followed by a loud ''bang'' and then a loss of directional control of the helicopter. Subsequent inspection of the helicopter revealed that the aft section of the tailboom, including the tail rotor, the tail rotor gearbox, and the vertical fin, had separated from the helicopter in-flight. The helicopter did not have the tail rotor pitch-limiting left-pedal stop installed.

As a result of BHTC issuing the TB and because of the additional accident, the FAA issued Priority Letter AD 99–06–15, Docket No. 99–SW–16–AD, on March 9, 1999, that superseded Priority Letter AD 98–20–41. AD 99–06–15 was published in the **Federal Register** as Amendment 39–11111 (64 FR 16801, April 7, 1999). AD 99–06–15 required, before further flight, installing a tail rotor pitch-limiting left-pedal stop and adjusting the rigging of the directional controls; installing a new airspeed limitation placard; marking a new Vne limit of 100 KIAS on all airspeed indicators; and revising the RFM to reduce the airspeed limitation further and to maintain the previously revised yaw-operational limitations. The AD was intended to prevent the tail rotor blades from striking the tailboom, which could result in separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter.

After the FAA issued AD 99–06–15, the manufacturer made a design change to the tail rotor system to eliminate tail rotor strikes to the tailboom and also made design changes to the pedal stop. Subsequently, the FAA issued superseding AD 2000–14–16, Docket No. 2000–SW–10–AD (65 FR 45703, July 25, 2000) which requires, before further flight after January 31, 2001, installing a redesigned tail rotor system and modifying the vertical fin and horizontal stabilizer to allow restoring the Vne to 140 KIAS.

Since the issuance of that AD, there has been an accident in which a helicopter flying at approximately 140 KIAS was destroyed on water impact following an in-flight occurrence. One of the suspected contributing factors is an in-flight tail rotor strike to the tailboom. As a precautionary measure, pending further investigation into the accident and before the suspected in-flight tail rotor strike can be confirmed or eliminated, Transport Canada issued AD No. CF–2001–01, dated January 8, 2001, to reduce Vne speed. The FAA agrees with this precautionary measure.

Since the unsafe condition described is likely to exist or develop on other BHTC Model 407 helicopters of the same type design, the FAA issued Emergency AD 2001–01–52 to prevent tail rotor blades from striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter. The AD requires the following before further flight:

- Reducing the maximum approved Vne to 100 KIAS if an airspeed actuated pedal stop is not installed or to 110 KIAS if an airspeed actuated pedal stop is installed;
- Inserting a copy of this AD into the RFM;
- Installing a temporary placard on the flight instrument panel to indicate the reduced Vne limit; and
- Installing a new redline Vne limit at either 100 or 110 KIAS, as applicable, on all airspeed indicators.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions previously listed are required before 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 January 10, 2001, to all known U.S. owners and operators of BHTC Model 407 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. However, there was an error in paragraphs (a) and (b) of the emergency AD. The word ''minimum'' was inadvertently used when the intent was to use the word ''maximum.'' The correction is made in this AD; the FAA has determined that this change will neither increase the economic burden on an operator nor increase the scope of the AD.

The FAA estimates that 200 helicopters of U.S. registry will be affected by this AD. It will take approximately 3 work hours per helicopter to manufacture and install each airspeed limitation placard. The average labor rate is $60 per work hour. Required parts will cost approximately $10 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,000 to install an airspeed limitation placard on all helicopters in the U.S. fleet.

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 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 mailed 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. 2001–SW–02–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

2001–01–52 Bell Helicopter Textron Canada: Amendment 39–12100. Docket No. 2001–SW–02–AD.

Applicability: Model 407 helicopters, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To prevent the tail rotor blades from striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters that do not have an airspeed actuated pedal stop installed, reduce the maximum approved placarded never exceed velocity (Vne) to 100 knots indicated airspeed (KIAS) except in autorotation where it remains 100 KIAS maximum or where the basic flight manual or operation installation limitations indicate less than these values.

(b) For helicopters that have an airspeed actuated pedal stop installed, reduce the maximum approved placarded Vne to 110 KIAS except in autorotation where it remains 100 KIAS maximum or where the basic flight manual or operation installation limitations indicate less than these values.

(c) Insert a copy of this AD into the Rotorcraft Flight Manual (BHT–407–FM–1) at the front of the Flight Limitations Section.

(d) Install a temporary locally manufactured placard on the flight instrument panel over the existing Vne placard to indicate the new Vne limit specified in paragraph (a) or (b) of this AD.

(e) Install a new redline Vne limit at either 100 or 110 KIAS on all airspeed indicators, corresponding to the new limit specified in the appropriate paragraph of this AD. Obscure or remove all previous redline limits. If the new redline is installed on the instrument glass, also install a slippage mark on the glass and on the instrument case.

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

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

(g) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished provided that the Vne limits specified in this AD are not exceeded.

(h) This amendment becomes effective on February 21, 2001, to all persons except those persons to whom it was made immediately effective by Emergency AD 2001–01–52, issued January 10, 2001, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–2001–01, dated January 8, 2001.

Issued in Fort Worth, Texas, on January 30, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–3103 Filed 2–5–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8913]

RIN 1545–AW71

Guidance Under Section 355(d); Recognition of Gain on Certain Distribution of Stock or Securities; Corrections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, December 20, 2000 (65 FR 79719), providing guidance relating to section 355(d), and recognition of gain on certain distributions of stock and securities.

DATES: This correction is effective December 20, 2000.

FOR FURTHER INFORMATION CONTACT: Michael N. Kaibni (202) 622–7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 355 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8913) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8913), which were the subject of FR Doc. 00–32041, is corrected as follows:

1. On page 79721, column 2, in the preamble under the heading ''*Transferred With Respect to an Active Trade or Business.*'', line 11 from the bottom of the paragraph, the language § 1.355–6(d)(3)(iv)(4)(E), the final'' is corrected to read ''§ 1.355–6(d)(3)(iv)(E), the final''.

2. On page 79722, column 1, in the preamble, under the heading ''Options'', the second paragraph, line 5, the language ''rights, and national principal contracts.'' is corrected to read ''rights, and notional principal contracts.''.

§ 1.355–6 [Corrected]

3. On page 79733, column 3, § 1.355–6(e)(3)(i), line 19, the language ''only to exchanges that are not treated'' is corrected to read ''only to exchanges that are not''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 01–2984 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–6942–8]

RIN 2060–AG22

Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements: Delay of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; Delay of Effective Date.

SUMMARY: In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action temporarily delays for 60 days the effective date of the rule entitled Amendments to Standards of Performance for New Stationary Sources; Monitoring Requirements, published in the **Federal Register** on August 10, 2000, 65 FR 48914. That rule concerns revising monitoring requirements to Performance Specification 1 (PS–1) of appendix B to part 60. The revisions clarify and update requirements for source owners and operators who must install and use continuous stack or duct opacity monitoring equipment. The revisions also update design and performance validation requirements for continuous opacity monitoring system (COMS) equipment in appendix B, PS–1.

DATES: The effective date of the final rule amendments to standards of performance for new stationary sources; monitoring requirements, published in the **Federal Register** on August 10, 2000, at 65 FR 48914, is delayed for 60 days, from February 6, 2001, to a new effective date of April 9, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. David Mobley, Acting Director, Emissions, Monitoring, and Analysis Division, (919) 541–5536.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the Agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Agency officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this rule immediately effective upon publication.

Dated: February 2, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–3200 Filed 2–5–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 99–168, CS Docket No. 98–120, MM Docket No. 00–39; FCC 01–02]

Service Rules for the 746–764 and 776–794 MHz Bands; Revisions to Part 27 of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This proceeding considers service rules for the 747–762 and 777–792 MHz bands (the lower and upper 700 MHz commercial bands). The Commission, in this document, affirms an earlier decision that base station transmitters should be permitted to operate in the upper 700 MHz commercial band and denies a petition for reconsideration of this issue. This action also responds to the petitioner's request for clarification as to the appropriate out-of-band emission standard for control stations operating in the 700 MHz commercial bands.

DATES: Effective February 6, 2001.

FOR FURTHER INFORMATION CONTACT: Legal Information: Stan Wiggins, 202–418–1310; Technical Information: Marty Liebman, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order* (Second MO&O) in WT Docket No. 99–168; CS Docket No. 98–120, and MM Docket No. 00–39, FCC 01–02, adopted January 2, 2001, and released January 12, 2001. The complete text of this Second MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

Synopsis of the Second Memorandum Opinion and Order

1. The Commission adopts a Second Memorandum Opinion and Order (Second MO&O) in the above-cited proceeding, with regard to service rules for the 747–762 and 777–792 MHz bands. The Second MO&O responds to a petition for reconsideration of the decision in the Memorandum Opinion and Order in this docket (65 FR 42879, July 12, 2000) to permit base station transmitters to operate in both the lower and upper 700 MHz commercial bands. Motorola, Inc. (Motorola) asked that the Commission reconsider this decision. As detailed in paragraphs 1 through 13 of the full text of the Second MO&O, the Commission finds that allowing such transmissions should not cause additional interference for public safety operations, will allow for the broadest possible use of this spectrum, consistent with sound spectrum management, and will expand participation in the auction and increase the potential for new technologies and new services.

2. The Commission concludes that, while interference is highly unlikely to occur as a result of this decision, where instances of interference actually occur they can be readily addressed on a case-by-case basis, and that historically-followed coordination procedures, requiring cooperation and accommodation by both commercial and public safety entities, will generally be able to resolve such interference. The Commission indicates that should routine coordination procedures fail to resolve the interference, it will consider other appropriate mitigation measures.

3. Motorola also sought clarification as to the appropriate out-of-band emission standard for control stations operating in the 700 MHz commercial bands. The Commission, in the Second MO&O, clarifies that control stations, which are fixed stations, must comply with the same 76 + 10 log P emission standard that applies to all base and fixed stations.

Authority Citation and Ordering Clauses

1. This action is taken pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 316, 319, 324, 332, 336, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 316, 319, 324, 332, 336, and 337 and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, section 213.

The Petition for Reconsideration or Clarification filed by Motorola is denied, and, in accordance with section 213 of the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 stat. 1501 (1999), this action shall be effective February 6, 2001.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–3045 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; CC Docket No. 96–98; FCC 01–26]

Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses five petitions for reconsideration and/or clarification of the Commission's Line Sharing Order, in which the Commission required incumbent local exchange carriers (LECs) to make a portion of their voice customer's local loop available to competitive providers of advanced services. The Commission denies two of these petitions, and grants three of them.

DATES: Effective February 6, 2001.

FOR FURTHER INFORMATION CONTACT: Jessica Rosenworcel, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order on Reconsideration in CC Docket No. 98–147 and the Commission's Fourth Report and Order on Reconsideration in CC Docket No. 96–98. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at *http://www.fcc.gov/*.

Synopsis of Reconsideration Order

1. The Commission takes several actions in this Reconsideration Order with respect to line sharing. Specifically, it clarifies that the requirement for an incumbent LEC to provide line sharing applies to the entire loop, even where the incumbent LEC has deployed fiber in the loop. With regard to line splitting, it grants AT&T and WorldCom's request for clarification that the incumbent LECs must permit competing carriers

providing voice service using the unbundled-network-element (UNE) platform to self-provision or partner with a data carrier in order to provide voice and data service on the same line. The Commission denies Bell Atlantic's request for clarification that data carriers participating in line sharing arrangements are not required to have access to the loop's entire frequency range for testing purposes. It also denies Bell Atlantic's request that the Commission reconsider the requirement that incumbent LECs refusing to condition a loop demonstrate to the relevant state commission that conditioning the specific loop in question will significantly degrade voiceband services. Also, the Commission grants the joint petition of the National Telephone Cooperative Association and the National Rural Telephone Association for clarification regarding the line sharing obligations of rural incumbent LECs. The Commission rejects Bell Atlantic's contention that the industry is permitted to adopt a line sharing deployment schedule other than the one developed in the Line Sharing Order.

2. The Commission also takes several actions concerning spectrum management. First, it denies BellSouth's request that the Commission reconsider its finding that new technologies are presumed deployable anywhere when successfully deployed in one state without significantly degrading the performance of other services. Second, it denies Bell Atlantic's request for the Commission to reconsider its conclusion that state commissions are in the best position to determine the disposition of known disturbers in the network.

Ordering Clauses

3. Pursuant to the authority contained in sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 51–154, 201, 202, 251–254, 256, 271, and 303(r), that the Third Report and Order on Reconsideration in CC Docket No. 98–147 and the Fourth Report and Order on Reconsideration in CC Docket No. 96–98 *Are Adopted*.

4. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r) that the petitions for reconsideration filed by Bell Atlantic and BellSouth on February 9, 2000, *Are Denied*.

5. Pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251,-254, 256, 271, and 303(r), that the petitions for reconsideration filed by AT&T Corp., MCI WorldCom, Inc., and the National Telephone Cooperative Association and the National Rural Telephone Association on February 9, 2000, *Are Granted* to the extent indicated herein and otherwise *Are Denied*.

List of Subjects in 47 CFR Part 51

Communications common carriers, Telecommunications, Interconnection.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–2915 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–183, MM Docket No. 99–346; RM–9763]

Digital Television Broadcast Services; Evansville, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tri-State Public Teleplex, Inc., licensee of noncommercial educational station WNIN(TV), substitutes DTV channel *12 for DTV channel *54 at Evansville, Indiana. *See* 64 FR 70670, December 17, 1999. DTV channel *12 can be allotted to Evansville at coordinates (38–01–27 N. and 87–21–43 W.) with a power of 15.0, HAAT of 177 meters and with a DTV service population of 599 thousand. With this action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–346, adopted January 30, 2001, and released January 31,2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Indiana, is amended by removing DTV Channel *54 and adding DTV Channel *12 at Evansville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–2914 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–220, MM Docket No. 99–315, RM–9731]

Digital Television Broadcast Service; McAllen, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Entravision Holdings, LLC, licensee of station KNVO(TV), NTSC channel 48, substitutes DTV channel 49 for DTV channel 46 at McAllen, Texas. *See* 64 FR 59147, November 2, 1999. DTV channel 49 can be allotted to McAllen in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (26–05–20 N. and 98–03–44 W.) with a power of 200, HAAT of 288 meters and with a DTV service population of 664 thousand. Since McAllen is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 99–315, adopted January 31, 2001, and released February 1, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 46 and adding DTV channel 49 at McAllen.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3012 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–219, MM Docket No. 00–184, RM–9955]

Digital Television Broadcast Service; Sheridan, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Duhamel Broadcasting Enterprises, licensee of station KSGW–TV, NTSC channel 12, substitutes DTV channel 13 for station KSGW–TV's assigned DTV channel 21 at Sheridan, Wyoming. *See* 65 FR 59796, October 6, 2000. DTV channel 13 can be allotted to Sheridan in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (44–37–20 N. and 107–06–57 W.) with a power of 50.0 , HAAT of 372 meters and with a DTV service population of 47 thousand. With this action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–184, adopted January 31, 2001, and released February 1, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Wyoming, is amended by removing DTV channel 21 and adding DTV channel 13 at Sheridan.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3013 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–218, MM Docket No. 00–183, RM–9959]

Digital Television Broadcast Service; Albany, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hubbard Broadcasting Inc., licensee if station WNYT(TV), NTSC channel 13, substitutes DTV 12 for DTV channel 15 at Albany, New York. *See* 65 FR 59797, October 6, 2000. DTV channel 12 can be allotted to Albany in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (42–37–37 N. and 74–00–49 W.) with a power of 10.0, HAAT of 421 meters and with a DTV service population of 1394 thousand. With this action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–183, adopted January 31, 2001, and released February 1, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New York, is amended by removing DTV channel 15 and adding DTV channel 12 at Albany.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3014 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–217, MM Docket No. 00–181, RM–9933]

Digital Television Broadcast Service; Henderson, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KVVU Broadcasting Corporation, licensee of station KVVU–TV, NTSC channel 5, substitutes DTV channel 9 for DTV 24 at Henderson, Nevada. *See* 65 FR 59797, October 6, 2000. DTV channel 9 can be allotted to Henderson in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (36–00–28 N. and 115–00–24 W.) with a power of 85.6, HAAT of 407 meters and with a DTV service population of 734 thousand. With this action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–181, adopted January 31, 2001, and released February 1, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nevada, is amended by removing DTV channel 24 and adding DTV channel 9 at Henderson.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3015 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–216, MM Docket No. 00–199; RM–9879]

Digital Television Broadcast Services; Hazleton, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WOLF License Corporation, licensee of Station WOLF–TV, substitutes DTV Channel 45 for DTV Channel 9 at Hazleton, Pennsylvania. *See* 65 FR 41621, July 6, 2000. DTV Channel 45 can be allotted to Hazleton at coordinates (41–11–00 N. and 75–52–10 W.) with a power of 546, HAAT of 488 meters, and with a DTV service population of 1787 thousand. Since Hazleton is located within 400 kilometers of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–119, adopted January 31, 2001, and released February 1, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania, is amended by removing DTV Channel 9 and adding DTV Channel 45 at Hazleton.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3016 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–215, MM Docket No. 00–201, RM–9919]

Digital Television Broadcast Service; Portsmouth, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Viacom Broadcasting of Seattle, Inc., licensee of station WGNT–TV, NTSC channel 27, substitutes DTV channel 50 for DTV channel 19 at Portsmouth, Virginia. *See* 65 FR 63044, October 20, 2000. DTV channel 50 can be allotted to Portsmouth in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (36–48–43 N. and 76–27–49 W.) with a power of 800, HAAT of 296 meters and with a DTV service population of 1677 thousand. With this action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No.00–201, adopted January 31, 2001, and released February 1, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia, is amended by removing DTV channel 19 and adding DTV channel 50 at Portsmouth.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3017 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–246, MM Docket No. 00–162, RM–9948]

Digital Television Broadcast Service; Fresno, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ackerley Broadcasting of Fresno, LLC, the successor-in-interest to Fisher Broadcasting-Fresno, licensee of station KGPE(TV) [formerly KJEO(TV)], substitutes DTV channel 34 for DTV channel 14 at Fresno, California. *See* 65 FR 54832, September 11, 2000. DTV channel 14 can be allotted to Fresno in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (37–04–14 N. and 119–25–31 W.) with a power of 330, HAAT of 597 meters and with a DTV service population of 1248 thousand.

With is action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–162, adopted February 1, 2001, and released February 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under California, is amended by removing DTV channel 14 and adding DTV channel 34 at Fresno.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3050 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–221, MM 87–8; FCC 00–431]

Review of the Commission's Regulations Governing Television Broadcasting Television Satellite Stations Review of Policy and Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document generally affirms the Commission's local TV multiple ownership rule, radio/TV cross-ownership rule, and grandfathering policies for conditional waivers of the previous radio/TV cross-ownership rule and local marketing agreements. This document modifies, however, the TV stations that qualify toward the minimum number necessary to form a combination pursuant to the local TV multiple ownership rule and the radio/TV cross-ownership rule.

EFFECTIVE DATE: Effective April 9, 2001.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, Policy and Rules Division, Mass Media Bureau, (202) 418–2130 (voice), (202) 418–1169 (TTY), or *ebash@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Second Order on Reconsideration* (''*MO&O*'') in MM Docket Nos. MM 91–221 and MM 87–8; FCC 00–431, adopted December 7, 2000; released January 19, 2001. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY—A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY—B402, Washington DC. The complete text is also available under the file name fcc00431.pdf on the Commission's Internet site at *www.fcc.gov*.

Synopsis of Memorandum Opinion and Second Order on Reconsideration

I. Introduction

1. In this *MO&O*, we resolve various petitions for reconsideration of the *Report and Order* (''*R&O*''), 64 FR 50651, September 17, 1999. We also clarify certain aspects of the *R&O* on our own motion.

Background

2. This proceeding is a broad and complex one involving several of the Commission's policies and rules on the cross-ownership and multiple ownership of broadcast stations. In the proceeding, the Commission has attempted to balance two of its most fundamental goals in broadcast ownership—fostering competition in the markets in which broadcast stations compete, and preserving a diversity of information sources, especially at the local level—with the efficiencies of common ownership and increased competition in the media marketplace. Harmonizing these concerns in the *R&O*, we amended the local TV multiple ownership rule, the radio/TV cross-ownership rule, and our standards for presumptive waiver of these rules. We also grandfathered certain television local marketing agreements (LMAs) that we determined were attributable ownership interests, as well as certain radio/TV combinations that were formed pursuant to waivers conditioned on the outcome of this proceeding.

3. The Commission's previous local television multiple ownership rule, or ''TV duopoly rule,'' prohibited common ownership of two TV stations when the Grade B contours of the stations overlapped. Our amended rule allows a party to own TV stations licensed to communities in different Designated Market Areas (DMAs) without regard to contour overlap. Our rule also permits a party to own two TV stations in the same DMA, if at least one of the stations is not among the four highest-ranked stations in the market, and at least eight independently owned and operating full-power broadcast TV stations would remain in the DMA after the proposed combination. In addition, we presume it is in the public interest to waive the amended rule if one of the stations in a proposed combination is a failed or failing station, or is not yet constructed. Once formed, whether pursuant to the amended duopoly rule or waiver standard, a combination may not be transferred unless it meets the rule or waiver standard in effect at the time of transfer.

4. The Commission's previous radio/TV cross-ownership rule generally prohibited common ownership of a radio and TV station in the same geographic area. Our amended rule permits a party to own, in the same geographic area, one TV station (or two TV stations, if permitted by the duopoly rule) and: (a) Up to six radio stations, if at least twenty independently owned media ''voices'' would remain in the market post-combination (or one TV station and seven radio stations in circumstances where a party could own two TV stations and six radio stations); (b) up to four radio stations, if at least ten independently owned media voices would remain in the market post-combination; and (c) one radio station, without regard to the number of independently owned media voices that would remain in the market post-combination. For purposes of the new rule, we count the following as media voices in the market: (a) Radio stations, (b) TV stations, (c) cable systems, as one entity, if a cable system is generally available in the DMA, and (d) certain daily newspapers. We also presume it is in the public interest to waive the amended radio/TV cross-ownership rule if one of the stations in a proposed combination is a failed station. Once formed, whether pursuant to the amended radio/TV cross-ownership rule or waiver standard, a combination may not be transferred unless it satisfies the rule or waiver standard in effect at the time of transfer.

5. In our companion *Attribution R&O*, 64 FR 50622, September 17, 1999, we concluded that a same-market LMA constitutes an attributable ownership interest for the brokering station if that station brokers more than 15% of the brokered station's broadcast hours per week. Consistent with our proposal in the *Second Further Notice of Proposed Rulemaking* (''*2FNPRM*''), 61 FR 66978, December 19, 1996, in the *R&O* we grandfathered LMAs that do not comply with our TV duopoly rule, if entered into prior to the adoption date of the *2FNPRM*. We grandfathered these LMAs through the conclusion of our 2004 biennial review. We required LMAs entered into on or after the adoption date of the *2FNPRM* to comply with our new TV duopoly rule within two years of the adoption date of the *R&O*. We also grandfathered certain radio/TV combinations formed pursuant to waivers that were conditioned on the outcome of this proceeding, if the waivers were applied for on or before July 29, 1999, and ultimately approved by the Commission.

6. We have received fourteen petitions for reconsideration of the *R&O*. These petitions seek reconsideration of both the TV duopoly rule and the radio/TV cross-ownership rule, as well as our grandfathering policies for television LMAs and waivers of the radio/TV cross-ownership rule that were conditioned on the outcome of this proceeding.

III. Discussion

A. Local Television Multiple Ownership Rule

1. Geographic Scope

7. *Background.* As indicated, we concluded in the *R&O* to modify our rule that disallowed common ownership of two TV stations if their Grade B contours overlapped. Instead, we decided to permit common ownership of two TV stations if they are licensed to communities in different DMAs.

8. *Discussion.* One petitioner asked us to reconsider our decision. Commenters have already fully debated the issue of the geographic scope of the duopoly rule, and we considered and resolved this issue in the *R&O*. We explained that DMAs reflect actual viewing patterns, and define the ''market'' in a manner that is widely accepted and used by the advertising and broadcasting industries. Nielsen Media Research collects viewing data from TV households four times a year, assigns a particular county to a DMA if a majority of the viewing in that county is of stations located in the DMA, and then uses the viewing data to compile DMA-based ratings for the TV shows. Advertisers use this data to make advertising purchasing decisions, and broadcasters use this data to make programming decisions. The DMA therefore properly reflects viewership patterns, and serves as the proper basis by which to define the geographic area for our TV duopoly rule. We recognize that a broadcast station may have an incentive to manipulate its DMA assignment in order to combine two stations, but Nielsen Media Research defines DMAs, and we believe that advertisers and competing broadcasters that rely on DMAs to make advertising and programming decisions have an incentive to ensure that DMA assignments are accurate and reliable. This does not mean that DMA assignments will not change, but will do so in response to marketplace changes. We believe that this is a desirable feature of our new rule. Accordingly, we reaffirm our decision to allow two broadcast TV stations to combine if they are located in different DMAs, without regard to contour overlap.

2. Market Rank/Eight Voice Test

9. *Background.* As indicated above, our new TV duopoly rule permits one party to own two stations within the same DMA, if two conditions are satisfied. At least one of the stations must not be ranked among the top four stations in the DMA, as determined by all-day audience share at the time the application to combine is filed, and at least eight independently owned and operating full-power broadcast TV stations must remain post-combination.

10. *Discussion. Market Rank.* One petitioner asked us to reconsider the requirement that at least one of the TV stations in a proposed duopoly not be among the top four stations in the DMA. The petitioner appears to argue that the requirement does not promote programming diversity. We are not persuaded that common ownership will have no adverse impact on program diversity. Moreover, the petitioner overlooks that we seek to promote both competition and diversity with the TV duopoly rule. As we explained in the *R&O*, ''[t]he 'top four ranked station' component of this standard is designed to ensure that the largest stations in the market do not combine and create potential competition concerns. These stations generally have a large share of the audience and advertising market in their area, and requiring them to operate independently will promote competition.'' Because larger stations generally produce local news while smaller stations often do not, we also explained that the requirement that both stations not be among the top four ranked stations did not harm, and in

fact furthered, our diversity goal, if the combination made it possible for the smaller station to produce local news. We thus believe that our decision to require that at least one of the stations in a proposed duopoly not be among the top four ranked stations in the DMA properly harmonizes our competition and diversity goals.

11. We also clarify how to resolve a tie for market rank. Nielsen Media Research often provides audience share in whole numbers, with the result that two stations have the same audience share. In such cases, duopoly applicants must submit more detailed information on audience share (i.e., estimates with a sufficient number of decimal places) to resolve the tie.

12. *Number of Broadcast TV Stations.* A number of petitioners ask us to reconsider our decision to require that eight independently owned and operating broadcast TV voices remain in the DMA post-merger. No petitioner argues that we adopt a particular number other than eight, however.

13. We reaffirm our decision to require that eight broadcast TV stations remain in the market post-combination. We explained our competition and diversity goals in some detail in the *R&O,* and stated that the requirement that eight TV broadcast stations remain in the DMA post-merger ''strikes what we believe to be an appropriate balance between permitting stations to take advantage of the efficiencies of television duopolies while at the same time ensuring a robust level of diversity.'' As we stated in the *R&O,* ''[o]ur decision today is an exercise in line drawing—perennially one of the most difficult yet inevitable challenges facing a government agency.'' We continue to believe that drawing the line at eight reasonably balances the competing interests at stake.

14. We reject the argument that our requirement that eight broadcast TV stations remain in the DMA post-combination inappropriately or unfairly disadvantages stations in smaller markets because of an alleged impossibility of sustaining a full complement of stations in such markets due to economic realities. As discussed in the *R&O,* we recognize that stations in smaller markets will not be able to take advantage of our new rule. We explained, however, that ''we believe this is appropriate given that these markets start with fewer broadcast outlets, and thus a lower potential for providing robust diversity to viewers in such markets * * *. [I]t is in these small markets that consolidation of broadcast television ownership could most undermine our competition and diversity goals.'' Petitioners' concerns that stations in smaller markets are in danger of failing is addressed by our waiver policies, under which we presume it is in the public interest to waive the duopoly rule if a station fails or is in danger of failing. As we explained in the *R&O,* ''the three waiver standards we adopt today * * *. will, consistent with our competition and diversity goals, provide relief in a more tailored fashion for stations in smaller markets that are unable to compete effectively.'' Because we have concluded that a diversity ''floor'' of eight stations serves our competition and diversity goals, we likewise decline to adopt the sliding scale proposed by one petitioner, which would require a greater number of broadcast stations in DMAs with greater populations. We do not believe that certain populations should have more or less competition and diversity than other populations.

15. While we generally affirm the use of DMAs in determining the number of stations in a particular market, we will modify our decision in one respect. Under the current rule, all independently owned and operating, full-power TV stations in a DMA (whether commercial or non-commercial) count toward the eight-station minimum. There are some geographically large DMAs, however, where counting every stations in the DMA may produce results at odds with our goal of establishing a minimum level of independent voices in a particular community. For example, the Miami-Ft. Lauderdale DMA contains a total of fourteen independent full-power TV stations. But two of those stations are licensed to Key West, Florida, approximately 120 miles from Miami. In a situation such as this, we do not believe that the Key West stations constitute an independent ''voice'' to viewers in Key West. However, under our current rules, a single owner could own the only two TV stations serving Key West by relying on the twelve stations in Miami, even though a viewer in Key West could not receive any of the Miami signals. Similarly, a potential combination in the Miami areas could count Key West stations as ''voices'' in the Miami market even though neither of those stations reaches the Miami area.

16. We therefore will modify our duopoly rule as follows. In counting the number of independently owned and operating, full-power stations in a market for purposes of our rule, we will count only those stations whose Grade B signal contour overlaps with the Grade B contour of at least one of the stations in the proposed combination. This new rule will help strengthen our eight-voice diversity floor in geographically large DMAs.

17. This new rule is consistent with our overall duopoly rule, which has always permitted common ownership of stations with no Grade B overlap. Indeed, in the *R&O,* we held that even though we were moving to a duopoly prohibition based on DMAs rather than contour overlap, we would still permit combinations between stations in the same DMA, regardless of the number of voices available, so long as there was no Grade B overlap. Where there was no Grade B overlap, we found that permitting stations to combine would not threaten our goal of preserving a minimum level of competition and diversity. Having reached that conclusion, we believe that its converse is also valid: if two stations with no Grade B overlap have so little impact on competition and diversity in the other's market that they should be permitted to combine, then neither should they be able to rely on the other as a source of competition and diversity in proposing to combine with a third station.

18. Finally, in the interest of consistency, we will adopt a similar modification of our one-to-a-market rule. Currently, we count all independently owned and operating, full-power TV stations in the same DMA as the TV station at issue as additional ''voices'' in the market. We will modify that rule to provide that only those independently owned and operating, full-power TV stations in the same DMA as the TV station(s) at issue, and that have a Grade B signal contour that overlaps with the Grade B contour of the TV station(s) at issue, will count as additional ''voices'' in the market.

19. *Exclusion of Media Other than Broadcast TV Stations.* Many commenters ask that if we continue to require that eight independently owned ''voices'' remain in the DMA post-combination, we count a host of other media, or at a minimum cable systems, newspapers, and radio stations, consistent with our modified radio/TV cross-ownership rule. Another petitioner asks us not to count noncommercial stations.

20. We first reaffirm that we will count both commercial and noncommercial operating TV stations in the DMA. Although noncommercial stations do not compete for advertising dollars, they do contribute to diversity. We recognize that the signal of noncommercial stations may not reach all over-the-air viewers in a DMA. The same may be said, however, of any broadcast TV station in a DMA. In addition, this argument overlooks the possible extension of the broadcast TV

station's signal carriage by a multichannel video programming distributor, such as cable. Indeed, in modifying our duopoly rule, we explained that ''DMAs reflect the fact that a station's audience reach, and hence its ''local market,'' is not necessarily coextensive with the area of its broadcast signal coverage. For example, a station's over-the-air reach can be extended by carriage on cable systems and other multichannel delivery systems, as well as through such means as satellite and translator stations.'' We thus believe that any categorical exclusion of noncommercial stations is unwarranted.

21. We also reaffirm our decision not to count media other than broadcast TV stations. The issue of whether to count other media entities for purposes of the TV duopoly rule has been debated already, and was resolved in the *R&O*. We explained that we had decided to count only broadcast TV stations because these stations are the primary source of news and information for a majority of Americans, and also because the record was not clear on the extent to which other media are substitutes for broadcast TV. We reaffirm both our decision to count only broadcast TV stations, and our rationale for doing so. Broadcast TV has the power to influence and persuade unmatched by other media. In terms of our diversity goal, we emphasize that TV is the dominant source of news and information for Americans, and in the world of television, broadcast TV stations are the dominant source of local news and information. Other video programming distributors, such as cable and DBS, typically do not serve as independent sources of local information; most of any local programming they provide is originated by a broadcast station. We thus reaffirm that, in applying the eight voice standard, we will only count broadcast TV stations.

22. One petitioner argues that, in counting broadcast TV stations in a DMA, we should include those not licensed in the DMA but with a reportable share in the DMA. To serve our competition goal, we have defined the geographic scope of our new duopoly rule with reference to DMAs only, because the DMA is the accepted measure of the market in the broadcast TV industry. Counting stations outside the DMA undercuts the rationale for our decision to adopt the market-based DMA approach. We believe it would be inconsistent with this approach to consider stations in different DMAs to be in separate markets for one purpose (*i.e.*, the triggering circumstances of the duopoly rule), but consider them to be in the same market for another purpose (*i.e.*, counting voices). We recognize that in counting radio stations for purposes of the radio/TV cross-ownership rule, we include those with a reportable share in the radio market. However, DMAs typically cover much larger geographic areas than radio markets, so that a TV station with a reportable share in a DMA may serve a much smaller portion of that market than a radio station with a reportable share in a radio market.

23. In counting broadcast TV stations in the DMA, we also clarify on our own motion that we will not count low power TV (LPTV) stations, including our recently created Class A stations. On March 28, pursuant to the Community Broadcasters Protection Act of 1999, we adopted rules establishing the Class A TV service, which affords certain LPTV stations a form of ''primary'' status. Given the limited signal coverage of LPTV stations, including Class A stations, we do not believe that they have sufficient influence and power to qualify as a station for purposes of our requirement that eight broadcast TV stations remain in a market post-combination. We emphasize that the new duopoly rule requires that ''at least 8 independently owned and operating full-power commercial and noncommercial TV stations'' must remain in a DMA post-merger.

3. Waivers

24. *Background*. In the *R&O,* we held that we would presume it would be in the public interest to waive our duopoly rule if one of the two TV stations was a ''failed'' station, a ''failing'' station, or an ''unbuilt'' station. We explained that stations in such circumstances are not meaningful sources of competition and diversity in a given market, such that their combination with another station not only will not erode our competition and diversity goals, but perhaps will generate public interest benefits, such as additional programming. We held that applicants for all three of these presumptive waivers must demonstrate that the in-market buyer is the only reasonably available candidate willing and able to operate the station, such that selling a station to an out-of-market buyer would result in an artificially depressed price. In addition, we held that, to qualify for a ''failed'' station waiver, applicants must demonstrate that one of the stations has been dark for at least four months or involved in involuntary bankruptcy or insolvency proceedings. To qualify for a failing station waiver, applicants must demonstrate that one of the stations has a low all-day audience share and has a poor financial condition, such as negative cash flow for the past three years, and that the merger will produce public interest benefits. To qualify for an ''unbuilt'' station waiver, applicants must demonstrate that a combination would result in the construction of an authorized but as yet unconstructed station, and that the permittee has made reasonable efforts to construct, but has been unable to do so.

25. *Discussion*. Several parties ask us to reconsider some of the elements of our presumptive waiver standards, suggesting that they are too burdensome and onerous. For example, some petitioners contend that our failed and failing waiver standards require too much degradation of service before we will permit duopolies. They also ask us to reconsider our requirement that the in-market buyer is the only reasonably available candidate willing and able to operate a station.

26. We reaffirm the elements of our presumptive waiver standards. Given the importance of our competition and diversity goals, we believe it is important to ensure that waivers are available only when truly necessary. As we stated in the context of our failed station waiver, ''we hope to limit the special relief awarded to failed stations to those situations where this relief is clearly needed.'' An essential element of proof for us to presume that a duopoly is in the public interest—in circumstances where less than eight independent broadcast TV stations will remain post-combination—is that one of the stations is in fact failed, failing, or unconstructed, for legitimate reasons, and that no out-of-market buyer is willing to operate the station, and that sale to such a buyer would result in an artificially depressed price. Were it otherwise, combinations would be permitted that would unnecessarily erode our competition and diversity goals. We do not believe that our requirement pertaining to out-of-market buyers amounts to an inappropriate comparison of potential buyers in violation of section 310(d). Rather, in view of the mechanics of the rule, the Commission is not reviewing possible buyers for a particular transfer. The Commission is simply establishing a bar that any licensee who wishes to waive past the eight voice/top four ranked standard must pass.

27. We recognize that a duopoly waiver applicant that is a party to a several-year-old LMA may not, as a practical matter, now be able to show that at the time it entered into the LMA, it was the only buyer willing and able to operate or construct the failed, failing, or unbuilt station, and that sale of the station to an out-of-market buyer

would result in an artificially depressed price. In the *R&O*, we intended to permit parties to an LMA to make a waiver showing based on the circumstances that existed just prior to their entering into the LMA. We therefore will not require a duopoly waiver applicant that seeks to acquire a station with which it formed an LMA in the past (*i.e.*, prior to the adoption date of the *R&O*, in which we announced our new policy) to prove that it was the only buyer willing and able to operate the station, and that sale of the station to an out-of-market buyer would result in an artificially depressed price. We expect such waiver applicants, to prove the other elements of the relevant waiver standard.

28. Two petitioners ask that we adopt a special waiver standard to allow holders of existing LMAs, especially grandfathered LMAs, to convert those arrangements to duopolies. We reject this proposal. Based on the fact that some parties entered into TV LMAs when the Commission had not expressed any unequivocal policy on them, we believed the equities justified affording certain parties some relief and so grandfathered some LMAs to permit them to remain in existence until at least 2004. These equity concerns have no place, however, in considering whether to grant LMAs special dispensation to convert to duopolies, because the parties never had any reasonable expectation of being able to do so, given the Commission's flat prohibition on duopolies.

29. Another petitioner asks us to clarify that a station's demonstrated inability to fund the build-out of its DTV facilities on its own is, standing alone, satisfactory evidence that the station is failing. As indicated, all of our waiver standards require duopoly applicants to show that one of the stations is the only entity ready, willing, and able to operate the other station, and that sale to another buyer would result in an artificially depressed price. In addition, our failing station standard requires applicants to show that one of the stations has an all-day audience share of no more than four per cent and has had negative cash flow for three consecutive years immediately prior to the application, and that consolidation of the stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity. We clarify that DTV transition costs are relevant to our consideration of whether a station is failing, in that we will consider how these costs have affected a station's cash flow, and whether consolidation with another in-market station would result in demonstrable public interest benefits, such as expedited and improved DTV service. This is consistent with our standards for re-evaluation of grandfathered LMAs in 2004, which include consideration of ''the extent to which one station has enabled the other to convert to digital operations, and whether joint operation has expedited that conversion, as well as produced more over-the-air programming using digital transmission.'' We decline, however, to adopt a policy holding that a station's difficulty in funding its DTV transition is tantamount to its failing under all circumstances. The other elements of our waiver standards are necessary to protect our competition and diversity goals.

30. A petitioner asks us to permit combinations without a waiver where the duopoly involves an authorized but unconstructed station. We decline to do so. Given the fact-intensive nature of the criteria for waiver, we continue to believe that duopolies should be permitted without regard to voice counts not by rule, but by waiver.

31. Public interest groups ask that we reconsider our presumptive waiver standards as well. One petitioner asked that we eliminate our failing and unbuilt station standards for waiver of our duopoly rule, since among other reasons these standards are not available for waiver of our radio/TV cross-ownership rule. We reaffirm our decision. As we explained in the *R&O*, we amended our duopoly and radio/TV cross-ownership rules to differing degrees, and our standards for presumptive waiver vary accordingly. We amended our duopoly rule to a lesser extent than our radio/TV cross-ownership rule, but offered more standards for presumptive waiver of our duopoly rule than for our radio/TV cross-ownership rule. Our overall approach to the duopoly and radio/TV cross-ownership policies is consistent. We have simply struck the balance between combinations allowable by rule and those allowable by waiver at different points. Agencies have the discretion to decide whether to establish their policies through a case-by-case method or through rulemaking, and thus we have struck the balance between these two methods in the manner that we believe best serves the public interest.

32. Another public interest group also asks that we require applicants for duopoly waivers to provide ''socially and economically disadvantaged small business concerns'' (SDBs) with reasonable notice of a station's availability, or offer expedited processing to duopoly-eligible licensees that voluntarily marketed to SDBs. We decline to do so. While we are concerned about minority ownership, we believe, as we stated in the *R&O*, initiatives to enhance minority ownership should await the evaluation of various studies sponsored by the Commission.

4. Transferability

33. *Background.* In the *R&O*, we stated that, once formed, a duopoly could not be transferred unless it complies with the duopoly rule or waiver standard in effect at the time of transfer. This is the case whether the combination was formed in the first instance pursuant to the duopoly rule or waiver.

34. Several petitioners ask us to eliminate our restrictions on transfer, claiming that the transfer of these previously-approved combinations cannot affect our competition and diversity goals, and that restrictions may interfere with investment in broadcast stations. One petitioner asks that we eliminate the restrictions for smaller markets. Others ask that we permit the transfer of duopolies on certain conditions.

35. We reaffirm our decision not to permit the transfer of a duopoly, unless it meets a rule or waiver standard in effect at the time of transfer. Petitioners are correct that we would not have permitted these combinations in the first instance unless we concluded that they did not compromise our competition and diversity goals at that time. But marketplace factors change over time. For example, suppose that a TV station seeks to buy a second station, pursuant to a failed station waiver, in a DMA where there are six independently owned TV stations. We approve the transaction, such that five independent TV stations remain. A TV station in the DMA then goes off the air, with the result that there are four independent stations in the DMA. Several years later, the combination has rehabilitated the previously failed station, and a station group with a national presence but no stations in the same market as the combination seeks to acquire the combination. Section 309(d) requires us to evaluate whether this transfer serves the public interest, convenience, and necessity. We believe the answer to this statutorily-mandated inquiry is more complicated than simply acknowledging that we approved the combination in the past, at a time when the marketplace was significantly different. We recognize that the mere transfer of a combination may or may not adversely affect the competition and diversity dynamics in the market. We believe that

we struck the appropriate balance in harmonizing marketplace changes with our bedrock competition and diversity goals by not requiring combinations to divest stations with the ebb and flow of the market, but requiring them to comply with our rules and waiver policies at the time of transfer. We are especially concerned with maintaining a competition and diversity ''floor'' in smaller markets, and thus decline to adopt the suggestion that we allow parties to transfer duopolies in those markets without regard to our rules or waiver policies. We reaffirm our decision to prohibit transfers of duopolies, unless they comply with our rule or waiver policies at the time of transfer.

36. Several commenters ask us to adopt additional exceptions to our transfer policy, on the same bases commenters asked us to adopt additional exceptions to our waiver policies. Against the backdrop of reaffirming our duopoly rule, standards for presumptive waiver, and transfer policy, we do not believe that it is appropriate to carve out any additional exceptions to the transfer policy. Rather, we believe that these exceptions, if they have merit, are better examined on a case-by-case basis. However, as request by one petitioner, we do wish to clarify the answer to the question of whether duopolies created from LMAs may be transferred through 2004, as the LMAs can be. We clarify that such a duopoly, like any other duopoly, may not be transferred unless it satisfies the rule or waiver standard at the time of transfer. As explained, in the context of our waiver policies, we extended certain relief to grandfathered LMAs, based on the equities of their situation. Parties to grandfathered LMAs formed these arrangements and may have made significant investments in them before the Commission had given clear notice that it intended to attribute LMAs in certain circumstances. These parties could not have formed a reasonable expectation that they could have converted these LMAs to duopolies, since the Commission prohibited duopolies at the time. Accordingly, the equity arguments for maintaining and transferring LMAs do not extend to converting or transferring duopolies created from those LMAs.

B. Radio/TV Cross-Ownership Rule

37. We turn next to petitions for reconsideration of our amended radio/TV cross-ownership rule. As with the TV duopoly rule, petitioners have asked us to reconsider many aspects of our policy, including the circumstances that trigger our rule, the application of our voice counts, our standards for presumptive waiver, and our transfer policy.

1. Circumstances That Trigger the Rule

38. *Background.* In amending the *R&O,* we did not change the circumstances that trigger our radio/TV cross-ownership rule. Rather, we stated that ''[t]he current one-to-a-market rule, and the rule we adopt today, is triggered by the degree of contour overlap among the stations involved.'' Thus, the rule is triggered when the Grade A contour of a TV station encompasses the entire community of license of an AM or FM radio station, or when the 2 mV\m contour of an AM radio station, or the 1 mV\m contour of an FM radio station, encompasses the entire community of license of a TV station.

39. *Discussion.* Several parties ask us to clarify the application of the rule. Parties ask us to clarify that radio stations, even if encompassed by the Grade A contour of a TV station, do not trigger radio/TV cross-ownership analysis if they are located in separate DMAs from the TV station. Parties also ask us to clarify that overlapping contours of a single TV station and several radio stations, if the radio stations are in separate radio markets, constitute several distinct radio/TV combinations, each deserving independent analysis.

40. We clarify as follows. Although the radio/TV cross-ownership rule continues to be triggered by contour encompassment, we generally do not count stations assigned to different markets toward the limits of the rule when applying it. Thus, for purposes of the radio/TV cross-ownership rule, we generally do not count radio stations located in one Arbitron radio market toward the limits on the number of radio stations a party may own in another Arbitron radio market, even when the radio stations in the different markets fall within the Grade A contour of a commonly owned TV station. For example, the recent application to transfer control of CBS Corp. to Viacom, Inc. involved a TV station located in the Baltimore DMA and Arbitron radio metro, the Grade A contour of which encompassed the entire communities of license of several radio stations located in the Washington, DC DMA and Arbitron radio metro. We did not count these several radio stations toward CBS/Viacom's radio/TV ownership limits in the Baltimore market because the stations are not assigned to that market. We do count, however, a radio station assigned to one Arbitron radio market toward an entity's ownership limits in a distant market when the contour of the radio station triggers the rule, because the rule continues to be triggered by contour encompassment, and such a radio station has a presence for competition and diversity purposes in the distant market. For example, the recent CBS/Viacom transaction also involved a radio station assigned to the San Francisco DMA and Arbitron radio metro, the 2mV\m contour of which encompassed the entire community of license of a proposed co-owned TV station located in the Sacramento DMA. We counted that San Francisco-based radio station toward CBS/Viacom's radio/TV ownership limits in the Sacramento market because the contour of that radio station triggered the rule. In sum, we clarify that, generally, we do not count toward an entity's radio/TV ownership limits in one market those radio stations assigned to an Arbitron radio market other than the one in which a commonly owned TV station is located. However, we will count toward an entity's radio/TV cross-ownership limits any radio station assigned to an Arbitron radio market other than the one in which a commonly owned TV station is located, if the contour of the radio station triggers the radio/TV cross-ownership rule. Given that contour encompassment continues to trigger the radio/TV cross-ownership rule, we believe it is necessary to recognize that radio stations located in one market in fact have a presence in a distant market, if their contours reach into the distant market and trigger the rule.

2. Application of the Voice Counts

41. *Background.* In the *R&O,* we decided to permit common ownership of one TV station (or two, if permitted by the duopoly rule) and a varying number of radio stations, depending on the number of certain independently owned media voices that would remain in a given market post-combination. Specifically, pursuant to the amended rule, we allow the common ownership of one (or two) TV stations and six radio stations in the same market, if at least twenty independently owned media voices would remain in the market post-combination. In circumstances where we allow common ownership of two TV and six radio stations, we also allow common ownership of one TV and seven radio stations. Under our new rule, we allow common ownership of one (or two) TV stations and four radio stations in the same market, if at least ten independently owned media voices would remain in the market post-combination. We also allow common ownership of one (or two) TV stations and one radio station in the same market, without regard to the number of

media voices that would remain post-combination. For purposes of the new radio/TV cross-ownership rule, we include as independently owned media voices in the market all independently owned and operating radio stations in the market, all independently owned and operating full-power TV stations in the market, independently owned cable systems (as one voice, if generally available in the TV station's DMA), and independently owned daily newspapers for which the circulation exceeds 5% of the households in the DMA.

42. *Discussion.* Petitioners raise a number of concerns about the application of our voice counts. As a preliminary matter, one petitioner suggests that the *R&O* was not clear about the circumstances pursuant to which one entity may own one TV station and seven radio stations. To the extent the *R&O* was unclear, we clarify that an entity may own such a combination only if it could own two TV stations and six radio stations, *i.e.*, only if it could satisfy the TV duopoly requirement that eight full-power independently owned and operating broadcast TV stations would remain in the DMA post-combination. We believe that construction of the rule to allow a combination of 1 TV/7 radio stations only where a combination of 2 TV/6 radio is possible best serves our competition and diversity goals. We believe that a combination of eight broadcast outlets should be permissible only under such circumstances where the more stringent duopoly test can be satisfied.

43. *Broadcast Stations Counts.* One petitioner asks us not to count noncommercial broadcast stations, and that we count only those broadcast stations with a certain level of viewership in a DMA. We reaffirm that we will count noncommercial stations, for the same reasons we stated above in the context of our duopoly rule. We also will not require broadcast stations to have a certain level of viewership before counting them. We believe that the assignment of a broadcast station to a particular market, and its continued success as a going concern, demonstrates that a station is a source of viable competition and diversity in a given market, and therefore should be counted.

44. Consistent with our decision not to count in the duopoly context Class A or LPTV stations for purposes of satisfying the requirement that eight independent TV broadcast stations must remain in the DMA post-merger, we wish to clarify on our own motion that we will not count in the radio/TV cross-ownership context either LPTV stations, including Class A stations, or low power FM (LPFM) stations for purposes of satisfying the requirement that a certain number of media entities must remain in the market post-combination. As we explained above in the duopoly context, LPTV stations, given their limited signal coverage, do not have sufficient influence and power to qualify as a station for purposes of our policy that a certain minimum number of stations must remain in a market post-combination. Likewise, the LPFM service is designed to serve small, localized communities; the strict limitation on their signal reach means that their programming will not be available to most of the market at issue in a proposed radio/TV combination. Therefore, LPFM stations will not be counted in determining compliance with the requirement that a specified number of independently owned media voices must survive the formation of the combination at issue.

45. *Newspapers Counts.* Pursuant to our new rule, we include daily newspapers in our count of independently owned media voices if they are published in the DMA at issue and if they have a circulation in excess of 5% of the households in the DMA. One petitioner asks us to include a newspaper that owns a number of daily newspapers that have an aggregate circulation equal to or greater than 5% of the households in the DMA. We decline to do so, because it is not consistent with our rationale for limiting the number of newspapers we include in our count of ''media voices'' to those with a circulation of at least 5% of the households in the DMA. As we explained in the *R&O,* ''[o]ur intent in this regard is to include those newspapers that are widely available throughout the DMA and that provide coverage of issues of interest to a sizeable percentage of the population. Although we recognize that other publications also provide a source of diversity and competition, many of these are only targeted to particular communities and are not accessible to, or relied upon by, the population throughout the local market.'' We reaffirm both our decision and our rationale.

3. Waivers

46. In the *R&O,* we held that we would presume it is in the public interest to waive the radio/TV cross-ownership rule if one of the stations is a failed station. One petitioner asks that we also presume that waiver of the radio/TV cross-ownership rule is in the public interest if one of the stations is failing or not yet constructed, as we did in the context of the duopoly rule. As we have explained, we revised our duopoly rule to a lesser extent than our radio/TV cross-ownership rule. We believe that a waiver is another form of liberalizing a rule, and thus that we struck the appropriate balance in our duopoly and radio/TV cross-ownership policies, in terms of our rules and presumptive waiver policies. We reaffirm our approach to our revised radio/TV cross-ownership policy ''by amending the rule to provide a greater degree of common ownership of radio and television stations while at the same time limiting waivers of this new rule to only extraordinary circumstances.''

47. In the *R&O,* we also decided to grandfather any radio/TV combination formed pursuant to a waiver conditioned on the outcome of this proceeding, if applied for on or before July 29, 1999 (the ''sunshine'' notice for the *R&O,* and ultimately approved by the Commission. We grandfathered these combinations through our 2004 biennial review, during which the Commission will review the radio/TV cross-ownership rule, and the conditional waivers. One petitioner asks us to reconsider our grandfathering decision, and require all radio/TV combinations to comply with our new rules and waiver policies. As we explained in the *R&O,* although the conditional waiver grantees knew that the continuation of any combinations they formed was subject to the outcome of this proceeding, we believed it was appropriate to grandfather the specified combinations because in many cases a significant period of time had passed since the grantees formed and made investments in their combinations. We reaffirm both our decision and our rationale.

4. Transferability

48. In the *R&O,* we stated that, once formed, whether pursuant to the amended rule or waiver standard, a radio/TV combination could not be transferred unless it complies with the radio/TV cross-ownership rule or waiver standard in effect at the time of transfer. Some parties ask us to reconsider our decision, for reasons similar to those they asked us to reconsider our same decision in the duopoly context. We explained that we believe that we have properly harmonized changes in the marketplace with our competition and diversity goals by, on the one hand, not requiring combinations to divest broadcast stations when the market changes such that those combinations no longer comply with our rules and waiver policies, and, on the other hand,

requiring combinations to comply with these rules and waiver policies at the time of transfer. We reaffirm our decision.

C. Television Local Marketing Agreements

49. *Background.* In our *Attribution R&O,* we adopted ''a new rule to *per se* attribute television LMAs, or time brokerage of another television station in the same market, for more than fifteen percent of the brokered station's broadcast hours per week and to count such LMAs toward the brokering licensee's local ownership limits.'' In the *R&O* in this proceeding, we concluded, as we proposed in the *2FNPRM,* to grandfather LMAs entered into before the adoption date of that notice (November 5, 1996) through the conclusion of our 2004 biennial review, and to require LMAs entered into on or after that date to comply with our TV duopoly rule within two years of the adoption date of the *R&O* (August 5, 1999).

50. *Discussion.* Several petitioners contend that we should have grandfathered all LMAs, and that our decision not to do so is contrary to section 202(g) of the Telecommunications Act of 1996. This issue was already fully briefed and developed in the record that led to the *R&O,* and we see no reason to disturb our decision or revisit our analysis in detail here. Section 202(g) states that ''[n]othing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.'' As we explained in the *R&O,* the express terms of the language indicate what section 202 was *not* intended to do, *i.e.,* prohibit LMAs, but it does not indicate what if anything else the section was intended to do. We recognize that the Conference Report to the 1996 Act states that ''[s]ubsection (g) grandfathers LMAs currently in existence upon enactment of this legislation and allows LMAs in the future, consistent with the Commission's rules. The conferees note the positive contributions of television LMAs and this subsection assures that this legislation does not deprive the public of the benefits of existing LMAs that were otherwise in compliance with the Commission regulations on the date of enactment.'' We believe that this language at best indicates that Congress intended the Commission to grandfather LMAs that were in existence as of the date of enactment, *i.e.,* February 8, 1996. We have grandfathered those LMAs, as well as those entered into almost nine months later when the Commission adopted the *2FNPRM.* Thus, we reject the argument that section 202(g) compels us to grandfather *all* LMAs entered into prior to the effective date of our new rules.

51. Our decision not to grandfather LMAs entered into on or after the adoption date of the *2FNPRM* does not constitute retroactive rulemaking. As the Supreme Court has stated, ''[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment * * * or upsets expectations based on prior law.'' Likewise, as the U.S. Court of Appeals for the District of Columbia Circuit has stated, ''[i]t is often the case that a business will undertake a certain course of conduct based on the current law, and will then find its expectations frustrated when the law changes. This has never been thought to constitute retroactive rulemaking, and indeed most economic regulation would be unworkable if all laws disrupting prior expectations were deemed suspect.'' In any event, parties to the non-grandfathered LMAs could not have had a reasonable expectation that their agreements and investments would be permissible, since when the Commission adopted the *2FNPRM,* it gave explicit notice of its proposal not to grandfather non-compliant LMAs entered into on or after that date. We have not assessed a forfeiture or other penalty on parties to the non-grandfathered LMAs. We have not altered any reasonable expectations they had when they entered into these LMAs, or imposed any new duties on the parties to the LMAs. Rather, we held, after giving explicit notice of our proposal to do so, that non-compliant LMAs entered into on or after the date of that notice will not be grandfathered.

52. Nor does our decision not to grandfather LMAs entered into on or after the adoption date of the *2FNPRM* constitute an unconstitutional taking of property in violation of the Fifth Amendment. As a preliminary matter, it is doubtful whether an LMA constitutes a cognizable ''property'' interest for takings purposes. Yet even assuming that the parties to LMAs could satisfy the threshold question of whether they have a property interest, our decision not to grandfather LMAs entered into after the *2FNPRM* does not constitute a taking. Parties to nongrandfathered LMAs entered them after the Commission made the following statements in the *2FNPRM*: ''[T]elevision LMAs entered into on or after [November 5, 1996] would be entered into at the risk of the contracting parties. Consequently, if these latter television LMAs result in a violation of any Commission ownership rule, they would not be grandfathered and would be accorded only a brief period in which to terminate.'' Any party that subsequently chose to enter into an LMA cannot now be heard to argue that the Commission's action—which is well within our authority—interfered with their reasonable investment-backed expectations. Indeed, we gave these parties an ample two-year period in which to terminate their LMAs in order ''to avoid undue disruption of existing arrangements and [to] allow the holders of LMAs to order their affairs.''

53. A public interest group requests that we eliminate grandfathered LMAs if by 2004 minority or SDB ownership has fallen by 10%. We decline to do so, and reaffirm our approach in the *R&O* to decide the status of grandfathered LMAs in tandem with, or not later than, our 2004 biennial review of our broadcast cross-ownership rules.

D. First Amendment Arguments

54. *Background.* In the *R&O,* we explained that ''[a]ll of our broadcast cross-ownership and multiple ownership rules, including the 'TV duopoly' and 'one-to-a-market' rules at issue in this proceeding, are based on the 'twin goals' of competition and diversity.'' Our competition goal seeks to ensure that broadcasters do not obtain market power, to the detriment of advertisers, other competitors, and the public. Our diversity goal seeks to ensure that the public has access to information from a variety of diverse and antagonistic sources.

55. *Discussion.* One petitioner contends that our diversity rationale violates the First Amendment, for a variety of reasons. In essence, the petitioner argues that our diversity goal, ''standing alone'' and without a scarcity of video programming alternatives, cannot sustain our cross-ownership and multiple ownership rules, and that even if this goal were sufficiently important for First Amendment purposes, our ownership rules are not sufficiently tailored to achieve that goal.

56. We disagree. Aside from the fact that the petitioner ignores the competition basis for our rules, our diversity goal and means of promoting that goal are consistent with the First Amendment. To the extent our ownership rules implicate First Amendment concerns, the Supreme Court has noted that they are content-neutral. According to the applicable test, ''[a] content-neutral regulation will be sustained under the First

Amendment if it advances important governmental interests unrelated to the suppression of free speech, and does not burden substantially more speech than necessary to further those interests.'' In the *R&O*, we explained at length the basis for our conclusion that our ownership rules advance the important governmental interests of competition and diversity, and do so in a particularly nonburdensome way for purposes of the First Amendment. The petitioner has not provided any reason for us to reconsider that conclusion. We also note that, in order for the rules to apply to entities and individuals, those entities or individuals must already own a broadcast outlet in the same market. Our rules and waiver policies are designed to ensure that others have an opportunity to own an outlet in the market before an entity or individual with one or more outlets already in a given market obtains another one. Our rules thus foster, rather than impede, the values underlying the First Amendment, as the Supreme Court has recognized.

IV. Administrative Matters

57. Authority for issuance of this *MO&O* is contained in sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

58. *Paperwork Reduction Act Analysis.* The actions taken in this *MO&O* have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

59. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible impact on small entities of the rules adopted in this *MO&O*. The Supplemental FRFA is set forth below.

V. Ordering Clauses

60. The petitions for reconsideration or clarification are *granted* to the extent provided herein and otherwise *are denied in part* pursuant to sections 4(i), 303(r), 403, and 405 of the Communications Act, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and 1.429 of the Commission's rules, 47 CFR 1.429(i).

61. Pursuant to sections 4(i) & (j), 303(r), 307, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 303(r), 307, 308, and 309, part 73 of the Commission's rules, 47 CFR part 73, *is amended* as set forth in the rule changes.

62. Pursuant to the Contract with America Advancement Act of 1996, the rule amendments set forth *shall become effective* April 9, 2001.

63. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *MO&O* in MM Docket Nos. 91–221 and 87–8, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

64. This proceeding is *terminated.*

VI. Supplemental Final Regulatory Flexibility Analysis

65. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (''*NPRM*''), 57 FR 28163, June 24, 1992; the *Further Notice of Proposed Rulemaking* (''*FNPRM*''), 60 FR 6490, February 2, 1995; and the *2FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, the *FNPRM*, and the *2FNPRM*, including comment on the IRFAs. The comments received were discussed in the Final Regulatory Flexibility Analysis (FRFA) contained in the *R&O* in this proceeding. As described, this *MO&O* grants reconsideration of some actions taken in the *R&O*, and provides clarification of other issues. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) addresses the rule modifications on reconsideration and conforms to the RFA.

Need for, and Objectives of, the Memorandum Opinion and Second Order on Reconsideration

66. In the *R&O*, the Commission revised its local television ownership rules—the local television multiple ownership rule, or TV duopoly rule, and the radio/TV cross-ownership rule—and also adopted grandfathering policies for certain television local marketing agreements and radio/TV combinations. The Commission received fourteen petitions for reconsideration of the new rules and grandfathering policies. The *MO&O* resolves these petitions and associated pleadings, consistent with the Commission's overall goals in the proceeding. These Commission's goals were to balance two of its most fundamental goals in broadcast ownership—fostering competition in the markets in which broadcast stations compete, and preserving a diversity of information sources, especially at the local level—with the efficiencies of common ownership and increased competition in the media marketplace.

Summary of Significant Issues Raised by the Public

67. The comments in response to the IRFAs that addressed small business issues were discussed in the FRFA contained in the *R&O* in this proceeding. The Commission received no petitions for reconsideration in direct response to the FRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

68. The rules revisions contained in this *MO&O* will apply to commercial television and radio broadcast licensees, and potential licensees and permittees. These entities are discussed in detail in the FRFA contained in the *R&O* at Section III.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

69. No new recording, recordkeeping or other compliance requirements are adopted.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

70. The *MO&O* generally affirms and clarifies the *R&O*, but it also modifies the TV duopoly and radio/TV cross-ownership rule. As explained below, this change relates to the standard the Commission uses to determine if the necessary circumstances are present to approve a particular combination. As also explained below, the Commission has considered how this change affects small entities, and taken steps to minimize significant economic impact on them.

71. The duopoly rule, as revised in the *R&O*, permits common ownership of two TV stations in the same market, defined by Designated Market Areas (DMAs), if, among other things, eight independently owned and operating full-power TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located.

72. The rules as revised in the *MO&O* strike what we believe to be the appropriate balance between allowing broadcast stations to realize the efficiencies of combined operations, and furthering our policy goals of competition and diversity. The rules tighten the showing necessary for common ownership, and thereby prevent stations in the market from obtaining and exercising market power

at the expense of smaller stations. For example, consider a DMA that includes nine TV stations, six of which broadcast from hypothetical City A, and the other three of which broadcast from hypothetical City B. The signal contours of the stations in City A do not reach viewers in City B, and vice versa. The rule, as revised in the *R&O,* would permit two of the three stations in City B to combine, with the possible result that they could obtain and exercise market power at the expense of the third station in City B. The rule as revised in the *MO&O* would not permit any of the stations in City B to combine with each other. (It would, however, permit one station in City A to combine with one station in City B, leaving eight TV stations in the DMA.) Thus, the alternative considered of affirming the rule as revised in the *R&O* could have enabled a smaller station's competitors to obtain and exercise market power.

73. In tightening the circumstances under which two stations can combine, we recognize that our new rule may not just protect smaller stations, but instead may hamper their ability to combine, reduce costs, and compete more effectively. We note, however, that the rules, as revised in the *R&O,* and affirmed in the *MO&O,* permit struggling stations to combine when one of them has failed or is failing, or the combination of the two would result in the construction of an authorized but as yet unconstructed station.

74. For the above reasons, we believe that the Commission has taken steps to minimize significant economic impact on a substantial number of small entities.

Report to Congress

75. The Commission will send a copy of this *MO&O,* including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *MO&O,* including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.3555 is amended by revising paragraphs (b)(2)(ii) and (c)(3)(i) to read as follows:

§ 73.3555 Multiple Ownership.

* * * * *

(b) * * *

(2) * * *

(ii) at least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. Count only those stations the Grade B signal contours of which overlap with the Grade B signal contour of at least one of the stations in the proposed combination. In areas where there is no Nielsen DMA, count the TV stations present in an area that would be the functional equivalent of a TV market. Count only those TV stations the Grade B signal contours of which overlap with the Grade B signal contour of at least one of the stations in the proposed combination.

* * * * *

(c) * * *

(3) * * *

(i) *TV stations:* independently owned and operating full-power broadcast TV stations within the DMA of the TV station's (or stations') community (or communities) of license that have Grade B signal contours that overlap with the Grade B signal contour(s) of the TV station(s) at issue;

* * * * *

[FR Doc. 01–3046 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 37

[Docket OST–1998–3648]

RIN 2105–ACOO

Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs)

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule; Request for comments.

SUMMARY: The Department is amending its Americans with Disabilities Act (ADA) regulations concerning accessibility of over-the-road buses (OTRBs) by removing the provision requiring compensation to passengers who do not receive required service, clarifiying the information collection requirements, postponing until March 26, 2001, the requirement for bus companies to submit information reporting ridership on accessible fixed route service and the acquisition of buses, and designating a different address for regulated parties to use in submitting the required information. The amendments respond to a recent court decision and comments on the information collection requirements.

DATES: *Effective Date:* This rule becomes effective March 8, 2001.

Written Comments: Comments on the interim final rule must be submitted on or before March 8, 2001.

ADDRESSES: The public is invited to submit written comments on the Interim Final Rule. The Interim Final Rule may be changed in light of the comments received. Written comments should refer to the docket number of this interim rule and be submitted in duplicate to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

All docket material will be available for inspection at this address and on the Internet at *http://dms.dot.gov.* Docket hours at the Nassif Building are Monday–Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Attorney, Regulation and Enforcement, Office of the General Counsel, 400 7th Street, SW., Room 10424, Washington, DC 20590, 202–366–9306 (voice), 202–366–9313 (fax), or *blane,workie@ost.dot.gov* (email).

SUPPLEMENTARY INFORMATION: The Department's September 1998 final rule

on over-the-road bus accessibility contained a number of information collection requirements and a requirement that bus operators compensate disabled passengers when required service is not provided. The final rule amends both of the aforementioned requirements and postpones until March 26, 2001, the requirement for bus companies to submit information reporting ridership on accessible fixed route service and the acquisition of buses. The Department addresses the reasons for the amendments in turn.

Section 37.199 Compensation for Failure To Provide Required Vehicles or Service

As a means of ensuring that OTRB operators were accountable for meeting service requirements under the final rule, the Department adopted a suggestion made by bus industry commenters during the comment period leading to the final rule. Section 37.199 of the final rule requires bus operators to make modest compensation payments to disabled passengers when required service is not provided. This provision focuses primarily, though not exclusively, on 48-hour advance notice service.

The bus industry sought judicial review of the entire final rule. The U.S. District Court for the District of Columbia upheld the final rule in every respect. *American Bus Association, Inc.* v. *Rodney E. Slater,* No. 98 Civ. 2351 (D. D.C. September 10, 1999). The industry then appealed the District Court decision solely with respect to § 37.199. On November 14, 2000, the Federal Appeals Court for the District of Columbia Circuit determined that the compensation provision was not authorized by statute. *American Bus Association, Inc.* v. *Rodney E. Slater,* 231 F.3d 1 (D.C. Cir. Nov. 14, 2000). In consequence of the court's decision, the Department in this final rule is deleting § 37.199, as well as certain recordkeeping and reporting provisions that relate to the compensation provision.

The Department wishes to emphasize that the remainder of the rule, including all requirements for accessible buses and bus service, remain fully in effect. The court decision does not change these requirements in any way.

The Department continues to believe that OTRB operators must remain accountable for proper implementation of all required service under the rule. While removing § 37.199 will eliminate the opportunity for individual passengers to receive compensation automatically for the denial of required service, there are other existing means through which the Department's rule can be enforced.

Under Title III of the ADA, there are judicial remedies available for noncompliance (e.g., enforcement litigation brought by the Department of Justice). Also, the OTRB rule includes recordkeeping and reporting requirements concerning the provision of service. These requirements will allow the Department and other interested persons to determine the extent to which OTRB operators provide required service. It may also provide a factual basis for the Department to work with the Department of Justice on potential enforcement actions. The Department seeks comment on whether there are other appropriate enforcement mechanisms that the Department could, in the future, propose to replace § 37.199.

The Department also seeks comment on whether, in the absence of § 37.199, we should reconsider certain substantive provisions of the rule. During the comment period leading to the OTRB rule, bus industry commenters asked to maximize the use of on-call accessible bus service, saying that it was the most cost-effective approach to providing accessible services. Disability community commenters disagreed, saying that on-call service had shown itself to be unreliable and that disabled passengers could not count on the bus industry to comply fully with on-call service obligations.

To mitigate impacts of the rule on small businesses, we permitted charter/tour operators and smaller fixed-route and mixed-service operators to meet their requirements through 48-hour on-call services, rather than requiring them to purchase accessible buses in all cases. We believed that this decision was reasonable, in part, because it was balanced by the compensation provision of § 37.199, which would help to ensure that bus operators met their obligations. In the absence of this accountability mechanism, should the Department reconsider its decision to allow extensive use of on-call bus service? For example, should we propose requiring acquisition of accessible buses in some situations where on-call service is not permitted? Are there other ways of restoring the balance between the Department's objectives of ensuring accessible buses and service for passengers with disabilities and mitigating economic impacts on small businesses?

Section 37.213 Information Collection Requirements

The Department is making changes to the final rule regarding the information collection requirements in response to comments. In an April 1, 1999, **Federal Register** notice (64 FR 15866), we asked for comments on these requirements under the Paperwork Reduction Act. We received 91 comments from members of disability community organizations, individuals with disabilities, and state and local agencies that work with individuals with disabilities. Prior to this notice, the American Bus Association (ABA) had provided a comment on the information collection requirements of the rule. We received no additional comments from the bus industry regarding the information collection requirements following the April 1999 notice.

The common theme among the disability community comments was that the only way to protect the civil rights of people with disabilities and provide equal access to transportation is to hold OTRB companies accountable by requiring documentation. Documentation is the only way a disabled passenger can prove that he or she made a request for advance service or equivalent service or that lawful compensation is due.

The commenters, however, had concerns regarding the proposed documentation. One concern was that bus companies may require the passenger to provide documentation as proof or as a prerequisite to receiving accessible service. A commenter requested that the rule make clear that neither a copy of the form or confirmation number is needed as proof of request or as a prerequisite to receiving accessible service. DOT believes that it is clear that bus companies cannot require documentation as a prerequisite to receiving accessible service. Nowhere in the rule is there a requirement for disabled persons to provide proof of request as a prerequisite to receiving accessible service.

A second concern was that the request for an accessible bus should cover the entire trip, including round trip or any connections, and operators should be required to document the arrangements that were made to provide an accessible bus. Commenters wanted assurance that a passenger traveling round trip or whose trip involves bus changes should only have to make one request. DOT believes that the rule intends for a request for accessible bus service to cover the entire trip, including round trip and/or any connections. The

amendment revises the rule to clarify this point.

A third concern was that the rule does not specify what constitutes a failure to provide an accessible bus. A failure to provide service occurs when accessible service is not provided. Specific questions as to whether there is a failure on the part of operator to provide the requested accessible service when the passenger is made to wait or accepts an alternative arrangement are primarily matters of interpretation. DOT does not believe it is necessary to modify the regulations for this purpose.

Commenters supported the requirement that bus companies report the number of new or used accessible buses that have been purchased or leased. Many commenters explained that this requirement is essential to monitor companies' compliance with the regulations. One commenter suggested that companies should be required to report both the number of accessible buses that are actually used in service and the number of accessible buses in the entire fleet. DOT does not think, however, that there is a strong rationale for requiring companies to report the number of accessible buses that are actually used in service, since the rule already requires fixed route operators to report the number of accessible buses in each category and ridership on accessible buses.

Another commenter expressed a concern with how bus companies are planning to make their fleets accessible. Specifically, the commenter wanted data indicating whether companies would raise fares or receive government assistance. As stated in the September 1998 final rule's preamble, there are a variety of programs that provide financial assistance or relief to OTRB companies. OTRB companies accepted over $2 million in accessibility subsidies during 1999, for example. The Department does not believe, however, that it is necessary to collect extensive fare information, which can reflect a variety of market influences.

Some disability community commenters said that the requirement that bus companies report the number of lift boardings should be eliminated from the rule. There is a general belief among disability community commenters that, historically, bus companies have underreported this information and that DOT's reliance on this data will be detrimental to the disability community. Thus, in the absence of some way to independently verify this data, they assert that this requirement should be dropped. The ABA believes that reporting under the rule should be limited to Class I carriers and to data concerning total one-way trips and total one-way trips by passengers in wheelchairs.

DOT believes that it is important that the rule retain the requirement to report the number of lift boardings because ridership has been a major issue in this regulation. Six years from now, there will be a regulatory review and some measure of usage is potentially useful information. DOT is aware of concerns of underreporting and will aim to periodically perform spot checks of lift boarding usage to test the accuracy of the information provided by the OTRB industry. We are also willing to consider data developed independently by sources outside the Department.

We recognize that ABA opposes the accountability requirements of the rule, and consequently would prefer to avoid reporting information concerning the success of bus companies in meeting their requirements for accessible buses and service. Nonetheless, for program evaluation and compliance purposes, we believe that this recordkeeping and reporting is vital to ensuring that passengers receive the nondiscriminatory service that the ADA and the Department's regulation establish as their civil right.

Many disability community commenters expressed the viewpoint that the proposed five-year record retention requirement is too short. The OTRB industry has over thirteen years to phase in the ADA regulations. Therefore, commenters said, the retention period should be extended to fifteen or twenty years in order to cover the entire period in which the regulations are to be phased in. The ABA suggested, however, that the record retention period be reduced to one year, as a means of reducing paperwork burdens.

DOT is not persuaded by these arguments and believes that five years is an appropriate time period for retention of records and a reasonable compromise between these competing concerns. It is unlikely that in year 10 there will be a need or interest to look at forms from year 4, and older records would be of limited use in enforcement proceedings. In DOT's experience, five years is ample time to retain records for enforcement purposes. In addition, requiring long-term or indefinite retention of records could add to the information collection burden of the rule for Paperwork Reduction Act purposes. Yet, permitting companies to discard records after one year would probably be insufficient for program evaluation and compliance purposes.

Commenters further requested that DOT require that the individual forms be submitted to DOT annually because the summarized reports submitted by industry might not be entirely accurate. DOT believes that it is sufficient to require the OTRB industry to submit annual reports, especially considering the fact that operators must make the forms available to DOT or Department of Justice (DOJ) officials at their request. In addition, the limitations of the Department's resources would make it difficult for us to catalog the additional forms and review them adequately. Commenters also asserted that records should be made available to the general public. Most, if not all, of the records or information that DOT receives from the OTRB industry would be available to the public under the Freedom of Information Act (FOIA).

There were also a number of comments regarding the proposed forms to be used. One suggestion is that Form A should denote the locations where the accessible bus is needed and operators should be required to document the arrangements made for the return trip or any connections. A second suggestion is that Forms A and B differ unnecessarily, which can lead to confusion. A third suggestion is that there needs to be clarification of when a passenger is entitled to documentation for equivalent service.

Commenters said that the rule and Form B should more clearly require small fixed operators who choose to provide equivalent service give the passenger a copy of Form B upon request for equivalent service and whenever the requested equivalent service is provided. A fourth suggestion is that DOT fix an error in item 10 of Form B. Item 10 of Form B states ''If the answer to items 9 and 10 is no, attach documentation that compensation required by Department of Transportation regulations was paid.'' Item 10 mistakenly refers to item 10 as if it preceded it, leading one commenter to wonder whether an item is missing from Form B.

Based upon these comments, DOT is revising Appendix A to Subpart H of Part 37 and section 37.213 of the final rule. As explained earlier, DOT agrees with the comments that the form should include a question about the location(s) where an accessible bus is needed. DOT also agrees with the suggestions that Forms A and B should not differ unnecessarily. For these reasons, we have eliminated the dual forms and created one form, which will be used for all purposes. The new form avoids the problem cited by commenters with respect to item 10 of Form B. Additionally, the new form does not require OTRB operators attach

documentation that compensation was paid because the compensation provision has been eliminated. Furthermore, DOT agrees that there needs to be clear language in section 37.213(b) of the final rule and Form B explaining that a passenger is entitled to documentation whenever equivalent service is requested and whenever the requested equivalent service is not provided.

The ABA requested clarification of the time in which bus companies should send copies of the form back to passengers after a request for accessible or equivalent service. The ABA suggested the next business day after the request is received. In cases where the carrier failed to provide accessible or equivalent service, and the carrier paid compensation, ABA recommended that the form and attached compensation should be sent within up to seven working days from the failure to provide service. The ABA said that this would be consistent with the seven-day time frame for actually providing the compensation.

The Department agrees with the ABA in that on the next business day after a passenger's request for accessible or equivalent services is received, bus companies should send copies of the form back to that passenger. It does not matter whether the operator believes that it has a basis under the rule for failing to provide accessible or equivalent service (e.g., the request for accessible service was not made in a timely manner), it must still send copies of the form to the passenger on the next business day. The compensation provision has been removed from the rule and thus, the related requirement of attaching compensation to the form no longer exists.

Comments were also received suggesting that DOT require bus companies to post public notice of key ADA requirements on their buses, at their stations, in their publications, and on their web-sites. Some commenters propose that the companies make forms available through various means such as over the internet, via facsimile, available for pick-up, or mailed on the same day the request is made. Such third-party notice requirements are viewed as information collection burdens under the Paperwork Reduction Act, and we are not convinced that they are necessary burdens to impose. It is in the interest of all concerned, including the companies, to make customers aware of available services. The Department can revisit this issue if it appears, during implementation, that consumers are not receiving adequate information.

As for the burden estimates, the commenters agreed that most of DOT's estimations of the burden hours that it will take to comply with the reporting requirements were reasonable. The only one they felt was exaggerated was the estimation of the amount of time it will take to prepare an annual report listing the number of accessible buses. DOT estimated that it will take 35.4 hours and the commenters feel that three to five hours is a more accurate estimation. The commenters argue that computers and the Internet substantially lessen the burden of the paperwork requirements. OTRB companies can use computers to automatically confirm and record transactions completed over the Internet. If the transaction is completed by telephone, an employee can enter the information as the transaction is taking place. By keeping an up-to-date database, this information will always be ready and available. Therefore, it will take minimal hours to report this information to DOT.

DOT agrees that modern technology could reduce the burden of preparing an annual report listing the number of accessible buses. However, the commenters have not provided DOT with the data to support their belief that three to five hours is a more accurate estimate. All of DOT's burden hour estimates were calculated using national averages of cost indicators developed through a major study of records management costs. The Association of Records Managers and Administrators (ARMA) sponsored this study.

Extension of Due Date for Information Collection

The September 1998 final rule on over the road buses (49 CFR Part 37, Subpart H) called for bus companies to submit a number of forms, reports and data to the Department. In this final rule, we extend the due date for information collection as required by § 37.213 of this rule. Paragraph (c) of this section called for large operators to make their first submissions to the Department on October 30, 2000, for the year beginning in October 1999, and for small operators to make their first submissions to the Department on October 29, 2001, for the year beginning in October 2000. Paragraph (d) called for bus companies to submit their first report on accessible and inaccessible new, used and leased buses to the Department on October 28, 1999, for the year beginning in October 1998.

The Department is extending the effective date for some of the information collection requirements for two reasons. First, although the Department published a notice requesting comments on these information collection requirements on April 1, 1999, DOT has not been able to publish a notice addressing the comments received until today. Following the publication of this final rule, we expect to obtain an OMB control number for the new information collection requirements resulting from the OTRB rulemaking.

Second, in December 1999, two major bus industry associations petitioned the Department to change this rule. Beginning on October 29, 1999, bus companies were required to submit a report concerning the acquisition of buses. The industry associations alleged that most operators were not aware of the requirement and relatively few operators had submitted the information. Although we did provide legal notice of the requirement, we believe we should provide more time because we have not completed the Paperwork Reduction Act requirements. The Department will also make efforts to inform companies of this reporting requirement.

The Department, however, does not want to lose the benefit of information gathered during the past two years regarding company bus acquisitions. Thus, we are amending § 37.213(d) by changing the first reporting date for the acquisition of buses from October 29, 1999 to March 26, 2001, but we will require the March 2001 report to include data for the period of October 1998 through October 2000. All subsequent submissions will be due on the last Monday in October of that year and would include a year of data (i.e. the October 29, 2001 submission should include data from October 2000 through October 2001).

The Department also does not want to lose the benefit of information gathered during the past year regarding ridership. Thus, we are amending § 37.213(c) by changing the first reporting date for ridership data for large operators from October 30, 2000 to March 26, 2001. The same data that should have been submitted on October 30, 2000, for the period of October 1999 through October 2000, shall be submitted on March 26, 2001. Beginning on October 29, 2001 and on the last Monday in October each year thereafter, large operators must submit data for the year commencing and ending each October (i.e. the October 30, 2001 submission by large operators must include data from October 2000 through October 2001). The due date for submissions by small operators, October 29, 2001, remains unchanged except to clarify that data for each year thereafter must be submitted on the last Monday in October.

Additionally, we are amending § 37.213(a), (b), (c), and (d) by deleting the phrase ''on that date'' and adding the phrase ''on the last Monday in October'' to clarify that the due date for the submission of data in subsequent years is always the last Monday in October.

Finally, petitioners were correct in stating that there was uncertainty about which office in DOT would collect the data in this and other reports. Although the September 1998 report designated the Bureau of Transportation Statistics (BTS) to play this role, DOT has decided to require submission of the reports to the Office of Data Analysis and Information Systems in the Federal Motor Carrier Safety Administration, and the rule has been changed to this effect.

Regulatory Analysis and Notices

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

This rulemaking is not ''significant'' under Executive Order 12866 or the Department of Transportation Regulatory Policies and Procedures because there are no costs associated with this rule.

• Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

• Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

• Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We hereby certify this final rule will not have a significant economic impact on a substantial number of small entities because it imposes no costs.

• Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** (54 FR 15866). Although minor changes in the information collection burden hours in 1(A)–(D) and 2(A)–(C) as well as the estimated total annual burden hours have been made due to mathematical errors in the previous submission, the assumptions upon which these calculations are based have not changed. Moreover, the effect on the information collection burden hours of the elimination of the compensation requirement provision on the ICRs is de minimis.

The DOT Final Rule on Accessibility of Over-the-Road Buses has information collection requirements in four areas: (1) Advance notice requests; (2) equivalent service; (3) ridership on accessible fixed route service; and, (4) number of accessible and inaccessible purchased or leased buses.

(1)(A) Requirement to fill out a form each time there is an advance notice request.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 3.3 (low estimate) to 5.0 (high estimate) hours for each of the 3,448 respondents.

Estimated Total Annual Burden: 11,478 (low estimate) to 17,321 (high estimate) hours.

Frequency: 15 times (low estimate) and 23 times (high estimate) in initial year.

(1)(B) Requirement to provide a copy of the form to the passenger when the operator receives a request for accessible bus service.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 3.1 (low estimate) to 4.7 hours (high estimate) for each of the 3,448 respondents.

Estimated Total Annual Burden: 10,787 (low estimate) to 16,277 (high estimate) hours.

Frequency: 15 times (low estimate) and 23 times (high estimate) in initial year.

(1)(C) Requirement to provide a copy of the form to the passenger on the scheduled date of trip if the requested accessible bus was not provided.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 0.3 (low estimate) to 0.5 hours (high estimate) for each of the 3,448 respondents.

Estimated Total Annual Burden: 1,079 (low estimate) to 1628 (high estimate) hours.

Frequency: 1 time (low estimate) to 2 times (high estimate) in initial year.

(1)(D) Requirement to retain one copy of the form for 5 years.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 1.9 (low estimate) to 2.9 (high estimate) hours for each of the 3,448 respondents.

Estimated Total Annual Burden: 6,627 (low estimate) to 9999 (high estimate) hours.

Frequency: 15 times (low estimate) and 23 times (high estimate) in initial year.

(1)(E) Requirement to submit a summary of its form to DOT.

Respondents: Demand-responsive (i.e. charter/tour service) operators. Fixed route companies before fleet becomes fully accessible. Small mixed service operators that choose to provide 48 hour notice.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 3,448 respondents.

Estimated Total Annual Burden: 122,059 hours.

Frequency: Submit summary to DOT annually.

(2)(A) Requirement to fill out a form each time fixed route operator provides equivalent service.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 4.0 (low estimate) to 6.3 (high estimate) hours for each of the 215 respondents.

Estimated Total Annual Burden: 870 (low estimate) to 1356 (high estimate) hours.

Frequency: 18 times (low estimate) and 28 times (high estimate) in initial year.

(2)(B)Requirement to provide one copy of the form to the passenger.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 3.8 (low estimate) to 5.9 (high estimate) hours for each of the 215 respondents.

Estimated Total Annual Burden: 817 (low estimate) to 1274 (high estimate) hours.

Frequency: 18 times (low estimate) and 28 times (high estimate) in initial year.

(2)(C) Requirement to retain copy for 5 years.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 2.3 (low estimate) to 3.6 (high estimate) hours for each of the 215 respondents.

Estimated Total Annual Burden: 502 (low estimate) to 783 (high estimate) hours.

Frequency: 18 times (low estimate) and 28 times (high estimate) in initial year.

(2)(D)Requirement to submit a summary of its form to DOT.

Respondents: Small fixed route operators who choose to provide equivalent service to passengers with disabilities.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 215 respondents.

Estimated Total Annual Burden: 7,611 hours.

Frequency: Submit summary to DOT annually.

(3) Requirement to submit a report to DOT on ridership on accessible fixed route buses.

Respondents: Fixed route operators.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 448 respondents.

Estimated Total Annual Burden: 15,859 hours.

Frequency: Submit report to DOT annually.

(4) Requirement to submit a report to DOT listing the number of accessible and inaccessible new and used buses it has purchased or leased, as well as the total numbers of buses in operators' fleets.

Respondents: All operators.

Estimated Annual Burden on Respondents: 35.4 hours for each of the 3448 respondents.

Estimated Total Annual Burden: 122,059 hours.

Frequency: Submit report to DOT annually.

The estimated total annual burden resulting from the collection of information in the DOT Final Rule on Accessibility of Over-the-Road Buses is between 299,748 hours (low estimate) to 316,226 hours (high estimate).

- Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Issued this 18th day of January, 2000, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR Part 37 is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for part 37 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

Subpart H—Over-the-Road Buses (OTRBs)

§ 37.199 [Removed and Reserved]

2. Remove and reserve § 37.199.

3. Revise § 37.213 to read as follows:

§ 37.213 Information collection requirements.

(a) This paragraph (a) applies to demand-responsive operators under § 37.189 and fixed-route operators under § 37.193(a)(1) that are required to, and small mixed-service operators under § 37.191 that choose to, provide accessible OTRB service on 48 hours' advance notice.

(1) When the operator receives a request for an accessible bus or equivalent service, the operator shall complete lines 1–9 of the Service Request Form in Appendix A to this subpart. The operator shall transmit a copy of the form to the passenger no later than the end of the next business day following the receipt of the request. The passenger shall be required to make only one request, which covers all legs of the requested trip (e.g., in the case of a round trip, both the outgoing and return legs of the trip; in the case of a multi-leg trip, all connecting legs).

(2) On the scheduled date(s) of the trip(s), the operator providing the trip shall complete lines 10 and 11 of the form. In any case in which the requested accessible bus was not provided, the operator shall transmit a copy of the form to the passenger no later than the end of the next business day following failure to provide requested service.

(3) The operator shall retain its copy of the completed form for five years. The operator shall make these forms available to Department of Transportation or Department of Justice officials at their request.

(4) Beginning October 29, 2001, for large operators, and October 28, 2002,

for small operators, and on the last Monday in October in each year thereafter, each operator shall submit a summary of its forms to the Department of Transportation. The summary shall state the number of requests for accessible bus service and the number of times these requests were met. It shall also include the name, address, telephone number, and contact person name for the operator.

(b) This paragraph (b) applies to small fixed route operators who choose to provide equivalent service to passengers with disabilities under § 37.183(b)(2).

(1) The operator shall complete the Service Request Form in Appendix A to this subpart on every occasion on which a passenger with a disability needs equivalent service in order to be provided transportation.

(2) The operator shall transmit a copy of the form to the passenger no later than the next business day following request for equivalent service and whenever the requested equivalent service is not provided. The operator shall retain its copy of the completed form for five years. The operator shall make these forms available to the Department of Transportation of Department of Justice officials at their request.

(3) Beginning on October 28, 2002 and on the last Monday in October in each year therafter, each operator shall submit a summary of its forms to the Department of Transportation. The summary shall state the number of situations in which equivalent service was needed and the number of times such service was provided. It shall also include the name, address, telephone number, and contact person name for the operator.

(c) This paragraph (c) applies to fixed-route operators.

(1) On March 26, 2001, each fixed-route large operator shall submit to the Department a report on how many passengers with disabilities used the lift to board accessible buses for the period of October 1999 to October 2000. For fixed-route operators, the report shall reflect separately the data pertaining to 48-hour advance reservation service and other service.

(2) Beginning on October 29, 2001 and on the last Monday in October in each year thereafter, each fixed-route operator shall submit to the Department, a report on how many passengers with disabilities used the lift to board accessible buses. For fixed-route operators, the report shall reflect separately the data pertaining to 48-hour advance reservation service and other service.

(d) This paragraph (d) applies to each over the road bus operator.

(1) On March 26, 2001, each operator shall submit to the Department, a summary report listing the number of new buses and used buses it has purchased or leased for the period of October 1998 through October 2000, and how many buses in each category are accessible. It shall also include the total number of buses in the operator's fleet and the name, address, telephone number, and contact person name for the operator.

(2) Beginning on October 29, 2001 and on the last Monday in October in each year thereafter, each operator shall submit to the Department, a summary report listing the number of new buses and used buses it has purchased or leased during the preceding year, and how many buses in each category are accessible. It shall also include the total number of buses in the operator's fleet and the name, address, telephone number, and contact person name for the operator.

(e) The information required to be submitted to the Department shall be sent to the following address: Federal Motor Carrier Safety Administration, Office of Data Analysis & Information System 400 7th Street, S.W., Washington, D.C. 20590.

4. Revise Appendix A to Subpart H of Part 37 to read as follows:

Appendix A to Subpart H of Part 37—Service Request Form

Form for Advance Notice Requests and Provision of Equivalent Service

1. Operator's name _____
2. Address _____
_____
3. Phone number: _____
4. Passenger's name: _____
5. Address: _____
_____
6. Phone number: _____
7. Scheduled date(s) and time(s) of trip(s): __
_____
8. Date and time of request: _____
9. Location(s) of need for accessible bus or equivalent service, as applicable: _____
10. Was accessible bus or equivalent service, as applicable, provided for trip(s)? Yes _____ no _____
11. Was there a basis recognized by U.S. Department of transportation regulations for not providing an accessible bus or equivalent service, as applicable, for the trip(s)? Yes _____ no _____

If yes, explain _____
_____

[FR Doc. 01–2853 Filed 2–5–01; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 66, No. 25
Tuesday, February 6, 2001

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM–72–4]

Prairie Island Coalition; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM) submitted by the Prairie Island Coalition (PRM–72–4). The petitioner requested that the NRC undertake rulemaking to examine certain issues regarding the potential for thermal shock and corrosion of spent fuel in dry cask storage; amend its regulations governing the storage of spent nuclear fuel in dry storage casks to define the parameters of acceptable degradation of spent fuel in dry cask storage; amend its regulations to define the parameters of retrievability for spent nuclear fuel in dry cask storage; and require licensees to demonstrate safe cask unloading capability before a cask may be used at an independent spent fuel storage installation (ISFSI).

ADDRESSES: Copies of the petition for rulemaking, The **Federal Register** notice of receipt, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

You may also access these documents on NRC's interactive rulemaking website at *http://ruleforum.llnl.gov*. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail (CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–6195, e-mail (geg1@nrc.gov).

SUPPLEMENTARY INFORMATION:

The Petition

On March 12, 1998 (63 FR 12040), the NRC published a notice of receipt of a petition for rulemaking filed by the Prairie Island Coalition (PIC). The petition consists of the issues presented in paragraphs 13, 14, and 15 of the document attached to an August 26, 1997, letter from George Crocker, PIC, to L. Joseph Callan, Executive Director for Operations, NRC. The issues in the remainder of the August 26, 1997, document were submitted as a petition under 10 CFR 2.206 of the Commission's regulations. The Director of the Office of Nuclear Reactor Regulation responded to this petition in a Director's Decision (DD–98–02) published on February 20, 1998 (63 FR 8703). Similar issues were addressed by the Director in a decision (DD–97–18) published on September 8, 1997 (62 FR 47227). Those issues concerned the degradation, retrievability, and unloading of spent nuclear fuel from dry storage casks.

The petitioner requested an amendment of the regulations in 10 CFR part 72 to define the parameters of spent fuel degradation that are acceptable to the NRC under 10 CFR 72.122(h). Section 72.122(h) provides that spent fuel cladding must be protected during storage against degradation that leads to gross ruptures or that the fuel must be confined such that degradation will not pose an operational safety concern. The petitioner is concerned about the potential effect of spent fuel degradation on the ability of licensees to unload a dry storage cask safely. PIC contended that the NRC has not adequately addressed the possibility of damage to spent fuel caused by thermal shock when cool water refloods a cask that contains dry spent nuclear fuel. The petitioner also contended that the NRC has not adequately addressed degradation of spent nuclear fuel resulting from the loss of helium from failed cask seals or because of the passage of time. The petitioner stated that no procedures have been developed to ensure operational safety or to assess worker or offsite radiation exposure when degraded spent fuel must be unloaded.

The petitioner also requested an amendment to the regulations in 10 CFR part 72 that govern storage of spent nuclear fuel in dry storage casks to define the parameters of retrievability of spent fuel required by the NRC under 10 CFR 72.122(l). Section 72.122(l) states that spent fuel storage systems must be designed to allow ready retrievability of the spent fuel for future processing or disposal. PIC is concerned that the NRC has not taken into account the potential problems that may be encountered in unloading a cask to retrieve spent fuel.

Lastly, the petitioner requested an amendment to the regulations to require licensees to demonstrate the ability to unload spent nuclear fuel safely from a dry storage cask before a cask can be used at an ISFSI. The petitioner contended that if a licensee can demonstrate ability to unload spent nuclear fuel safely from a cask in a pool after long-term storage, the public will have assurance that a spent fuel storage cask can be unloaded. PIC believes that although the NRC's regulations do not require a licensee to be able to unload a cask immediately, the NRC clearly requires a licensee to be able to unload the spent fuel at some point. The petitioner also believes that because in-pool unloading of spent fuel from a dry storage cask (that has contained the fuel for a protracted period) has not been completed, there is sufficient reason to require a licensee to demonstrate the capability to unload a dry cask underwater. PIC stated that it would be satisfied if a licensee can demonstrate the ability to unload spent nuclear fuel from a dry storage cask at some reasonable point in time.

Public Comments on the Petition

The notice of receipt of the PRM invited interested persons to submit comments. The NRC received letters from 12 commenters: The State of Utah, five private organizations, three associated industries (including one from the Nuclear Energy Institute (NEI)), and three private individuals. The comments focused on the main elements of the petition-degradation, retrievability, and unloading of spent nuclear fuel from dry storage casks. The NRC also received responses from the petitioner and one of the commenters on many of the points raised in the comments. The NRC reviewed and considered comments and responses in developing its decision on this petition.

Eight of the commenters supported this petition for rulemaking.

Commenters supporting the petition pointed out that a number of degradation modes exist for dry cask storage systems, including flawed cask fabrication, neutron flux and irradiation, liquid metal embrittlement, metal creep, hot metal reactivity, and thermal shock. These commenters believe that any of these modes of degradation may render unloading procedures ineffectual in terms of protecting workers, the public, and the environment from unacceptable radiation exposure. They believe that a rulemaking is needed to create procedures that ensure the safe management of the waste during a variety of contingency situations that may arise as a result of degradation.

One commenter believes that a rulemaking is needed to provide a direct connection between NRC requirements and concerns about fuel integrity and the procedures necessary for monitoring, retrieving, repairing, and maintaining cask systems. The rulemaking would serve to reduce the uncertainties surrounding degradation, loading, and transfer of nuclear waste and should provide for the development of contingency analysis of the interaction between storage timelines, technologies, and degradation factors.

Other commenters supported the rulemaking proposed by the petitioner to address a variety of issues, including the viability of retrieval of spent fuel from dry storage casks, the need to specify procedures for managing cladding degradation, the need to determine how damaged spent fuel will be managed after unloading (since damaged spent fuel cannot be placed in another cask), and whether special unloading procedures are needed for dual-purpose casks (which not only store fuel for an extended period but also transport the spent fuel to a repository or storage facility) because during transport the fuel may be subject to vibration and accidents.

The State of Utah believes that a rulemaking is needed because the set of dry storage parameters is too vague and does not provide sufficient guidance for the NRC staff or cask designers. Further, the State believes that dry storage systems have operated with extremely thin safety margins, as evidenced by the welding problems experienced with the VSC–24 casks. In particular, the State notes that NRC's experience with the unloading of spent fuel from transportation casks does not provide a basis for confidence that storage casks can be successfully unloaded because of key differences between the two, primarily that the State believes that the cladding temperature in transportation casks is much cooler than the cladding temperature in storage casks and that transportation casks are used for a brief period, after which the fuel and cask interior can be inspected, which is not true for storage casks. The State also supports the petitioner's request that the NRC's regulations should require a physical demonstration of unloading ability and believes that a physical demonstration is particularly important at an off site ISFSI, given that the reactor and the spent fuel pool that supplied the irradiated fuel may no longer exist.

The three industry commenters opposed the petition. The NEI observed that two Director's Decisions (DD–97–18 and DD–98–02) addressed the same issues with respect to the Prairie Island ISFSI and stated that the Director's responses demonstrate that there is no generic issue regarding safely unloading dry spent fuel storage casks, and hence no need for rulemaking. In NEI's view, experience, testing, and computer modeling have all shown that the combination of an inert atmosphere and temperature limits provides a robust basis to conclude that the integrity of the fuel will be maintained during the licensed storage period. NEI also believes that the fact that thousands of spent fuel assemblies have been successfully unloaded from shipping casks without damage—and that most of these shipping casks are designed for fuel temperatures higher than storage casks—provides confidence that storage cask unloading will not result in fuel damage. Moreover, NEI points out that the petition does not present any relevant technical, scientific, or other data to support the need for rulemaking.

A cask manufacturer, Transnuclear, Inc., commented that Transnuclear metal casks are designed to store fuel below a maximum allowable fuel cladding temperature in an inert medium (helium) and that this is a well-established method of preventing cladding degradation. This commenter also stated that thermal shock to spent fuel assemblies is not a problem, that spent fuel assemblies have been successfully unloaded from shipping casks without damage, and that most of these shipping casks are designed for higher fuel temperatures than storage casks. Therefore, thermal shock will not present a significant problem when the casks are reflooded with spent fuel pool water before being unloaded. The commenter states that fuel temperature limits as high as 570 degrees Celsius have been approved for transportation packages and that unloading of fuel from a transportation cask into a spent fuel pool without causing fuel degradation has been demonstrated in the United States and France. In the case of unloading fuel from a storage cask, the commenter believed that the thermal shock phenomenon will be much less significant because of the lower fuel temperature (usually less than 300 degrees Celsius). In addition, the thermal shock is minimized by following procedures that allow the fuel to gradually cool down to the boiling point of water (100 degrees Celsius) before being submerged in the pool.

The petitioner reviewed the comments received on its petition and provided a response. In the petitioner's view, rules governing procedures for safe management of contingency conditions during unloading do not presently exist and are needed. The petitioner states that the whole point of its request for rulemaking is that lack of actual knowledge about how waste materials will behave during storage and unavoidable management operations makes contingency planning necessary in order to protect against worker and public radiation exposure likely to occur if contingency procedures are not in place. The petitioner believes that phenomena such as high temperature zinc reactivity and thermal shock will allow site personnel very little time to evaluate the situation and initiate corrective action.

Reasons for Denial

The NRC is denying the petition for the following reasons:

The petitioners identified several concerns pertaining to the lack of specific guidance in the unloading procedure to address a scenario in which significant fuel degradation occurs during storage. The NRC staff agrees with the petitioners that such a scenario would complicate the unloading process by requiring additional measures and precautions to limit the release of radioactive materials from the cask into parts of the reactor facility and nearby environs. Currently, unloading procedures used by part 72 licensees include a hold point to sample the atmosphere within the cask cavity to test for radioactive and flammable gases before venting the cask cavity and removing the cask lid. On the basis of the analysis of the gas sample, the unloading procedure includes a step to allow personnel to determine whether additional measures or precautions are needed to safely unload the cask.

While acknowledging many of the petitioner's concerns regarding the potential difficulties in retrieving degraded fuel from dry storage casks, the NRC staff concluded that licensees need not be required to incorporate specific guidance into the normal unloading procedure to address this

unlikely situation. This conclusion is based on the NRC staff's acceptance of current practices and that the required compensatory actions and precautions needed to address such contingency situations may vary significantly, depending on the actual results from the analysis of the gas sample. On the basis of licensees' experiences in developing and implementing plans to address the problem of fuel assemblies damaged during reactor operations, in handling radioactive wastes of various forms, and in resolving other comparable problems, the NRC staff has confidence that licensees could, if necessary, develop plans to retrieve damaged fuel from a storage cask while minimizing the radiological consequences to plant workers and the general public. In addition, the NRC staff is confident that the technical problems associated with retrieving degraded fuel could be overcome. Furthermore, requirements for planning and executing such an activity are contained in the licenses issued for each ISFSI and power reactor, and in NRC regulations at 10 CFR parts 20, 50, and 72. Therefore, the NRC staff has accepted gas sampling and defined hold or decision points before breaching the cask confinement boundary as an adequate means of addressing concerns pertaining to the unlikely degradation of fuel assemblies during storage. In addition, the NRC inspects loading and unloading procedures during preoperational testing to confirm their adequacy.

The NRC believes that the petitioner is incorrect in asserting that 10 CFR 72.122(h) needs to be revised to define parameters of acceptable spent fuel degradation. The NRC believes that an applicant may store spent fuel without significant degradation in a safe technical manner without additional prescriptive requirements. In the present case, 10 CFR 72.122(h) specifies the performance-based outcome that must be achieved by the licensee. The applicant must address all relevant considerations to achieve the outcome specified in the regulation. Specifically, paragraph (h)(1) of 10 CFR 72.122 states, in part that: ''[t]he spent fuel cladding must be protected during storage against degradation that leads to gross ruptures or the fuel must be otherwise confined such that degradation of the fuel during storage will not pose operational safety problems with respect to its removal from storage.''

Research, experience, testing, and computer modeling have all shown that the combination of an inert atmosphere and establishment of cladding temperature limits provides an adequate technical basis for concluding that the fuel integrity will be maintained during the licensed storage period. Industry experience in unloading transportation casks under water without incurring fuel damage and limited experience in unloading storage casks provides confidence that storage cask unloading will also not result in fuel damage. Additional experience on the long-term performance of spent fuel storage systems has been gained from NRC-sponsored studies. Specifically, the NRC studied spent nuclear fuel assemblies that have been out of the reactor for approximately 20 years. In September 1999, a Castor-V/21 cask that has been at the Idaho National Engineering and Environmental Laboratory since 1985 was reopened, and the cask internals, fuel assemblies, and several rods were visually inspected. This cask contained 21 spent pressurized water reactor fuel assemblies (with burnup in the 30–35 GWd/MTU range) from the Surry Nuclear Power Plant. These fuel assemblies have been in continuous storage in this cask for approximately 15 years. The examinations found no evidence of significant degradation of the Castor-V/21 cask systems important to safety from the initial cask loading in 1985 to the time of examination in 1999. The fuel examination found no long-term fuel degradation, thus confirming the adequacy of existing practices to protect the fuel.

The NRC believes that the petitioner and the commenters have not provided adequate justification for revising the requirements in 10 CFR 72.122(l) to include specific parameters for retrievability. The NRC reviews an applicant's method of retrievability to determine if it is appropriate for use rather than specifying in the regulations exactly how retrievability is to be accomplished. Each site must have specific procedures in place that are exclusively associated with that site, and the licensee should have the flexibility of achieving the outcome specified in 10 CFR 72.122(l).

Furthermore, Regulatory Guide 3.61, ''Standard Format and Content of Topical Safety Analysis Reports for a Spent Fuel Dry Storage Facility'' contains an outline of the specific information needed, and NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems'' provides guidance to the NRC staff performing safety reviews of dry cask storage systems. These documents provide guidance to applicants and the NRC staff to ensure that the safety analysis report (SAR), the safety evaluation report, and the Certificate of Compliance contain commitments to prepare and validate procedures, and to train qualified personnel in their use so that spent fuel can be retrieved safely from a dry storage cask.

The NRC staff agrees with the petitioner's premise that actually unloading a storage cask would likely result in licensees learning lessons that could improve unloading procedures. The staff does not agree that additional demonstration of the unloading procedure is warranted. In addition to the NRC staff's review of the procedure for unloading casks, reasonable assurance that the casks can be safely unloaded is provided by a variety of experiences related to the use and storage of radioactive materials. These experiences include preoperational tests and dry-run exercises that are performed to verify key aspects of unloading procedures for casks; related research sponsored by the commercial nuclear industry, the U.S. Department of Energy, and the NRC; actual loading and unloading of transportation casks; loading of storage casks; handling of spent fuel assemblies under various conditions; and performing relevant maintenance and engineering activities associated with reactor facilities. In addition, as discussed below, there is recent experience from unloading a spent fuel storage cask at Surry. Accordingly, the NRC believes that the request of the petitioner and some commenters to require a demonstration of cask unloading before a cask can be used at an ISFSI is unnecessary.

The NRC staff also believes that adequate assurances are in place to ensure safe cask unloading. As part of the review described in NUREG–1536, the NRC staff verifies that the SAR has requirements for cask unloading procedures. The NRC inspects procedures, training and qualification, and ISFSI operations. Further, requiring a full demonstration of cask unloading could result in unnecessary radiation exposure to workers and the public.

The NRC staff's view that adequate assurances are in place to ensure safe cask unloading are borne out by the practical experience in retrieving dry storage casks that have been stored with spent fuel for a number of years. In 2000, two TN–32 spent fuel storage casks at Surry were retrieved from the storage pad because of indications of a failed seal. In one case, the seal monitoring system had developed a leak. The cask was returned to the pool, the seals replaced, the monitoring system repaired, and the cask leak tested. The cask was then returned to the ISFSI pad. The second cask had a leak in the secondary seal. The primary seal was intact. The cask was returned to the pool and the lid removed to

replace the seals. Localized corrosion was discovered on the sealing surface of the lid. The fuel was unloaded while repairs were made to the sealing surface. After the sealing surfaces were restored and the seals replaced, the cask was reloaded, leak tested, and returned to the storage pad. During these operations, no releases of radiation to the environment occurred and no spent fuel degradation was found. These two casks were initially loaded and placed in storage in 1996. More information can be found in NRC Inspection Report 72–002/2000–06.

The petitioner believes that the NRC has not evaluated phenomena such as high-temperature zinc reactivity and thermal shock that will allow site personnel very little time to evaluate the situation and initiate corrective actions. The NRC staff reviews areas such as thermal loading, inadvertent criticality, and structural or containment failure for normal and abnormal conditions that are addressed by the designer of the storage system. NRC places thermal load limit restrictions on casks approved for use and requires that fuel be stored in an inert atmosphere. Although no adverse effects of zinc on the cladding of the spent fuel stored in NRC certified casks have as yet been identified, NRC has initiated a research project to investigate the possible effects of zinc on spent fuel cladding.

The NRC staff believes that the petitioner has identified a valid concern regarding the potential recovery of fuel assemblies that unexpectedly degrade during storage. However, in this unlikely event, the NRC staff has concluded that there is reasonable assurance that a licensee can safely unload degraded fuel or address other problems. This conclusion is based on the NRC's defense-in-depth approach to safety that includes requirements to design and operate spent fuel storage systems that minimize the possibility of degradation; requirements to establish competent organizations staffed with experienced, trained, and qualified personnel; and NRC inspections to confirm safety and compliance with requirements. The NRC staff finds acceptable these procedures for detecting degraded fuel through sampling and, on the basis of the sample results, the implementation of appropriate recovery provisions that reflect the ALARA (as low as is reasonably achievable) requirements. The NRC staff's acceptance of this approach is based on the fact that the spent fuel storage cask can be maintained in a safe condition during the time needed to develop the necessary procedures and to assemble the appropriate equipment before proceeding with cask unloading. The NRC staff also relies on the considerable radiological safety experience available in the nuclear industry in its assessment that appropriately detailed procedures can be prepared for the specific circumstances in a timely manner.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 18th day of January, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–3025 Filed 2–5–01; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 438

[FRL–6941–8]

RIN 2040–AB79

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Announcement of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meeting.

SUMMARY: EPA is conducting an additional public meeting and hearing on the pretreatment standards for the Metal Products and Machinery (MP&M) proposed rule in Chicago, Illinois on March 8, 2001.

EPA proposed effluent limitations guidelines and standards for the MP&M Industry in the **Federal Register** on January 3, 2001 (66 FR 425). In that document EPA announced public meetings and pretreatment hearings in three locations: Oakland, CA; Dallas, TX; and Washington, DC. Based on stakeholder requests, EPA is adding an additional public meeting and pretreatment hearing in Chicago, IL. For information on the specific location, see the **ADDRESSES** section below.

DATES: EPA is conducting a public meeting (9:00 AM–12:00 PM) and hearing on the pretreatment standards (1:00 PM–4:00 PM) for the MP&M proposed rule on March 8, 2001.

ADDRESSES: The Metal Products and Machinery public meeting and pretreatment hearing will be held at the EPA Region 5 offices in the Metcalfe Federal Building, 77 West Jackson Blvd., Room 331, Chicago, IL (312) 353–2000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Ebner at (202) 260–5397 or Ms. Shari Barash at (202) 260–7130 or by E-mail: ebner.michael@epa.gov or barash.shari@epa.gov.

SUPPLEMENTARY INFORMATION: During the public meeting, EPA will present information on the applicability of the proposed regulation, the technology options selected as the basis for the proposed limitations and standards, and the compliance costs and pollutant reductions. EPA will also allow time for questions and answers during this session. During the pretreatment hearing, the public will have the opportunity to provide oral comment to EPA. EPA will not address any issues raised during the pretreatment hearing at that time, but these comments will be recorded and included in the public record for the rule. Persons wishing to present formal comments at the public hearing should contact Mr. Michael Ebner before the hearing and should have a written copy of their comments for submittal.

Documents related to the proposed regulation are available on the MP&M web site (*http://www.epa.gov/ost/guide/mpm/rule.html*).

If you wish to submit written comments on the proposed MP&M rule, the comment period closes on May 3, 2001. Please see the Notice of Proposed Rulemaking in the **Federal Register** (66 FR 425; January 3, 2001) for information on ''How to Submit Comments.''

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 01–3089 Filed 2–5–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; CC Docket No. 96–98; FCC 01–26]

Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document clarifies the Commission's rules with regard to an incumbent local exchange carrier's (LEC) obligation to provide line sharing in those instances in which the loop is serviced by a remote terminal, and seeks

comment in a Further Notice of Proposed Rulemaking on the technical and economic issues associated with implementing this requirement.

DATES: Comments are due February 27, 2001 and reply comments are due March 13, 2001.

FOR FURTHER INFORMATION CONTACT: Jessica Rosenworcel, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking in CC Docket No. 98–147, and the Commission's Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96–98, released January 19, 2001 and adopted January 19, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY—B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at *http://www.fcc.gov*.

Synopsis of Reconsideration Order

1. The Commission adopts a Third Further Notice of Proposed Rulemaking in the Advanced Services proceeding, CC Docket No. 98–147, and a Sixth Further Notice of Proposed Rulemaking in the Local Competition proceeding, CC Docket No. 96–98. The Commission requests comment on issues that have been raised with respect to line sharing where an incumbent LEC has deployed fiber in the loop. The Commission clarifies that the requirement to provide line sharing applies to the entire loop, even where the incumbent LEC has deployed fiber in the loop, *e.g.*, where the loop is served by a remote terminal.

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act (RFA),[1] 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 Third Further Notice of Proposed Rulemaking in CC Docket No. 98–147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96–98 (Third Further Notice). 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 Third Further Notice, as described in paragraph 67. The Commission will send a copy of the Third Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the Third Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

5. This Third Further Notice continues our efforts to promote innovation, investment, and competition in the market for advanced services. We invite comment on whether we should amend our line sharing or unbundled network element rules to ensure that competitive local exchange carriers (LECs) are able to gain access to the high frequency portion of the loop for the provision of advanced services where an incumbent LEC has deployed fiber in the loop on which it is providing voice service. Specifically, the Commission seeks comment on the technical and economic feasibility of different types of line sharing arrangements where an incumbent LEC has deployed fiber in the loop.

6. The Third Further Notice is adopted pursuant to sections 1–4, 201, 202, 251–254, 256, 271, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 251–254, 256, 271, and 303(r).

Description and Estimate of the Number of Small Entities Affected by This Third Further Notice

7. 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 proposals in this Third Further NPRM, if adopted.[4] In the IRFA to the Advanced Services Order and NPRM, we adopted the analysis and definitions set forth in determining the small entities affected by this Third Further Notice for purposes of this IRFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[6] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[7] We describe and estimate below the number of small telephone companies that may be affected by the proposals in the Third Further Notice, if adopted.

8. The most reliable source of information regarding the total numbers of 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 Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS).[8] According to data in the most recent report, there are 4,144 interstate carriers.[9] These carriers include, *inter alia*, LECs, wireline carriers and service providers, interexchange carriers, competitive access providers, operator services providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

9. The SBA has defined establishments engaged in providing ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees.[10] We discuss below the total estimated number of telephone companies and small businesses in this category and then attempt to refine further those estimates.

10. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [11] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[12] We have therefore included small incumbent LECs in this RFA analysis, although we

[1] See 5 U.S.C. 603.

[2] See 5 U.S.C. 603(a).

[3] See id.

[4] See 5 U.S.C. 603(b)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[7] 15 U.S.C. 632; see, *e.g., Brown Transport Truckload, Inc.* v. *Southern Wipers, Inc.*, 176 B.R. 82 (N.D. Ga. 1994).

[8] FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 2000) (Carrier Locator).

[9] Id.

[10] 13 CFR 121.201, SIC Codes 4812 and 4813. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).

[11] 5 U.S.C. 601(3)

[12] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999) (SBA May 27, 1999 Letter).

emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

11. *Total number of telephone companies affected.* The 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.[13] These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 4,144 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' [14] For example, a PCS provider that is affiliated with an interexchange carrier having more the 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 4,144 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the decisions and rules proposed in this Third Further Notice.

12. *Wireline carriers and service providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[15] According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[16] All but 26 of the 2,231 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,205 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,205 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules proposed in the Third Further Notice.

13. *Local exchange carriers.* The Commission has not developed a special size definition of small LECs or competitive LECs. The closest applicable definition for these types of carriers under SBA rules is, again, that used for telephone communications companies other than radiotelephone (wireless) companies.[17] The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).[18] According to our most recent data, there are 1,348 incumbent LECs, 212 competitive LECs,[19] and 442 resellers.[20]

14. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are no more than 1,348 small entity incumbent LECs, 212 competitive LECs, and 442 resellers that may be affected by the proposals in this Third Further Notice.[21]

Description of Projected Reporting, Record Keeping, and Other Compliance Requirements

15. In the Third Further Notice in CC Docket No. 98–147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96–98, we invite comment on whether we should amend our line sharing or unbundled network element rules to ensure that competitive LECs are able to gain access to the high frequency portion of the loop for the provision of advanced services where an incumbent LEC has deployed fiber in the loop on which it is providing voice service. Specifically, we seek comment on the ways in which competitive LECs can access the high frequency portion of the loop for line sharing where an incumbent LEC has deployed fiber in the loop. We also seek comment on the technical feasibility and practical considerations associated with different methods of providing such access. At a minimum, these methods include collocation of a competitor's digital subscriber line access multiplexer (DSLAM) at the remote terminal, or alternatively, the use of ''plug in'' line cards in remote terminal equipment that perform a function similar to that of a traditional DSLAM. With regard to the feeder segment of the loop, there are alternatives for transmitting a competitor's data traffic between the remote terminal and the central office, such as the use of dark fiber or other feeder subloop offerings. Therefore, we also seek comment on all possible alternatives and technical feasibility issues associated with transmission of a competitive LEC's bit stream between the remote terminal and the central office.

16. If the Commission does not amend its rules, no additional compliance requirements are anticipated from further consideration of these issues. However, the Commission may amend or clarify its line sharing or unbundled network element rules to impose further obligations upon incumbent LECs to ensure competitive LEC access to the high frequency portion of the loop for the provision of advanced services. Depending upon the specific nature of any new obligations, small entities, including small incumbent LECs, may be subject to additional reporting, recordkeeping, and other compliance requirements. If further requirements are imposed, compliance with further requests for unbundled network elements may require the use of engineering, technical, operational, accounting, billing, and legal skills.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

[13] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size 1–123 (1995) (1992 Census).

[14] 15 U.S.C. 632(a)(1).

[15] 1992 Census at Firm Size 1–123.

[16] 13 CFR 121.201, SIC Code 4813

[17] *Id.* at SIC Code 4813.

[18] See 47 CFR 64.601 *et seq.*; Carrier Locator at Fig. 1.

[19] The total for competitive LECs includes both competitive LECs and competitive access providers.

[20] Carrier Locator at Fig. 1. The total for resellers includes both toll resellers and local resellers.

[21] This TRS category also includes competitive access providers.

coverage of the rule, or any part thereof, for small entities.[22]

18. In the Third Further Notice, we seek to develop a record sufficient to adequately address issues related to developing long-term policies for ensuring that competitive carriers have access to unbundled network elements as changes are made to traditional telephone networks. In addressing these issues, we seek to ensure that competing providers, including small entity carriers, obtain access to inputs necessary to the provision voice and advanced telecommunications services. We believe that the issues on which we invite comment could impose minimal burdens on small entities, including both telecommunications carriers that request unbundled network elements and the incumbent LECs that, under section 251 of the Communications Act, must provide unbundled network elements to requesting carriers. As indicated above, both groups of carriers include entities that, for purposes of this IRFA, are classified as small entities. In framing the issues in this Third Further Notice, we have sought to develop a record on the potential impact our proposed rules could have upon small entities. We thus ask that commenters propose measures to avoid significant economic impact on small business entities.

List of Subjects in 47 CFR Part 51

Communications common carriers, Telecommunications, Interconnection.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–2916 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA01–182, MM Docket No. 01–23, RM–9960]

Digital Television Broadcast Service; Ontario, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by USA Station Group Partnership of Southern California, licensee of Station KHSC–TV, NTSC Channel 46, Ontario, California, requesting the substitution of DTV Channel 29 for Station KHSC–TV's assigned DTV Channel 47. DTV Channel 29 can be allotted to Ontario, California, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (34–13–37 N. and 118–03–58 W.). As requested, we propose to allot DTV Channel 29 to Ontario with a power of 155 and a height above average terrain (HAAT) of 927 meters. However, since the community of Ontario is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before March 26, 2001, and reply comments on or before April 10, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jacqueline P. Cleary, Sumeet Seam, Hogan & Hartson L.L.P., 555 13th Street, NW, Washington, DC 20004–1106 (Counsel for USA Station Group Partnership of Southern California).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–23, adopted January 30, 2001, and released January 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under California is amended by removing DTV Channel 47 and adding DTV Channel 29 at Ontario.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–2913 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–247, MM Docket No. 01–28, RM–10043]

Digital Television Broadcast Service; Albuquerque, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by The Board of Regents of the University of New Mexico and the Board of Education of the City of Albuquerque, New Mexico, licensee of noncommercial education station KNME–TV, NTSC channel *5, Albuquerque, New Mexico, proposing the substitution of DTV channel *35 for station KNME–TV's assigned DTV *25. DTV Channel *35 can be allotted to Albuquerque, New Mexico, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (35–12–44 N. and 106–26–57 W.). As requested, we propose to allot DTV Channel *35 to Albuquerque with a power of 250 and a height above average terrain (HAAT) of 1289 meters.

DATES: Comments must be filed on or before March 26, 2001, and reply comments on or before April 10, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments

[22] 5 U.S.C. 603(c).

with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036 (Counsel for The Board of Regents of the University of New Mexico and the Board of Education of the City of Albuquerque, New Mexico).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–28, adopted February 1, 2001, and released February 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New Mexico is amended by removing DTV Channel *25 and adding DTV Channel *35 at Albuquerque.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3049 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–248, MM Docket No. 01–29, RAM–10044]

Digital Television Broadcast Service; Butte, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Eagle Communications, Inc., licensee of station KTVM(TV), NTSC channel 6, Butte, Montana, proposing the substitution of DTV channel 33 for station KTVM(TV)'s assigned DTV channel 2. DTV Channel 33 can be allotted to Butte, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (46–00–27 N. and 112–26–30 W.). As requested, we propose to allot DTV Channel 33 to Butte with a power of 1000 and a height above average terrain (HAAT) of 576 meters. However, since the community of Butte is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before March 26, 2001, and reply comments on or before April 10, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur B. Goodkind, Holland & Knight LLP, 2100 Pennsylvania Avenue, NW., Suite 400, Washington, 20037–3202 (Counsel for Eagle Communications, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–29, adopted February 1, 2001, and released February 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana is amended by removing DTV Channel 2 and adding DTV Channel 33 at Butte.

Federal Communications Commission.

Dated:

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3048 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–249, MM Docket No. 01–30, RM–10042]

Digital Television Broadcast Service; Bozeman, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KCTZ Communications, Inc., licensee of station KBZK(TV), NTSC channel 7, Bozeman, Montana, seeking the substitution of DTV channel 13 for station KBZK(TV)'s assigned DTV channel 16. DTV Channel 13 can be allotted to Bozeman, Montana, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (45–40–24 N. and 110–52–02 W.). As requested, we propose to allot DTV Channel 13 to Bozeman with a power of 160 and a height above average terrain (HAAT) of 305 meters. However, since the community of Bozeman is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal.

DATES: Comments must be filed on or before March 26, 2001, and reply comments on or before April 10, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Low, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–30, adopted February 1, 2001, and released February 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana is amended by removing DTV Channel 16 and adding DTV Channel 13 at Bozeman.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3047 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 66, No. 25
Tuesday, February 6, 2001

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

Farm Service Agency

President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of preliminary report publication, request for comments, and notice of meeting.

SUMMARY: Executive Order No. 13168 published September 22, 2000, established the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health (Commission). This notice announces that the Commission's Preliminary Report has been published, that comments are requested on the Preliminary Report, and that a public meeting will be conducted by the Commission on February 21, 2001. The purpose of the meeting will be to review comments received on the Preliminary Report and recommendations from a tobacco working group and others in preparation for work on the Final Report.

DATES: The Commission will meet on February 21, 2001, from 9:00 a.m. to 4:00 p.m. at 2101 L Street, NW, Room 303A, Washington, DC. If special accommodations are required, please contact Doug Richardson, at the address specified above, by COB February14, 2001. All times are Eastern Standard Time. Comments on the Preliminary Report are requested through March 8, 2001. Comments may be submitted through the website at *http://www.fsa.usda.gov/tobcom/*, by fax, or by mail to the Commission at the contact information listed below. All meetings are open to the public; however, seating is limited and available on a first-come basis. Written comments may be filed with the Commission before or after the meeting at the contact information listed below. Copies of the Preliminary Report are available on the Commission's website at *http://www.fsa.usda.gov/tobcom/* or by contacting the Commission's office at the contact information listed below.

FOR FURTHER INFORMATION CONTACT: Doug Richardson, Executive Director, Tobacco Commission, United States Department of Agriculture, (USDA), 1400 Independence Avenue, SW, STOP 0574, Washington, D.C., 20250–0574 or telephone (202) 418–4266 or toll free (866) 804–6698; FAX (202) 418–4270; Internet: doug__richardson@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to advise the President on changes occurring in the tobacco farming economy and recommend such measures as may be necessary to improve economic opportunity and development in communities that are dependent on tobacco production, while protecting consumers, particularly children, from hazards associated with smoking. The Commission collected and reviewed information about changes in the tobacco farming economy and Federal, State, and local initiatives intended to help tobacco growers, tobacco quota holders, and communities dependent on tobacco production pursue new economic opportunities. The Commission received public input through two public forums, its website, written comments and experts in tobacco farming, tobacco health issues, and economic development. After reviewing all input, the Commission issued its Preliminary Report regarding the economic situation facing tobacco producers and tobacco dependent communities. As set forth in the Report, the Commission has made no final recommendations but has established the following principles to guide its future deliberations:

(a) The Commission's recommendations should promote both the public health and the economic security and stability of tobacco farmers and their communities.

(b) Both short-term and long-term assistance are warranted for family tobacco farmers and their communities because of two factors: (1) the dramatic reduction in the purchase of U.S. tobacco leaf in recent years as the result of a complex set of trends that are both long term and global in nature, and (2) past Federal policies which have led many tobacco farmers to a heavy, if not total, reliance on this crop and way of life.

(c) The preservation of a tobacco program that controls supply, maintains price, moves quotas into the hands of growers, and incorporates health and safety protection is in the best interests of tobacco farmers and the public health.

(d) Solutions to the problems facing tobacco farmers should protect family farms, of which a significant number are small farms and owned by minorities.

(e) Policies should be adopted to ensure that any system of direct contracting between manufacturers and U.S. tobacco farmers does not undermine the protections for family farms and the public health that are provided by the tobacco program.

(f) Any tobacco program changes should focus on long-term solutions to the problems facing tobacco farmers, not short-term quick fixes.

(g) Tobacco farmers should be compensated for their quota at a fair and equitable value in order to address their current crisis and reduce their dependency on tobacco, an action which is in the best interests of the tobacco producing and the public health communities.

(h) Economic development assistance to tobacco producing communities is in the best interests of tobacco farmers, their communities, and the public health community. The Commission should consider the broadest range of economic actions to assist tobacco farmers, tobacco farm families, and their communities in promoting their prosperity, stability, and way of life during this period of transition, including:

(1) Locally driven assistance to tobacco producing communities for economic redevelopment and diversification,

(2) Support for the growth of supplemental crops (particularly those utilizing specialized tobacco farming skills) and livestock and the infrastructure necessary to produce, process, develop new markets, and bring these commodities to market; and

(3) Continued research into the development of non-harmful uses of tobacco products.

(i) The American tobacco farmer and the public should be protected against

unfair foreign competition. For example, increased and expanded inspections for non-approved pesticides on imported tobacco are in the best interest of tobacco growers, their communities, and the health community.

(j) More needs to be done to prevent the harm caused by tobacco and this has been acknowledged by some tobacco product manufacturers. Comprehensive programs, such as those suggested in the August 2000 Report of the Surgeon General, to reduce tobacco use and the harm caused by tobacco should be adopted by both the public and private sector with a special emphasis on the problems facing tobacco growing states.

(k) Tobacco should be regulated. The U.S. Food and Drug Administration (FDA) should have authority to establish fair and equitable regulatory controls over the manufacture, sale, distribution, and labeling of tobacco products, comparable to regulations established for other products regulated by the FDA. Such regulations should have as their goal the protection of public health. The U.S. Department of Agriculture (USDA) should retain its authority to set safety standards governing tobacco farms.

(l) Measures to fund the recommendations of the Commission must be reliable, long-term, and consistent with the best interests of both tobacco farming communities and the public health.

In its December 5, 2000, meeting, the Commission established a tobacco working group comprised of tobacco producers, farm organizations, and health community representatives to study further changes needed in the tobacco program and to propose recommendations to be considered by the Commission.

The Preliminary Report requests public input on a number of issues. This notice solicits recommendations on these issues or on any other issues pertinent to the Commission's charge. Copies of the Preliminary Report are available on the Commission's website at *http://www.fsa.usda.gov/tobcom/* or by contacting the Commission's office at the contact information listed above. The purpose of this meeting is to review public input received to date on the Preliminary Report and to review the report from the tobacco working group and others in order to begin preparation of the Final Report to the President.

Signed at Washington, D.C. on February 1, 2001.

James R. Little,

Acting Administrator, Farm Service Agency.

[FR Doc. 01–3120 Filed 2–2–01; 10:41 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware 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 Delaware Advisory Committee to the Commission will convene at 11:30 a.m. and adjourn at 3:30 p.m. on February 27, 2001, at the Metropolitan Wilmington Urban League, 100 W. 10th Street, Wilmington, Delaware 19801. The purpose of the meeting is to (1) make plans to hold a press conference to release the Committee's report, Delaware Citizens Guide to Civil Rights and Supporting Services, (2) hear from invited speakers on civil rights issues affecting the State; and (3) discuss new project proposals.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). 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, January 29, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–2986 Filed 2–5–01; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana 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 Montana Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:00 p.m. on Thursday, March 8, 2001, at the Holiday Inn, 400 10th Avenue, South, Great Falls, Montana 59405. The purpose of the meeting is to brief the Committee members on civil rights issues in the State and to provide an update on the current project, ''Equal Educational Opportunities for Native American Students in Montana Public Schools.''

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). 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, January 31, 2001.

Edward A. Hailes, Jr.,

General Counsel.

[FR Doc. 01–2987 Filed 2–5–01; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Industrial Reports Surveys—WAVE II (Mandatory and Voluntary Submissions)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Judy Dodds, Assistant Chief for Census and Related Programs, (301) 457–4587, Census Bureau, Manufacturing and Construction Division, Room 2101, Building #4, Washington, DC 20233 (or via the Internet at judy.m.dodds@census.gov) .

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR surveys

deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. These surveys provide continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, the monthly and quarterly surveys are conducted on a voluntary basis and annual collections are mandatory. The collection frequency of individual CIR surveys is determined by the cyclical nature of production, the need for frequent trade monitoring, or the use of data in Government economic indicator series. Some monthly and quarterly CIR surveys have an annual ''counterpart'' collection. The annual counterpart collects annual data on a mandatory basis from those firms not participating in the more frequent collection.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into ''waves.'' There are three waves and each wave contains a voluntary and mandatory clearance package, making 6 separate clearances. Each year, one wave (2 clearance packages) is submitted for review. This year the Census Bureau plans to submit mandatory and voluntary surveys of Wave II for clearance. Due to budgetary reductions the Census Bureau has discontinued the following surveys in this wave: MA325A—''Inorganic Chemicals'', MA325B—''Fertilizer Materials'', MA325C—''Industrial Gases'', and MQ316A—''Footwear''. The surveys in Wave II are:

Mandatory surveys	Voluntary surveys
M311J—Fats and Oils (Oilseed Crushings)	*M327G—Glass Containers.
M311L—Fats and Oils (Renderers)	*M331J—Inventories of Steel Producing Mills.
M313N—Cotton and Raw Linters in Public Storage	*MQ311A—Flour Milling Products.
M313P—Consumption on the Cotton System and Stocks	*MQ325A—Inorganic Chemicals.
MQ315A—Apparel	*MQ325C—Industrial Gases.
MQ314X—Bed and Bath Furnishings	MQ325F—Paint and Allied Products.
MQ333W—Metalworking Machinery	*MQ335C—Fluorescent Lamp Ballast.
MA313F—Yarn Production	MA311D—Confectionery.
MA313K—Knit Fabric Production	MA333N—Fluid Power Product.
MA314Q—Carpets and Rugs	MA335L—Electric Light Fixtures.
MA321T—Lumber Production and Mill Stocks	*These voluntary surveys have mandatory annual counterparts.
MA325G—Pharmaceutical Preparations, except Biologicals	
MA316A—Footwear	
MA335J—Insulated Wire and Cable	
MA333L—Internal Combustion Engines	
MA333P—Pumps and Compressors	
MA335E—Electric Housewares and Fans	
MA334M—Consumer Electronics	
MA334Q—Semiconductor, Printed Circuit Boards, and Other Electronic Components.	
MA334S—Electromedical and Irradiation Equipment	.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect data. We ask respondents to return monthly report forms within 10 days, quarterly report forms within 15 days, and annual report forms within 30 days of the initial mailing. Telephone calls and/or letters encouraging participation will be mailed to respondents who have not responded by the designated time.

III. Data

OMB Number: 0607–0395—Mandatory Surveys. 0607–0206—Voluntary & Annual Counterparts Surveys.

Form Number: See Chart Above.

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: Mandatory Surveys—11,652; Voluntary & Annual Counterparts Surveys—2,742; Total—14,394.

Estimated Time Per Response: Mandatory Surveys—1.4546 hrs. avg.; Voluntary & Annual Counterparts Surveys—1.386 hrs. avg.

Estimated Total Annual Burden: Mandatory Surveys—16,949 hours; Voluntary & Annual Counterparts Surveys—3,800 hours; Total—20,749 hours.

Estimated Total Annual Cost: The estimated cost to respondents for all the CIR reports in Wave II for fiscal year 2002 is $377,632.

Respondent's Obligation: The CIR program includes both mandatory and voluntary surveys.

Legal Authority: Title 13, United States Code, Sections 61, 81, 182, 224, and 225.

IV. Request for Comments

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 (including hours and cost) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 1, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–3053 Filed 2–5–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Initiation of National Security Investigation of Imports of Iron Ore and Semi-Finished Steel

AGENCY: Bureau of Export Administration, Office of Strategic Industries and Economic Security, Strategic Analysis Division, Department of Commerce.

ACTION: Notice of initiation of national security investigation and request for public comments.

SUMMARY: This notice is to advise the public that an investigation has been initiated under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of iron ore and semi-finished steel. Interested parties are invited to submit written comments, opinions, data, information, or advice relative to the investigation to the Bureau of Export Administration, U.S. Department of Commerce.

DATES: Comments must be received by April 9, 2001.

ADDRESSES: Send three copies of written comments to Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, Room 3876, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Brad Botwin, Director, Strategic Analysis Division, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–4060, *bbotwin@bxa.doc.gov* or Michael Vaccaro, Trade and Industry Analyst, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–8232, *mvaccaro@bxa.doc.gov*. For more information about the section 232 program, including the regulations and the text of previous investigations, see *www.doc-bxa.bmpcoe.org* under ''Programs.''

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2001, the Department of Commerce initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of iron ore and semi-finished steel. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President not later than October 29, 2001.

The iron ore and semi-finished steel products to be investigated include:

1. Iron Ore:

—Briquettes

—Pellets

—Sinter

2. Semi-finished Steel

—Ingots

—Billets

—Blooms

—Slab

This investigation is being undertaken in accordance with part 705 of the National Security Industrial Base Regulations (15 CFR parts 700 to 709) (the ''regulations''). Interested parties are invited to submit written comments, opinions, data, information, or advice relevant to this investigation to the Office of Strategic Industries & Economic Security, U.S. Department of Commerce, no later than April 9, 2001. The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the regulations as they affect national security, including the following: (a) Quantity of the article in question or other circumstances related to the importation of the articles subject to the investigation; (b) Domestic production and productive capacity needed for those articles to meet protected national defense requirements; (c) Existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce these items; (d) Growth requirements of domestic industries to meet national defense requirements and/or requirements to assure such growth; (e) The impact of foreign competition on the economic welfare of the domestic industry; and (f) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects.

Those wishing to comment should submit three copies of all materials. Material that is national security classified information or business confidential information will be exempted from public disclosure as provided for by § 705.6 of the regulations. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission, then file a statement justifying nondisclosure and reference to the specific legal authority claimed, and provide a non-confidential submission which can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

If public hearings are held in support of this investigation, a separate **Federal Register** notice will be published.

The Bureau of Export Administration does not maintain a separate public inspection facility. Requesters should first view the Bureau's webpage, which can be found at *http://www.bxa.doc.gov* (see FOIA heading). If requesters cannot access the website, they may call 202–482–2165 for assistance. The records related to this assessment are made accessible in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Dated: February 1, 2001.

Matthew Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 01–3059 Filed 2–5–01; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Postponement of Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of extension of the time limit for the preliminary results in the new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China.

SUMMARY: The United States Department of Commerce (''the Department'') is extending the time limit for the preliminary results of a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). This review covers the period February 1, 2000 through July 31, 2000.

EFFECTIVE DATE: February 6, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4007, respectively.

Postponement of Preliminary Results of Administrative Review

On October 2, 2000, the Department initiated a new shipper review (65 FR

58735) of the antidumping duty order on certain preserved mushrooms from the PRC. The current deadline for the preliminary results in this review is March 21, 2001.

In accordance with section 751 (a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended, we determine that it is not practicable to complete this review of Green Fresh Foods (Zhangzhou) Co., Ltd. within the original time frame because of the additional time required to conduct verification. Thus, the Department is extending the time limit for completion of the preliminary results until May 31, 2001.

Dated: January 30, 2001.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–3075 Filed 2–5–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Postponement of Final Results of New Shipper Review and Administrative Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of extension of the time limit for the final results in the new shipper review and administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China.

SUMMARY: The United States Department of Commerce (''the Department'') is extending the time limit for the final results of the new shipper review and administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). These reviews cover the period August 5, 1998, through January 31, 2000, and are being conducted concurrently.

EFFECTIVE DATE: February 6, 2001.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

Postponement of Final Results of Administrative Review

On March 21, 2000 and March 30, 2000, respectively, the Department initiated a new shipper review (65 FR 17257) and an administrative review (65 FR 16875) of the antidumping duty order on certain preserved mushrooms from the PRC. Pursuant to section 351.214(j)(3) of its regulations, and with the agreement of Raoping Xingyu Foods Co., Ltd. (''Raoping''), the company which requested the new shipper review, the Department is conducting the 1998–2000 administrative review and the new shipper review of Raoping concurrently. The current deadline for the final results in these reviews is March 7, 2001.

In accordance with section 751 (a)(3)(A) of the Tariff Act of 1930 (''the Act''), as amended, we determine that it is not practicable to complete these reviews within the original time frame because of the additional time required to conduct verification and to analyze issues raised in the administrative review. Thus, the Department is extending the time limit for completion of the final results until May 31, 2001, in accordance with § 351.213(h)(2) of the Department's regulations.

Dated: January 30, 2001.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–3076 Filed 2–5–01; 8:45 am]

BILLING CODE 3510–DS–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for February 15, 2001 at 10:00 a.m., in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, January 30, 2001.

Charles H. Atherton,

Secretary.

[FR Doc. 01–3061 Filed 2–5–01; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0386]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Small Business Programs

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through December 31, 2001. DoD proposes that OMB extend its approval for use through December 31, 2004.

DATES: DoD will consider all comments received by April 9, 2001.

ADDRESSES: E-mailed comments are preferred. Submit comments to: *dfars@acq.osd.mil.* Please cite OMB Control Number 0704–0386 in the subject line.

Respondents that cannot submit comments by e-mail may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0386.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0326.

The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Ms. Susan Schneider, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 219, Small Business Programs, and the clause at DFARS 252.219–7003; OMB Control Number 0704–0386.

Needs and Uses: This collection of information is necessary to implement the reporting requirements of the acquisition-related sections of the Small Business Act (15 U.S.C. 631, *et seq.*) and the applicable sections of the Armed Services Procurement Act (10 U.S.C. 2302, *et seq.*).

Affected Public: Business or other for-profit and not-for-profit institutions.

Annual Burden Hours: 41.

Number of Respondents: 41.

Responses Per Respondent: 1.

Annual Responses: 41.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

Summary of Information Collection

DFARS 219.704 and the clause at DFARS 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), require prime contractors to notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small business for the firms listed in those subcontracting plans that specifically identify small, small disadvantaged, and women-owned small businesses. Notifications must be in writing and may be submitted in a contractor-specified format.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 01–2989 Filed 2–5–01; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0398]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Substitutions for Military or Federal Specifications and Standards

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) approved this information collection requirement for use through January 31, 2001. DoD proposes that OMB extend its approval for use through January 31, 2004.

DATES: DoD will consider all comments received by April 9, 2001.

ADDRESSES: E-mailed comments are preferred. Submit comments to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0398 in the subject line.

Respondents that cannot submit comments by e-mail may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0398.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0293. The information collection requirements addressed in this notice are available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html. Paper copies are available from Mr. Rick Layser, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Section 211.273, Substitutions for Military or Federal Specifications and Standards, and related clause at DFARS 252.211–7005; OMB Control Number 0704–0398.

Needs and Uses: This information collection permits offerors to propose Single Process Initiative (SPI) processes as alternatives to military or Federal specifications and standards cited in DoD solicitations for previously developed items. DoD uses the information to verify Government acceptance of an SPI process as a valid replacement for a military or Federal specification or standard.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 771.

Number of Respondents: 257.

Responses Per Respondent: 3.

Annual Responses: 771.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.211–7005, Substitutions for Military or Federal Specifications and Standards, is used in solicitations and contracts for previously developed items. The clause encourages offerors to propose management or manufacturing processes, that have been previously accepted by DoD under the SPI program, as alternatives to military or Federal specifications and standards cited in the solicitation. An offeror proposing to use an SPI process must—

(1) Identify the specific military or Federal specification or standard for which the SPI process has been accepted;

(2) Identify each facility at which the offeror proposes to use the SPI process in lieu of military or Federal specifications or standards cited in the solicitation;

(3) Identify the contract line items, subline items, components, or elements affected by the SPI process; and

(4) If the proposed SPI process has been accepted at the facility at which it is proposed for use, but is not yet listed at the SPI Internet site, submit documentation of DoD acceptance of the SPI process.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 01–2991 Filed 2–5–01; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0341]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Acquisition of Information Technology

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed

extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through September 30, 2001. DoD proposes that OMB extend its approval for use through September 30, 2004.

DATES: DoD will consider all comments received by April 9, 2001.

ADDRESSES: E-mailed comments are preferred. Submit comments to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0341 in the subject line.

Respondents that cannot submit comments by e-mail may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0341.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0326. The information collection requirements addressed in this notice are available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html. Paper copies are available from Ms. Susan Schneider, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology, and the associated clauses at DFARS 252.239–7000 and 252.239–7006; OMB Control Number 0704–0341.

Needs and Uses: This requirement provides for the collection of information from contractors regarding security requirements for computers used to process classified information; tariffs pertaining to telecommunications services; and proposals from common carriers to perform special construction under contracts for telecommunications services. Contracting officers and other DoD personnel use the information to ensure that computer systems are adequate to protect against unauthorized release of classified information; to participate in the establishment of tariffs for telecommunications services; and to establish reasonable prices for special construction by common carriers.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,806.

Number of Respondents: 1,598.

Responses Per Respondent: Approximately 1.

Annual Responses: Approximately 1,630.

Average Burden Per Response: 1.13 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.239–7000, Protection Against Compromising Emanations, requires that the contractor provide, upon request of the contracting officer, documentation supporting the accreditation of a computer system to meet the appropriate security requirements.

The clause at DFARS 252.239–7006, Tariff Information, requires that the contractor provide to the contracting officer: (1) Upon request, a copy of the contractor's existing tariffs; (2) before filing, a copy of any application to a Federal, State, or other regulatory agency for new rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, and, upon request, a copy of all information, material, and data developed or prepared in support of or in connection with such an application; and (3) a notification to the contracting officer of any application submitted by anyone other than the contractor that may affect the rate or conditions of services under the agreement or contract.

DFARS 239.7408 requires the contracting officer to obtain a detailed special construction proposal from a common carrier that submits a proposal or quotation that has special construction requirements related to the performance of basic telecommunications services.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 01–2992 Filed 2–5–01; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0245]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Transportation

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through July 31, 2001. DoD proposes that OMB extend its approval for use through July 31, 2004.

DATES: DoD will consider all comments received by April 9, 2001.

ADDRESSES: E-mailed comments are preferred. Submit comments to: *dfars@acq.osd.mil.* Please cite OMB Control Number 0704–0245 in the subject line.

Respondents that cannot submit comments by e-mail may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0245.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288. The information collection requirements addressed in this notice are available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html. Paper copies are available from Ms. Amy Williams, OUSD (AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and Related Clauses at DFARS 252.247; OMB Control Number 0704–0245.

Needs and Uses: DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; and to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 150,114.

Number of Respondents: 60,270.

Responses Per Respondent: Approximately 8.

Annual Responses: 465,882.

Average Burden Per Response: .32 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.247–7000, Hardship Conditions, is prescribed at 247.270–6(a) for use in all solicitations and contracts for acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247–7001, Price Adjustment, is prescribed at 247.270–6(b) for use in solicitations and contracts when using sealed bidding to acquire stevedoring services. Paragraphs (b) and (c) of the clause require the contractor to notify the contracting officer of certain changes in the wage rates or benefits that apply to its direct labor employees. Paragraph (g) of the clause requires the contractor to include with its final invoice a statement that the contractor has experienced no decreases in rates of pay for labor or has notified the contracting officer of all such decreases.

The clause at DFARS 252.247–7002, Revision of Prices, is prescribed at 247.270–6(c) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247–7007, Liability and Insurance, is prescribed at 247.270–6(g) for use in all solicitations and contracts for acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, is prescribed at 247.573(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, is prescribed at 247.573(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (d) of the clause requires the contractor to submit requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e) of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of landing. Paragraph (f) of the clause requires the contractor to represent, with its final invoice, that: (1) No ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Paragraph (h) of the clause requires the contractor to flow down these requirements to subcontracts that exceed the simplified acquisition threshold and are either noncommercial subcontracts or certain types of commercial subcontracts.

The clause at DFARS 252.247–7024, Notification of Transportation of Supplies by Sea, is prescribed for use at 247.573(c) in all contracts for which the offeror represented, by completion of the provision at 252.247–7022, that it did not anticipate transporting any supplies by sea in performance of the contract. Paragraph (a) of the clause requires the contractor to notify the contracting officer if the contractor learns after award of the contract that supplies will be transported by sea.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 01–2993 Filed 2–5–01; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

National Defense University

Eighth Annual National Security Education Program (NSEP) Institutional Grants Competition

AGENCY: National Defense University, National Security Education Program (NSEP), DoD.

ACTION: Notice.

SUMMARY: The NSEP announces the opening of its eighth Annual Competition for Grants to U.S. Institutions of Higher Education.

DATES: The 2001 NSEP Grants Competition begins on Monday, February 5, 2001. Preliminary five-page proposals are due Monday, April 9, 2001.

ADDRESSES: Grants Solicitations (applications and guidelines) will be available and may be downloaded from the NSEP home page (*http://www.ndu.edu/nsep*) beginning Monday, February 5, 2001. As alternate methods, you may obtain copies of the solicitation package by writing to: NSEP, Institutional Grants, Rosslyn PO Box 20010, 1101 Wilson Blvd, Suite 1210, Arlington, VA 22209–2248; by facsimile request (703) 696–5667; or by sending an electronic mail request to: *nsepo@ndu.edu*.

FOR FURTHER INFORMATION CONTACT: Carol Anne Spreen, Program Officer for Institutional Grants, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Arlington, Virginia 22209–2248; electronic mail address: *spreenc@ndu.edu*.

Dated: January 11, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–3036 Filed 2–5–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Interim Payment Requests

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Office of the Director of Defense Procurement, in conjunction with the National Contract Management Association, is sponsoring a public meeting to discuss issues and impacts related to a proposed requirement that contractors relate billed costs in interim payment requests under cost-reimbursement contracts to specific contract line items. The Defense Finance and Accounting Service (DFAS) has proposed this requirement as a part of their Concept of Operations for the DoD's new payment systems, the DFAS Corporate Database and the Defense Procurement Payment System. Currently, unless the contract specifies otherwise, contractors need not identify specific contract line items being billed in interim payment requests. Typically, when not identified, DFAS prorates the billed costs against all contract line items.

The Director of Defense Procurement would like to hear the views of interested parties on what they believe to be the key issues and impacts pertaining to this proposed new requirement and any potential alternatives. In particular, we are interested in the views of specialists in the areas of cost accounting, billing, and the supporting computer systems.

DATES: The public meeting will be conducted at the address shown below on February 22, 2001, from 10:00 a.m. to 2:00 p.m., local time.

ADDRESSES: The public meeting will be conducted at the National Contract Management Association, 1912 Woodford Road, Vienna, VA 22182.

FOR FURTHER INFORMATION CONTACT: Bob Bemben, Office of Cost, Pricing, and Finance, by telephone at (703) 693–0196; by FAX at (703) 693–9616; or by e-mail at *robert.bemben@osd.mil.*

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 01–2990 Filed 2–5–01; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed new surveys, EIA–911A–C (Supplement), ''Biweekly Surveys to Assess Effects of Interruptions of Natural Gas Supplies in the Northeast United States.''

DATES: Comments must be filed on or before April 9, 2001. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to William Trapmann, (EI–44), ATTN: Form EIA–911, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Trapmann may be reached by telephone at 202–586–6408, by FAX at 202–586–4420 or by e-mail at *william.trapmann@eia.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the forms and instructions should be directed to Mr. Trapmann at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (FEA Act) (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. To carry out this program, section 13(b) of the FEA Act (15 U.S.C. 772(b)) states that ''All persons owning or operating facilities or business premises who are engaged in any phase of energy supply or major energy consumption shall make available to the (Administrator) such information and periodic reports, records, documents, and other data, relating to the purposes of this Act, * * *''

Under the authorities granted, EIA conducts mandatory surveys of companies involved in energy supply and consumption. EIA's current surveys of energy suppliers include monthly surveys of petroleum product resellers and retailers, electric power supply and marketing companies, and natural gas supply companies. Collecting information from all types of energy supply companies provides EIA with information used to accurately estimate energy prices and quantities. Users of EIA's information include analysts in Federal, State, and local governments, as well as analysts in energy trade associations, energy companies, the media, consultants, and other private organizations.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under section 3507(a) of the Paperwork Reduction Act of 1995.

In order to assess the interactions of the natural gas and distillate energy markets in the Northeast during the winter 2000/2001 heating season and to answer questions on the effects that ''fuel-switching'' customers (i.e., those that switch between natural gas and distillate) have on demand and market prices, EIA needs to collect information that is currently not available. An emergency clearance request was submitted to OMB on December 26, 2000, requesting OMB approval by January 3, 2001, to use the following three surveys to obtain biweekly data for the seven-week period, January 1, 2001, through April 8, 2001. OMB approved this request on January 8, 2001. In order for EIA to analyze data for the entire winter 2000/2001 heating season, EIA needs similar data for the October through December 2000 period.

- Form EIA–911A (Supplement), ''Biweekly Gas Supplier Survey'' EIA will collect information on a biweekly basis from a sample of natural gas suppliers in the Northeast regarding deliveries and interruptions of service for the October through December 2000 period. For each two-week period, data

will be collected on deliveries (firm, non-firm); interruptions (volumes and days interrupted, both firm and non-firm); and customers interrupted.

• Form EIA–911B (Supp.), ''Biweekly Petroleum Product Suppliers Sales Report'' For the October through December 2000 period, EIA will collect information on a biweekly basis from petroleum product suppliers in the Northeast regarding customers serviced; volumes (gallons) sold by product to customers with fuel-switching capabilities; total retail and wholesale volumes sold by product, and beginning and ending secondary-system inventories by product.

• Form EIA–911C (Supplement), ''Biweekly Natural Gas And Petroleum Customer Survey.''

For the October through December 2000 period, EIA will collect information on a biweekly basis from Northeast energy customers with fuel-switching capabilities regarding total natural gas and natural gas deliveries; involuntary interruptions of natural gas deliveries (firm/non-firm); substitutions of petroleum products as fuel in place of natural gas; and inventories of distillate fuel oil and other fuels.

II. Current Actions

EIA will be requesting a one-time OMB approval for the three surveys through August 31, 2001, to collect data for seven two-week periods (September 24, 2000 through December 31, 2000).

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Are the proposed collections of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Reporting burden is estimated to average:

EIA–911A (Supp.) = 2 hours per two-week reporting period,

EIA–911B (Supp.) = 1 hour per two-week reporting period, and

EIA–911C (Supp.) = 2 hours per two-week reporting period.

The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate are the burden estimates?

D. EIA estimates that the only cost to a respondent is for the time it will take to prepare for and complete the surveys. Will a respondent incur any other start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of these collections of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information that would be useful for developing the accurate and independent natural gas data that would be available from the proposed survey? If so, specify the agency, the data element(s), the methods of collection, and the name and phone number of someone that EIA may contact for additional information.

As a Potential User of the Information to be Collected

A. Is the information useful at the levels of detail to be collected?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, please specify the sources and their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. The comments also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, January 31, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 01–3055 Filed 2–5–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–74–000]

Natural Gas Pipeline Company of America; Notice of Application

January 31, 2001.

Take notice that on January 25, 2001, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP01–74–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its partial ownership of certain pipeline facilities located in the High Island area offshore Texas (HI), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

The facilities proposed for abandonment include Natural's 10.0 percent interest in 2.31 miles of a 24-inch diameter lateral originating at the HI Block A–370 platform and terminating at a subsea tap located in HI Block A–350, including related tap and meter facilities and appurtenances. Natural also proposes to abandon its 4.912 percent interest in 6.01 miles of a 24-inch diameter lateral originating at a subsea tap in HI Block A–350 and terminating at the manifold platform located in HI Block A–330.

Natural proposes to abandon the facilities by sale to Transcontinental Gas Pipe Line Corporation (Transco). Natural explains that it has not used the facilities to move its own supplies since 1987 and that its only current shippers are interruptible transportation customers. Natural further explains that Transco would provide service to the customers at mutually acceptable rates, terms and conditions of service, so that no customers would be disadvantaged by the abandonment. It is stated that Natural would transfer its ownership in the facilities to Transco at no cost, since they have been fully depreciated. It is explained that Transco would acquire the facilities under its blanket certificate issued in Docket No. CP82–426–000.

Any questions regarding the application should be directed to Phillip R. Telleen, Esq., Attorney, at (630) 691–3749, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148–5072.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 21, 2001, file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the 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 proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://ferc.fed.us/efi/doorbell.htm*.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–2997 Filed 2–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–75–000]

Natural Gas Pipeline Company of America; Notice of Application

January 31, 2001.

Take notice that on January 25, 2001, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its partial ownership of certain pipeline facilities located in the East Cameron area offshore Louisiana (EC), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

The facilities proposed for abandonment include Natural's 33.33 percent interest in 5.47 miles of a 10-inch diameter lateral originating at EC Block 347 and terminating at a 12-inch subsea tap located in Block EC–338, including related tap and meter facilities and appurtenances.

Natural proposes to abandon the facilities by sale to Tennessee Gas Pipeline Company (Tennessee). Natural explains that it has not used the facilities to move its own supplies since 1993 and that its only current shippers are interruptible transportation customers. Natural further explains that Tennessee would provide service to any shipper on a nondiscriminatory basis, so that no customers would be disadvantaged by the abandonment. It is stated that Natural would transfer its ownership in the facilities to Tennessee at no cost, since they have been fully depreciated. It is explained that Tennessee would acquire the facilities under its blanket certificate issued in Docket No. CP82–413–000.

Any questions regarding the application should be directed to Phillip R. Telleen, Esq., Attorney, at (630) 691–3749, Natural Gas Pipeline Company of America, 747 East 22nd Street, Lombard, Illinois 60148–5072.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 21, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the 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 proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://ferc.fed.us/efi/doorbell.htm*.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–2998 Filed 2–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–30–000]

South Carolina Public Service Authority v. Duke Energy Corporation; Notice of Complaint

January 31, 2001.

Take notice that on January 30, 2001, South Carolina Public Service Authority (Santee Cooper) filed a complaint and request for fast track procedures against Duke Energy Corporation, pursuant to Rule 206(h) of the Commission's Rules of Practice and Procedure, 18 CFR Section 385.206(h), the Commission for the following relief:

(1) Duke Energy Transmission (Duke ET), a division of Duke Energy Corporation should be directed to find that Available Transfer Capability (ATC) exists for the transmission of power under a sales agreement Santee Cooper has entered into in support of wholesale sales by Santee Cooper that replace sales traditionally made by Duke Power, another division of Duke Power Corporation.

(2) Duke Power should be directed to make power available under the power sales agreement between Duke Power and Santee Cooper for transmission to Santee Cooper's wholesale customer,

Saluda River, without requiring Santee Cooper to purchase unnecessary transmission service from Duke ET.

(3) In the event Santee Cooper is compelled by Duke Power to purchase unnecessary transmission service prior to the resolution of this proceeding, the Commission should require Duke Power to refund such revenues as are collected.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before February 9, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before February 9, 2001. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 01–3002 Filed 2–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1060–000, et al.]

Southern Company Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 31, 2001.

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER01–1060–000]

Take notice that on January 26, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered seven (7) long term firm point-to-point transmission service agreements between Southern Company and Carolina Power and Light Company, Duke Power Company, The Energy Authority, Entergy Services Inc., as agent for the Entergy operating companies, Oglethorpe Power Corporation, Sempra Energy Trading Corp. (Sempra) (for OASIS Request 191679); and Sempra (for OASIS Request 191684); three (3) umbrella agreements for short-term firm point-to-point transmission service between Southern Company and Amerada Hess Corporation (Amerada), DTE Energy Trading, Inc. (DTE), and North Carolina Municipal Power Agency Number 1 (NCMPA); and three (3) umbrella agreements for non-firm point-to-point transmission service between Southern Company and Amerada, DTE, and NCMPA under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Fourth Revised Volume No. 5).

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. AES NewEnergy, Inc.

[Docket No. ER01–1061–000]

Take notice that on January 26, 2001, AES NewEnergy, Inc. (AES NewEnergy), tendered for filing a notice of termination pursuant to Section 18.3 of the California Power Exchange Corporation (PX) FERC Electric Service Tariff No. 2 (PX Tariff) that was accepted by the Commission to be effective immediately, relating to AES NewEnergy's termination of its Participation Agreement with the PX.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. AES Placerita, Inc.

[Docket No. ER01–1062–000]

Take notice that on January 26, 2001, AES Placerita, Inc. (AES Placerita), tendered for filing a notice of termination pursuant to Section 18.3 of the California Power Exchange Corporation (PX) FERC Electric Service Tariff No. 2 (PX Tariff) that was accepted by the Commission to be effective immediately, relating to AES Placerita's termination of its Participation Agreement with the PX.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Xcel Energy Services, Inc.

[Docket No. ER01–1063–000]

Take notice that on January 26, 2001, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), tendered for filing a Long Term Firm Point-to-Point Transmission Service Agreement between Public Service and WestPlains Energy under Xcel's Joint Open Access Transmission Service Tariff.

XES requests that this agreement, designated as Original Service Agreement No. 102–PSCo under the Joint OATT, Original Volume No. 2, pursuant to Order No. 614, become effective on January 12, 2001.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Midwest Energy, Inc.

[Docket No. ER01–1064–000]

Take notice that on January 26, 2001, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission a Transaction Service Agreement entered into between Midwest and Kansas Municipal Energy Agency.

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Western Resources, Inc.

[Docket No. ER01–1065–000]

Take notice that on January 26, 2001, Western Resources, Inc. (WR), tendered for filing a Service Agreement between WR and Missouri River Energy System (MRES). WR states that the purpose of this agreement is to permit EKPC to take service under WR' Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective December 1, 2000.

Copies of the filing were served upon MRES and the Kansas Corporation Commission.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER01–1066–000]

Take notice that on January 26, 2001, the American Electric Power Service Corporation (AEPSC), tendered for filing six service agreements with Enron Power Marketing, Inc., Nevada Power

Company and New Energy Ventures, L.L.C. for transactions exceeding one year in length by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit these service agreements to be made effective on or prior to January 1, 2001.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. American Transmission Company LLC

[Docket No. ER01–1067–000]

Take notice that on January 26, 2001, American Transmission Company LLC (ATCLLC), tendered for filing a Network Operating Agreement and a Network Integration Service Agreement between ATCLLC and Rock County Electric Cooperative Association.

ATCLLC requests an effective date of January 1, 2001.

Comment date: February 16, 2001, in accordance with Standard Pargraph E at the end of this notice.

9. American Transmission Company LLC

[Docket No. ER01–1068–000]

Take notice that on January 26, 2001, American Transmission Company LLC (ATCLLC), tendered for filing a Network Operating Agreement and Network Integration Transmission Service Agreement between ATCLLC and Wisconsin Power and Light Company.

ATCLLC requests an effective date of January 1, 2001.

ATCLLC requests an effective date of January 1, 2001.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. American Transmission Company LLC

[Docket No. ER01–1069–000]

Take notice that on January 26, 2001, American Transmission Company LLC (ATCLLC), tendered for filing four Short-Term Firm and Non-Firm Point-to-Point Transmission Service Agreements between ATCLLC and the City of Columbia, MO and Manitowoc Public Utilities.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Southwest Power Pool, Inc.

[Docket No. ER01–1070–000]

Take notice that on January 26, 2001, Southwest Power Pool, Inc. (SPP), tendered for filing an executed service agreement for Firm Point-to-Point Transmission Service with Aquila Energy Marketing Corporation (Aquila).

SPP seeks an affective date of January 1, 2001 for this service agreement.

A copy of this filing was served on Aquila.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Badger Windpower, LLC

[Docket No. ER01–1071–000]

Take notice that on January 26, 2001, Badger Windpower, LLC (Badger), tendered for filing an application for authorization to sell wholesale power at market-based rates. Badger also requested that the Commission accept for filing a long-term Renewable Power Purchase Agreement for the sale of power from Badgeer to Wisconsin Electric Power Company as a stand-alone rate schedule under its proposed market rate tariff. Badger has requested that this Market Rate Tariff and Reserve Power Purchase Agreement become effective upon commencement of service.

Copies of this filing has been served on the Public Service Commission of Wisconsin, Florida Public Service Commission, Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, and the Council of the City of New Orleans.

Comment date: February 16, 2001, in accordance with Standard Pargraph E at the end of this notice.

13. UtiliCorp United Inc.

[Docket No. ER01–1072–000]

Take notice that on January 26, 2001, UtiliCorp United Inc. (UtiliCorp), tendered for filing Service Agreement No. 106 under UtiliCorp's FERC Electric Tariff, Third Revised Volume No. 24, a network transmission service agreement between UtiliCorp's Missouri Public Service division and the City of El Dorado Springs, Missouri.

UtiliCorp requests an effective date for the service agreement of December 28, 2000.

Comment date: February 16, 2001, in accordance with Standard Pargraph E at the end of this notice.

14. Central Vermont Public Service Corporation

[Docket No. ER01–1073–000]

Take notice that on January 26, 2001, Central Vermont Public Service Corporation (Central Vermont or Company), tendered for filing executed Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with The Legacy Energy Group, LLC, NRG Power Marketing, Inc. and Reliant Energy Services, Inc. under Central Vermont's FERC Electric Power, First Revised Volume No. 7.

Copies of the filing were served upon the above-mentioned companies and the Vermont Public Service Board.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–286–001]

Take notice that on January 26, 2000, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing a revised Wolverine Open Access Transmission Tariff to comply with the Commission's December 29, 2000 order in this docket.

Copies of the filing were served on Wolverine's four wholesale power customers and the Michigan Public Service Commission.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corporation

[Docket No. ER01–257–002]

Take notice that on January 26, 2001, the American Electric Power Service Corporation (AEPSC), tendered for filing an Amendment to Filing in Docket No. ER01–257–000. In AEPSC's initial filing on October 25, 2000, AEPSC failed to provide designations for a Transaction Confirmation Agreement (Confirmation Agreement) which was submitted for filing by the AEP Companies in the above referenced docket. Pursuant to the Commissions' Order No. 614, AEPSC respectfully designates the Confirmation Agreement with the City of Vernon, California as Service Agreement No. 277 under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997, and has been designated AEP

Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit this the Confirmation Agreement to be made effective as initially requested on or prior to October 1, 2000.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. TXU Energy Trading Company

[Docket No. ER99–3333–004]

Take notice that on January 29, 2001, TXU Energy Trading Company (TXU ET), tendered for filing a report concerning change of status and an updated market power analysis in connection with TXU ET's market-based rate authority.

Comment date: February 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company, Susquehanna Electric Company, PECO Energy Power Company

[Docket No. ER00–803–002]

Take notice that on January 26, 2001, Exelon Generation Company, L.L.C., Susquehanna Electric Company, and PECO Energy Power Company; (PEPCo), tendered for filing a compliance filing consisting of a revised amendment to an agreement of lease between themselves and PECO Energy Company (PECO) designated as PEPCo's Rate Schedule FPC No. 2, to be effective on January 12, 2001.

Copies of this filing were served on PECO.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER00–803–003]

Take notice that on January 26, 2001, PECO Energy Company (PECO), tendered for filing a compliance filing consisting of corrected sheets to fourteen Interconnection Agreement between PECO and Exelon Generation Company, L.L.C. (ExGen) or its subsidiary Susquehanna Electric Company (SECO) designated as PECO's Rate Schedules FERC No. 124–133 and 135–138, to be effective on 12 January 2001.

Copies of this filing were served on ExGen, the Pennsylvania Public Utility Commission and parties on the service list in this docket.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. AES Mohave, LLC

[Docket No. EG01–107–000]

Take notice that on January 25, 2001, AES Mohave, LLC (AES Mohave) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. AES Mohave intends to purchase certain undivided interests in the Mohave project, a 1,580 megawatt coal-fired power plant, located at the southern tip of Clark County, Nevada.

Comment date: February 21, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

21. GenPower McIntosh, LLC

[Docket No. EG01–106–000]

Take notice that on January 25, 2001, GenPower McIntosh, LLC (Applicant), a Delaware limited liability company, whose address is 1040 Great Plain Avenue, Needham, MA, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant intends to construct an approximate 529 MW natural gas-fired combined cycle independent power production facility (which output may increase to 595 MW under certain conditions) in Effingham County, Georgia (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the southern United States.

Comment date: February 21, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

22. San Gorgonio Power Corporation, Mountain View Power Partners, LLC and SeaWest WindPower, Inc.

[Docket No. EC01–61–000]

Take notice that on January 26, 2001, San Gorgonio Power Corporation (San Gorgonio), Mountain View Power Partners, LLC (Mountain View) and SeaWest WindPower, Inc. (SeaWest) tendered for filing an application for approval pursuant to section 203 of the Federal Power Act for a proposed transaction whereby San Gorgonio will acquire a 100 percent ownership interest in Mountain View. Mountain View is constructing a 44.4 MW wind power generating plant (Project) located in the San Gorgonio Pass of Riverside County, California, which is expected to begin producing test power for sale on or about February 15, 2001. Mountain View is currently wholly-owned by SeaWest. Pursuant to an acquisition agreement, the transaction would be consummated after the Project commences commercial operation, which is expected to occur by May 1, 2001. The transaction is expected to result in the disposition of FERC-jurisdictional facilities, including Mountain View's market-based rate tariff and interconnection facilities connecting the Project to the transmission facilities of Southern California Edison Company.

A copy of this Application was served upon the California Public Utilities Commission and the Governor of the State of California.

Comment date: February 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–3033 Filed 2–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2177–041]

Georgia Power Company; Notice of Availability of Draft Environmental Assessment

January 31, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application filed August 24, 2000, requesting the Commission's authorization to permit the City of Columbus Water Works (CWW) to withdraw up to 90.0 million gallons per day (MGD) from Lake Oliver reservoir, and has prepared a Draft Environmental Assessment (Draft EA) for the proposed and alternative actions.

The proposed water withdrawal, which is equivalent to approximately 140 cubic feet per second, is needed to provide treated water for domestic and industrial consumption in the Columbus, Georgia region. CWW's existing intake and pumping station at Lake Oliver are able to accommodate the withdrawal of 90 MGD; consequently, the proposed action would not involve any land-disturbing or new construction activities on project lands.

Copies of the Draft EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The document also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments on the Draft EA should be filed within 30 days from the date of this notice and should be addressed to Dave Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''Lake Oliver Water Withdrawal, Project No. 2177–041'' to the first page of your comments. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

For further information, please contact Jim Haimes, staff environmental protection specialist, at (202) 219–2780 or at his E-mail address: james.haimes@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 01–3000 Filed 2–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2901–008; Project No. 2902–009 Virginia]

Nekoosa Packaging Corporation; Notice of Availability of Draft Environmental Assessment

January 31, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Big Island Hydroelectric Project and the Holcomb Rock Hydroelectric Project, located on the James River in Bedford and Amherst Counties, Virginia, and has prepared a Draft Environmental Assessment (DEA) for the project. No federal lands or Indian reservations are occupied by project works or located within the project boundary.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2901–008 and Project No. 2902–009 to all comments. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

For further information, contact James T. Griffin at (202) 219–2799 or Monte TerHaar at (202) 219–2768.

David P. Boergers,

Secretary.

[FR Doc. 01–3001 Filed 2–5–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for a New License

January 31, 2001.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2145.

c. *Date filed:* January 12, 2001.

d. *Submitted By:* Public Utility District No. 1 of Chelan County, Washington.

e. *Name of Project:* Rocky Reach Project.

f. *Location:* On the Columbia River near the city of Wenatchee, in Chelan and Douglas counties, in Washington state.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at Public Utility District No. 1 of Chelan County, Washington. Contact Rosana Sokolowski at 509–663–8121 or Email: rosana@chelanpud.org.

i. *FERC Contact:* Vince E. Yearick, (202) 219–3073, *vince.yearick@ferc.fed.us.*

j. *Expiration Date of Current License:* June 30, 2006.

k. *Project Description:* The Rocky Reach project consists of a 130-foot high concrete gravity dam on the Columbia River. The powerhouse is 1,088 feet long, 210 feet wide and 218 feet high. It contains 11 generating units with a peak capacity of 1,280 megawatts. The spillway includes 12 gates, each 50 feet wide, that regulate the surface elevation of the reservoir. The project includes fish passage facilities.

1. The license states its unequivocal intent to submit an application for a new license for Project No. 2145. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be

filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 2004.

A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The notice may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 01–2999 Filed 2–05–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6942–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Community Right-to-Know Reporting Requirements under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.08. This ICR renews a previously approved ICR No. 1352.07 (expires August 31, 2001, OMB Control Number 2050–0072). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 9, 2001.

ADDRESSES: U.S. Environmental Protection Agency, Chemical Emergency Preparedness and Prevention Office (Mailcode 5104A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting the person in **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, 202–564–8019, fax no. 202–564–8233, or e-mail: Jacob.Sicy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are those facilities required to prepare or have available an MSDS for a hazardous chemical under the Hazard Communication Standard (HCS) of the Occupational Safety and Health Administration. Entities more likely to be affected by this action may include chemical, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Title: Community Right-to-Know Reporting Requirements under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.08.

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA section 311 requires owners and operators of facilities subject to OSHA HCS to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC, LEPC, and LFD with jurisdiction over their facility. This activity is to be completed on March 1 of each year, on the inventory of chemicals in the previous calendar year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.6 hours for new and newly regulated facilities and approximately 0.6 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3.1 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.17 hours per request. The average burden for state and local governments for managing and maintaining the reports is estimated to be 32.25 hours. The average burden for maintaining and updating the 312 database is 320 hours.

The total burden to facilities over the three-year information collection period is estimated to be 5,182,000 hours, at a cost of $166 million, with an associated state and local burden of 401,100 hours at a cost of $8.1 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of

collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 25, 2001.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 01–3088 Filed 2–5–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6942–1]

Notice of Open Meeting—The Environmental Financial Advisory Board Cost-Effective Environmental Management Workgroup

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board, Cost Effective Environmental Management Workgroup (CEM) will hold an open meeting in Washington, DC on March 5, 2001. The meeting will be held at the National Press Club, 13th Floor in the Zenger Room, 14th and F Streets, NW, Washington, DC. The meeting will begin at 9:00 am and end at approximately 4:00 pm.

Over the past decade, public utilities have accepted the challenge to become more efficient and cost effective. This meeting will address industry-wide programs that have been initiated as well as specific programs of individual utilities. The meeting will consist of a group of respected panelists who will share their perspectives on new and innovative public sector initiatives helping to lower the life cycle cost of environmental protection. Self-assessment, peer review, benchmarking, consultant evaluations, mock completion, and certification and accreditation will be described as tools that can be used to improve competitiveness. The meeting will provide an overview for the Environmental Financial Advisory Board as to the status of the industry and possible areas where policy recommendations to the EPA may be appropriate.

The meeting is open to the public, but seating is limited. To confirm your participation or get additional information, please contact Vanessa Bowie, U.S. EPA on 202 564–5186.

Dated: January 26, 2001.

Joseph Dillon,

Acting Comptroller.

[FR Doc. 01–3090 Filed 2–5–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6941–9]

Notice of Open Meeting—Environmental Financial Advisory Board

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in Washington, DC on March 6–7, 2001. The meeting will be held at the National Press Club, 13th Floor in the Holeman Lounge, 14th and F Street, NW, Washington, DC. The Tuesday, March 6 session will run from 8:30 a.m. to 5:00 p.m. and the Wednesday, March 7 session will begin at 8:00 a.m. and end at approximately 11:00 a.m.

EFAB is chartered with providing analysis and advice to the EPA Administrator and program offices on environmental finance. The purpose of this meeting is to discuss progress with work products under EFAB's current strategic action agenda. Environmental financing topics expected to be discussed include: State revolving funds, stewardship financing, brownfields legislation, cost-effective environmental management, and international initiatives.

The meeting is open to the public, but seating is limited. To confirm your participation or get further information, please contact Vanessa Bowie, EFAB Coordinator, U.S. EPA on (202) 564–5186.

Dated: January 26, 2001.

Joseph Dillon,

Acting Comptroller.

[FR Doc. 01–3091 Filed 2–5–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 29, 2001.

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 March 8, 2001. 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.: 3060–0702.

Title: Amendment of Parts 20 and 24 of the Commission Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Amendment of the Commission's Cellular PCS Cross-Ownership Rule.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 150.

Estimated Time Per Response: 20 hours.

Frequency of Response: Recordkeeping requirement, and on occasion reporting requirement.

Total Annual Burden: 2,251 hours.

Total Annual Cost: $1,079,800.

Needs and Uses: The information will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to bid in the broadband PCS auctions and hold a broadband PCS license. Without such information the Commission could not determine whether to issue the license to the successful applicant, and would not be able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–3018 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 26, 2001.

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 March 8, 2001. 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.: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 120.

Estimated Time Per Response: 10–60 hours.

Frequency of Response: Third party disclosure requirement, on occasion reporting requirements.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act, specified in the Public Notice, and also the Order. Carriers seeking designation for service provided on non-tribal lands must provide an affirmative statement from a court of competent jurisdiction or the state commission that the state lacks jurisdiction over the carrier.

OMB Control No.: 3060–0854.

Title: Truth-in-Billing Format—CC Docket No. 98–170.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,099.

Estimated Time Per Response: 5–465 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Total Annual Burden: 1,565,775 hours.

Total Annual Cost: $1,000,000–$9,000,000.

Needs and Uses: The Commission adopted rules to make consumers' telephone bills easier to read and understand. Telephone bills do not provide necessary information in a user-friendly format. As a result, consumers are experiencing difficulty in understanding their bills, in detecting fraud, in resolving billing disputes, and in comparing carrier rates to get the best value for themselves. The information will be used by consumers to help them understand their telephone bills. Consumers need this information to protect them against fraud and to help them resolve billing disputes if they wish.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–3020 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

January 30, 2001.

SUMMARY: The Federal Communications Commissions, 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, 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 March 8, 2001. 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 Commission, Room 1–A804, 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: 3060–0806.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form Number: FCC Forms 470 and 471.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions; businesses or other for-profit entities; State, local, or tribal governments.

Number of Respondents: 60,000.

Estimated Time per Response: 4 to 4.5 hours.

Frequency of Response: Recordkeeping; on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 470,000 hours.

Total Annual Costs: None.

Needs and Uses: The FCC adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must submit a description of the desired services to the Administrator via FCC Form 470. FCC Form 471 is submitted by schools and libraries that have ordered telecommunications services, Internet access, and internal connections. The FCC uses this information to determine eligibility of the applicants.

OMB Control Number: 3060–0686.

Title: Streamlining the Internet Section 214 Authorization Process and Tariff Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,650.

Estimated Time per Response: 30 mins. to 3,028 hrs.

Frequency of Response: Recordkeeping; On occasion, quarterly, and annual reporting requirements; third party disclosure.

Total Annual Burden: 73,896 hours.

Total Annual Costs: $12,467,000.

Needs and Uses: On September 12, 2000, the FCC adopted an Order on Reconsideration in IB Docket No. 97–142, Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, which addressed petitions seeking reconsideration of the Report and Order in this proceeding in which the Commission modified its rules and policies regarding foreign participation in the U.S. telecommunications market. The Order on Reconsideration, drafted in response to the Telecommunications Act of 1996, mandates the FCC to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act and to eliminate unnecessary government regulation of the telecommunications industry. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections pertaining to Part 1 of the rules are necessary to determine whether the FCC should grant a license for proposed submarine cables landing in the United States.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–3019 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–38–D (Auction No. 38); DA 01–138]

Auction of Licenses for 700 Mhz Guard Bands; Status of FCC Form 175 Applications To Participate in the Auction

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the status of applications received by the Commission to participate in the 700 MHz Guard Bands Auction (Auction No. 38). This document identifies three applications that are accepted for filing and instructs those applicants on upfront payment information, bidding software and other pertinent information in reference to the auction. This document also identifies the 2 applications that have been found to be incomplete.

DATES: Auction No. 38 is scheduled to begin on Tuesday, February 13, 2001.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Auctions Legal Branch (regarding legal questions) or Craig Bomberger, Analyst, Auctions Operations (regarding bidding and auction structure) at (202) 418–0660; Linda Sanderson, Auctions Operations (regarding bidding and general filing status) at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released January 19, 2001 (*Auction No. 38 Public Notice*). The complete text of the *Auction No. 38 Public Notice*, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased form the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 445 12th Street, SW, Room CY–B400, Washington, DC 20554, (202) 314–3070. The *Auction No. 38 Public Notice* is also available on the Internet at the Commission's web site: *http://www.fcc.gov/wtb/documents.html*.

List of Attachments available at the FCC:

Attachment A—List of Accepted Applicants

Attachment B—List of Incomplete Applicants

1. The Federal Communications Commission (''FCC'') has received 5 FCC Form 175 applications to participate in Auction No. 38 scheduled to begin on Tuesday, February 13, 2001, for 8 licenses in the 700 MHz Guard Bands spectrum. The applications have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the following categories:

Accepted for Filing—3 Applications

Incomplete—2 Applications

Accepted: Applications accepted for filing are listed alphabetically in Attachment A. These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Friday, January 26, 2001. With respect to the FCC Form 175 applications, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications. Also, applicants are advised that Attachment A includes FCC account numbers that were automatically created by the FCC software system for each applicant, and which are applicable for bidding only.

Incomplete: Applications found to be incomplete are listed alphabetically in Attachment B. Applicants whose FCC

Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. These applicants may become qualified bidders only if they: (i) make the required upfront payments by 6:00 p.m. ET on Friday, January 26, 2001; and (ii) resubmit their applications by 6:00 p.m. ET on Friday, January 26, 2001, to correct the minor deficiencies indicated. Applicants must also maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules. In addition, applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant. These account numbers are applicable for bidding purposes only, should the applicant become eligible to participate in Auction No. 38.

2. The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than 6:00 p.m. ET on Friday, January 26, 2001. This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be rejected.

Upfront Payment Deadline

3. Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 38 are due at Mellon Bank, Pittsburgh, Pennsylvania, no later than 6:00 p.m. ET on Friday, January 26, 2001. Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers (TIN). No other payment method is acceptable for this auction. Applicants are reminded to use their TIN and not their FCC Account Numbers on the FCC Remittance Advice (FCC Form 159).

4. Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If such an application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its Taxpayer Identification Number (TIN) and wire transfer instructions, the upfront payment will be refunded automatically.

5. We remind applicants that to avoid untimely upfront payments they should discuss arrangements (including bank closing schedules) with their banker several days before making the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Detailed information regarding upfront payments can be found in the *Auction No. 38 Procedures Public Notice,* 65 FR 83024 (December 29, 2000) under section III.D.

Other Important Information

6. *Qualified Bidders:* Approximately one week after the upfront payment deadline, following Commission review of resubmitted FCC Form 175 applications, and correlation of payments and applications, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions on how to access the auction tracking tool software, a bidding schedule for the Mock Auction, and the bidding schedule for the first day of the auction.

7. *Prohibition of Collusion:* Bidders are reminded that § 1.2105(c) of the Commission's rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For Auction No. 38, this prohibition became effective at the filing deadline of short-form applications on Friday, January 12, 2001, and will end on the post-auction down payment deadline. The post-auction down payment deadline will be announced in a future public notice. If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under § 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic area. For further details regarding the prohibition against collusion refer to the *Auction No. 38 Procedures Public Notice* under section I.B.

8. Winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Bidders found to have violated the anti-collusion rule may be subject to sanctions. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. If a bidder is found to have violated the antitrust laws in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.

9. *Auction Discount Voucher:* On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher in the amount of $125,273,878.00. This Auction Discount Voucher may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order.

10. *Ex Parte Rule:* Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in § 1.1208 of the Commission's rules.

11. *Mock Auction:* All applicants found to be qualified bidders are eligible to participate in a mock auction on Friday, February 9, 2001. *In the Qualified Bidders Public Notice,* the Bureau will announce when software for the mock auction will be posted on the World Wide Web. Telephonic bidding will also be available during the mock auction.

12. *Remote Bidding Software:* Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. To bid electronically, applicants must complete the software order form included in the *Auction No. 38 Procedures Public Notice* or contact the Auctions Hotline at (717) 338–2888. To ensure timely delivery of remote bidding software before the auction begins, the Commission requests receipt of software orders by 6:00 p.m. ET on Monday, January 29, 2001.

13. The FCC Remote Bidding System requires access to a 900 service telephone line. The first minute of connection time to the 900 number service is at no charge, however, $2.30 will be charged for each additional minute. The minimum hardware and software specifications required for the FCC remote bidding system are listed:

- CPU: Intel® Pentium or above
- RAM: 16 MB (more recommended if you have multiple applications open)
- Hard Disk: 33 MB available disk space
- 1.44 MB Floppy Drive or CD-ROM Drive (to install the Remote Bidding System)

- Modem: v.32bis 28.8 kbps Hayes© compatible modem (56.6 kbps recommended)
- Monitor: VGA or above
- Mouse or other pointing device
- Microsoft® Windows™ 95™ or 98™
- We recommend that you use Netscape® Communicator™ 4.73. However, you can also use Netscape Communicator 4.5, 4.51, 4.61, 4.7 or 4.72.

To download Netscape Communicator 4.73 free of charge, access the Netscape download site at http://home.netscape.com/download/

Note: The FCC Remote Bidding System has not been tested in a Macintosh, OS/2, or Windows NT™ environment. Therefore, the FCC will not support operating systems other than Microsoft Windows 95 or 98. This includes any other emulated Windows environment.

14. *Long-Form Applications:* All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.

15. *Bidder Alerts:* All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

16. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 01–3044 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal(s)

The following information collection(s), which is/are being handled under this delegated authority, has/have received initial Board approval and is/are hereby published for comment. At the end of the comment period, the proposed information collection(s), along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before April 9, 2001.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, 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 mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson may be 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 a.m. and 5 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: 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: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, 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, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without R revision, of the Following Report

1. *Report title:* Transfer Agent Registration and Amendment Form.
Agency form number: FR TA–1.
OMB control number: 7100–0099.
Frequency: On occasion.
Reporters: State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies.

Annual reporting hours: 12.

Estimated average hours per response: 1.25 (registration), 0.17 (amendment).

Number of respondents: 7 (registrations), 15 (amendments). Small businesses are not affected.

General description of report: This information collection is mandatory (sections 17A(c), 17(a), and 23(a) of the Securities Exchange Act of 1934 as amended (15 U.S.C. 78q–1(c)(1) and (2), 78q(a)(3), and 78w(a)(1)) and is not given confidential treatment.

Abstract: The Securities Exchange Act requires any person acting as a transfer agent to register as such and to amend registration information when it changes. State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies register with the Federal Reserve System by submitting form TA–1. The information collected includes the company name, all business addresses, and several questions about the registrant's proposed activity as a transfer agent. The Federal Reserve uses the information to act upon applications and to aid in performing its supervisory duties.

Board of Governors of the Federal Reserve System, January 31, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–3004 Filed 2–5–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Boiling Springs, MHC, and Boiling Springs Bancorp, both of Rutherford, New Jersey; to merge with Ridgewood Financial, Inc., and Ridgewood Financial, MHC, both of Ridgewood, New Jersey, and thereby indirectly acquire 100 percent of the voting shares of Ridgewood Savings Bank of New Jersey, Ridgewood, New Jersey.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Centra Financial Holdings, Inc., Morgantown, West Virginia; to acquire 100 percent of Centra Financial Corporation-Morgantown, Inc., Morgantown, West Virginia, and Centra Financial Corporation-Martinsburg, Inc., Martinsburg, West Virginia. Acquirees have applied to become bank holding companies by acquiring shares of Centra Bank, Inc., Morgantown, West Virginia.

C. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. South Alabama Bancorporation, Inc., Mobile, Alabama; to merge with The Peoples BancTrust Company, Inc., Selma, Alabama, and thereby indirectly acquire voting shares of Peoples Bank & Trust Company, Selma, Alabama.

D. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. United Bancorp, Inc., Tecumseh, Michigan; to acquire 100 percent of the voting shares of United Bank & Trust–Washtenaw, Ann Arbor, Michigan (in organization).

Board of Governors of the Federal Reserve System, January 31, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–3007 Filed 2–5–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank 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 office 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 February 20, 2001.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Barry Park McIntosh, Jr., Paris, Tennessee; to acquire additional voting shares of Security Bancshares, Inc., Paris, Tennessee, and thereby indirectly acquire additional voting shares of Security Bank and Trust Company, Paris, Tennessee.

Board of Governors of the Federal Reserve System, January 31, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–3006 Filed 2–5–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless

otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 606901–1413:

1. AmericaUnited Bancorp, Inc., Schaumburg, Illinois; to engage *de novo* in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Mitsubishi Tokyo Financial Group, Inc., and The Bank of Tokyo–Mitsubishi, Ltd., both of Tokyo, Japan; to acquire KOKUSAI America Incorporated, New York, New York, and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y, providing certain agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y, and engaging in investment transactions as principal, pursuant to § 225.28(b)(8) of Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–3005 Filed 2–5–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, February 12, 2001.

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 items 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 indicated procedural and other information about the meeting.

February 2, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–3204 Filed 1–2–01; 4:09 pm.

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services Task Force Meeting; Notice

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting:

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 9 a.m.–6 p.m., February 7, 2001. 9 a.m.–4 p.m., February 8, 2001.

Place: The Westin Peachtree Plaza, 210 Peachtree Street, Atlanta, Georgia 30303–1745, telephone (404) 659–1400.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters To Be Discussed: Agenda items include: presentation of recommendations for approval for the following chapters: Cancer, Motor Vehicle Occupant Injury, Physical Activity, and Sociocultural Environment; presentation of the dissemination/implementation/evaluation plan, discussions on the expansion and update of the Vaccine Preventable Disease Chapter; and general updates on the following information: Methods, Clinical Guide, and Alcohol, Diabetes, Mental Health, Sexual Behavior, and Violence Prevention Chapters.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Stephanie Zaza, M.D., M.P.H., Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on February 6, 2001.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 31, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–3022 Filed 2–5–01; 8:45am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01F–0047]

The National Fisheries Institute; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the National Fisheries Institute has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation for control of foodborne pathogens in crustaceans and processed crustaceans.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–

206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3032.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 1M4727) has been filed by the National Fisheries Institute, 1901 North Fort Myer Dr., Arlington, VA 22209. The petition proposes to amend the food additive regulations in Part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) to provide for the safe use of ionizing radiation for control of foodborne pathogens in raw-, frozen-, cooked-, partially cooked-, shelled-, or dried-crustaceans, or cooked- or ready-to-cook crustaceans processed with batter, breading, spices, or small amounts of other food ingredients.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 11, 2001.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–3095 Filed 2–5–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1672]

Ashford Blood Bank, Inc.; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 0740–001

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the establishment license (U.S. License No. 0740–001) and product licenses issued to Ashford Blood Bank, Inc., for the manufacture of Whole Blood and Red Blood Cells. The proposed revocation is based on the fact that authorized FDA employees have been unable to gain access to either of the establishment's locations for the purpose of carrying out a required inspection of the facility and that the manufacturing of products has been discontinued to an extent that a meaningful inspection or evaluation cannot be made.

DATES: The firm may submit written requests for a hearing by March 8, 2001, and any data and information justifying a hearing by April 9, 2001. Other interested persons may submit written comments on the proposed revocation by April 9, 2001.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Okrasinski, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the establishment license (U.S. License No. 0740–001) and product licenses issued to Ashford Blood Bank, Inc., Ashford Medical Center, suite 401–402, Santurce, PR 00907, for the manufacture of Whole Blood and Red Blood Cells. Proceedings to revoke the licenses are being initiated because: (1) Authorized FDA employees have been unable to gain access to either of the establishment's locations for the purpose of carrying out a required inspection of the facility, and (2) manufacturing of products has been discontinued to an extent that a meaningful inspection or evaluation cannot be made.

In a certified return-receipt letter dated October 28, 1997, FDA notified an authorized official of the firm that FDA had suspended the firm's establishment and product licenses for the manufacture of Whole Blood and Red Blood Cells at its facilities at Santurce, PR, and Bayamon, PR. This action was based on the fact that significant deviations from the regulations were noted by FDA's San Juan district office during inspections of the facilities conducted August 19, 1997, through September 17, 1997, and September 9, 1997, through September 17, 1997, respectively. FDA's San Juan district office attempted to conduct additional inspections of the two Ashford facilities. On May 1, 1998, FDA investigators attempted to inspect the satellite collection facility at Bayamon, PR, but found that the facility was no longer in operation, and the manufacturing of Whole Blood and Red Blood Cells had been discontinued. On November 23, 1999, FDA investigators attempted to inspect the main facility in Santurce, PR, but found that the facility was no longer in operation and the manufacturing of Whole Blood and Red Blood Cells had been discontinued.

In certified, return-receipt letters dated April 13, 2000, sent to the firm's facility at Santurce, PR, and also to the Ashford Blood Bank, Inc., P.O. Box 195034, San Juan, PR, 00919, FDA notified an authorized official of the firm that FDA's attempts to conduct inspections of the two facilities at Santurce, PR and Bayamon, PR were unsuccessful because the facilities were no longer in operation and the manufacture of Whole Blood and Red Blood Cells had been discontinued. The letter also advised the authorized official that, under 21 CFR 601.5(b)(1) and (b)(2) (now codified as 21 CFR 601.5(b)(1)(i) and (b)(1)(ii)), when FDA finds that authorized employees have been unable to gain access to an establishment for the purpose of carrying out an inspection under 21 CFR 600.21, or the manufacturing of products or of a product has been discontinued to an extent that a meaningful inspection cannot be made, the Commissioner of Food and Drugs (the Commissioner) shall institute proceedings for license revocation. In the same letter, FDA stated that a meaningful inspection could not be made at the establishment and notified the firm of FDA's intent to revoke U.S. License No. 0740–001 and its intent to offer an opportunity for a hearing.

Because FDA has made reasonable efforts to notify the firm of the proposed revocation and has not received any response from the firm to the revocation letter, FDA is proceeding under 21 CFR 12.21(b) and publishing this notice of opportunity for a hearing on a proposal to revoke the licenses of the previously mentioned firm.

FDA has placed copies of the documents relevant to the proposed revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. These documents include: (1) Summary of Findings, May 1, 1998; (2) memorandum regarding FDA visit to Santurce location, November 23, 1999; and (3) FDA letters to the authorized official dated October 28, 1997, and April 13, 2000. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Ashford Blood Bank, Inc., may submit a written request for a hearing to the Dockets Management Branch by March

8, 2001, and any data and information justifying a hearing must be submitted by April 9, 2001. Other interested persons may submit written comments on the proposed license revocation to the Dockets Management Branch by April 9, 2001. The failure of the licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact. If the Commissioner determines upon review of any objections or requests for a hearing that a hearing is not justified, in whole or in part, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner will deny the hearing request, with an explanation for the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: January 24, 2001.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 01–3094 Filed 2–5–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Missouri State Plan Amendment (SPA) 99–29

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 8, 2001, at 10:00 a.m., Plaza Room 664, Richard Bolling Federal Building, 601 E. Twelfth Street, Kansas City, Missouri 64106, to reconsider our decision to disapprove Missouri SPA 99–29.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, HCFA, C1–09–13, 7500 Security Boulevard, Baltimore, MD 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider HCFA's decision to disapprove Missouri's SPA 99–29. Missouri submitted SPA 99–29 on December 29, 1999, which proposed to pay for school-based assessment services described in an individualized education plan pursuant to the Individuals with Disabilities Education Act (IDEA) using a bundled rate methodology. One rate would be paid for a variable package of assessment services, regardless of the number of assessment services provided to a particular child. As explained below, HCFA disapproved Missouri SPA 99–29 after consulting with the Secretary on October 31, 2000.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid agency that informs said agency of the time and place of the hearing and the issues to be considered. If the agency is subsequently notified of additional issues that will be considered at the hearing, that notice will also be published.

In accordance with the requirements contained at 42 CFR 430.76(b)(2), any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice. Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The first issue is whether payment for Medicaid services using a bundled rate methodology, under which payment is made at a single rate for one or more in a group of different services furnished to an eligible individual over a fixed period of time, meets the conditions set forth in section 1902(a)(30) of the Act. Section 1902(a)(30)(A) provides that Medicaid State plans must provide for such methods and procedures relating to the payment for care and services available under the plan as may be necessary to ensure that payments are consistent with efficiency, economy, and quality of care. The amendment proposed to pay for school-based assessment services furnished pursuant to the IDEA using a bundled rate methodology. Under the proposed payment methodology, one rate would be paid for a variable package of assessment services, regardless of the number of assessment services provided to a particular child. As explained below, HCFA was unable to approve Missouri SPA 99–29 because the proposed payment methodology was not in compliance with section 1902(a)(30)(A) of the statute, and could not generate sufficient documentation to establish such compliance.

On May 21, 1999, HCFA issued a letter to all State Medicaid directors indicating that it would no longer approve State plan amendments proposing reimbursement for school-based health services using a bundled rate. That letter described a bundled rate as a single rate for one or more in a group of different services furnished to an eligible individual during a fixed period of time. In the May 21 letter, HCFA explained that such rates do not ensure accurate and reasonable payments consistent with efficiency, economy, and quality of care. Specifically, HCFA stated that the bundled rate is inconsistent with economy since the rate is not designed to accurately reflect true costs or reasonable fee-for-service rates. The bundled rate is also inconsistent with efficiency since it requires substantially more Federal oversight resources to establish the accuracy and reasonableness of State expenditures. In sum, HCFA concluded that, with a bundled rate, there is no reliable basis for determining that the payments

would be accurate, reasonable, and consistent with statutory requirements.

The second issue is whether the proposed amendment provided sufficient information on the payment methodology or rate structure to demonstrate that the requirements of 42 CFR part 447, subpart F (Payment Methods for Other Institutional and Noninstitutional Services) were met. HCFA concluded that the proposed amendment did not meet the requirements because it (including all associated communications with the State) did not fully explain how payments would be calculated and how rates would be determined. Therefore, based on the above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), HCFA disapproved Missouri SPA 99–29.

The notice to Missouri announcing an administrative hearing to reconsider disapproval of its SPA reads as follows:

Mr. Steven E. Renne, Acting Director, Missouri Department of Social Services, P.O. Box 1527, Broadway State Office Building, Jefferson City, MO 65102–1527

Dear Mr. Renne:

I am responding to your request received January 3, 2001, for reconsideration of the October 31, 2000, decision by the Health Care Financing Administration (HCFA) to disapprove Missouri State Plan Amendment (SPA) 99–29. I set forth below a statement of the issues and scheduled a hearing on your request.

The first issue is whether payment for Medicaid services using a bundled rate methodology, under which payment is made at a single rate for one or more in a group of different services furnished to an eligible individual over a fixed period of time, meets the conditions set forth in section 1902(a)(30) of the Social Security Act (Act). Section 1902(a)(30)(A) provides that Medicaid State plans must provide for such methods and procedures relating to the payment for care and services available under the plan as may be necessary to ensure that payments are consistent with efficiency, economy, and quality of care. The amendment proposed to pay for school-based assessment services furnished to special education children pursuant to the Individuals with Disabilities Education Act using a bundled rate methodology. Under the proposed payment methodology, one rate would be paid for a variable package of assessment services, regardless of the number of assessment services provided to a particular child. As explained below, HCFA was unable to approve Missouri SPA 99–29 because the proposed payment methodology was not in compliance with section 1902(a)(30)(A) of the statute, and sufficient documentation was not provided to establish such compliance.

On May 21, 1999, HCFA issued a letter to all State Medicaid directors indicating that it would no longer approve State plan amendments proposing reimbursement for school-based health services using a bundled rate. That letter described a bundled rate as a single rate for one or more in a group of different services furnished to an eligible individual during a fixed period of time. In the May 21 letter, HCFA explained that such rates do not ensure accurate and reasonable payments consistent with efficiency, economy, and quality of care. Specifically, HCFA stated that the bundled rate is inconsistent with economy since the rate is not designed to accurately reflect true costs or reasonable fee-for-service rates. The bundled rate is also inconsistent with efficiency since it requires substantially more Federal oversight resources to establish the accuracy and reasonableness of State expenditures. In sum, HCFA concluded that, with a bundled rate, there is no reliable basis for determining that the payments would be accurate, reasonable, and consistent with statutory requirements.

The second issue is whether the proposed amendment provided sufficient information on the payment methodology or rate structure to demonstrate that the requirements of 42 CFR part 447, subpart F (Payment Methods for Other Institutional and Noninstitutional Services) were met. HCFA concluded that the proposed amendment did not meet these requirements because it (including all associated communications with the State) did not fully explain how payments would be calculated and how rates would be determined.

A hearing on your request for reconsideration has been scheduled for 10:00 A.M. on March 8, 2001, Plaza Room 664, Richard Bolling Federal Building, 601 E. Twelfth Street, Kansas City, Missouri 64106. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication, which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the scheduled hearing date and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Michael McMullan,
Acting Deputy Administrator.

Section 1116 of the Social Security Act (42 U.S.C., section 1316); 42 CFR, section 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 31, 2001.

Michael McMullan,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 01–3058 Filed 2–5–01; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Application for the Pharmacology Research Associate Program

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of General Medical Sciences (NIGMS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Application for the Pharmacology Research Associate Program. *Type of Information Collection Request:* Extension of a currently approved collection, OMB No. 0925–0378, expiration date July 31, 2001. *Form Numbers:* NIH 2721–1, NIH 2721–2. *Need and Use of Information Collection:* The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and experience in laboratory or clinical investigation to individuals with a Ph.D. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or the Food and Drug Administration. The goal of the program is to develop leaders in pharmacological research for key positions in academic, industrial, and Federal research laboratories. *Frequency of Response:* Once a year. *Affected Public:* Individuals or households; Businesses or other for-profit. *Type of Respondents:* Applicants and Referees.

The annual reporting burden is as follows:

Type and number of respondents	Estimated number of responses per respondent	Estimated total responses	Average burden hours per responses	Estimated total annual burden hours requested
Applicants—50	1	50	2.00	100
Referees—150	1	150	0.167	25

Total Number of Respondents: 200
Total Number of Responses: 200
Total Hours: 125

The annualized cost to respondents is estimated at:

Applicants: $5,500.00
Referees: $1,250.00

There are no Capital Costs, Operating costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Sally Lee, NIGMS, NIH, Natcher Building, Room 2AN–18H, 45 Center Drive, MSC 6200, Bethesda, MD 20892–6200, or call non-toll-free number (301) 594–2755 or e-mail your request, including your address to: LeeS@nigms.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before April 9, 2001.

Dated: January 25, 2001.

Martha Pine,

Associate Director for Administration and Operations, National Institute of General Medical Sciences.

[FR Doc. 01–3011 Filed 2–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Patient-Oriented Research Career Development Awards (K23s).

Date: January 30, 2001.

Time: 12:30 pm to 1 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NHLBI Review Branch, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Diane M. Reid, MD, Review Branch, Room 7182, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3008 Filed 2–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 18–19, 2001.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Resort Coral Springs, 11775 Heron Bay Blvd, Coral Springs, FL 33076

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3010 Filed 2–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 12, 2001.
Time: 9 am to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.
Date: February 14–15, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Hilton Garden Inn, Washington, DC, Franklin Square, 815 14th Street, NW., Washington, DC 20005.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, (301) 435–2359.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Visual Sciences B Study Section.
Date: February 14–15, 2001.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Leonard Jakubczak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 14, 2001.
Time: 7 pm to 9 pm.
Agenda: To review and evaluate grant applications.
Place: La Jolla Cove Suites, La Jolla, CA 92037.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 14, 2001.
Time: 7 pm to 9 pm.
Agenda: To review and evaluate grant applications.
Place: La Jolla Cove Suites, La Jolla, CA 92037.
Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Radiology Study Section.
Date: February 15–16, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: La Jolla Cove Suites, La Jolla, CA 92037.
Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Geriatrics and Rehabilitation Medicine.
Date: February 15–16, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Four Point Sheraton, 1201 K Street, NW., Washington, DC 20005.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.
Date: February 15–16, 2001.
Time: 8 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: La Jolla Cove Suites, La Jolla, CA 92037.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 1.
Date: February 15–16, 2001.
Time: 8 am to 5:30 pm.
Agenda: To review and evaluate grant applications.
Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.
Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkins@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 15–16, 2001.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: St James Suites, 950 24th Street, NW, Washington, DC 20037.
Contact Person: Ellen K. Schwartz, EdD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, schwarte@csr.nih.gov

Name of Committee: Endocrinology and Reproduction Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.
Date: February 15–16, 2001.
Time: 8 am to 12 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.
Date: February 15–16, 2001.
Time: 8:30 am to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, cooper@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 15, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.

Date: February 15–16, 2001.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@mail.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 15–16, 2001.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Metallobiochemistry Study Section.

Date: February 15–16, 2001.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.

Date: February 15–16, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, Bethesda, MD 20892, (301) 435–1219.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 5.

Date: February 15–16, 2001.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021, duperes@csr.nih.gov

Name of Committee: Biochemical Sciences Integrated Review Group, Medical Biochemistry Study Section.

Date: February 15–16, 2001.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA 22209.

Contact Person: Alexander S. Liacouras, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 1.

Date: February 15–16, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada Inn, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PhD, MpH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: February 15–16, 2001.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Versailles IV Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 15–16, 2001.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's Inn, 1615 Rhode Island Ave., NW, Washington, DC 20036.

Contact Person: Michael J. Kozack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, kozakm@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 15–16, 2001.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Select, 480 King Street, Old Town Alexandria, VA 22314.

Contact Person: Yvette M. Davis, Vmd, Mph, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906.

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.

Date: February 15–17, 2001.

Time: 9 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: David J. Remondini, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemical Study Section.

Date: February 15–16, 2001.

Time: 8:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Arnold Revzin, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: January 29, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3009 Filed 2–5–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–00–1040–JH]

Gila Box Riparian National Conservation Area Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Gila Box Riparian National Conservation Area Advisory Committee Meeting.

SUMMARY: The purpose of this notice is to announce the next meeting of the Gila Box Riparian National Conservation Area Advisory Committee Meeting. The purpose of the Advisory Committee is to provide informed advice to the Safford Field Office Manager on management of public lands in the Gila Box Riparian National Conservation Area. The committee meets as needed, generally between two and four times a year.

The meeting will begin at the Bureau of Land Management, Safford Field Office on March 2, 2001, commencing at 9:00 a.m. and ending at 4:00 p.m. The meeting's agenda will consist of a morning in house discussion on the draft Gila Box brochure, Jeff Menges grazing protest and final decision, a status report on the Lee Trail headquarters, FY2001 Annual Work Plan and table of organization for the Gila Box RNCA. In the afternoon the committee will tour the west end of the RNCA to discuss OHV, recreation, and grazing issues. A public comment period will begin at 9:00 a.m. and may continue for the duration of the meeting for the public to comment on the management of the Gila Box NCA.

DATES: Meeting will be held on March 2, 2001, starting at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Jon Collins, Gila Box NCA Project Coordinator, Safford Field Office, 711 14th Ave., Safford, AZ 85546, Telephone (520) 348–4400.

Dated: January 23, 2001.

Frank Rowley,

Acting Safford Field Manager.

[FR Doc. 01–3078 Filed 2–5–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–01–1020–00]

Science Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to develop a work plan for FY 2001–2002, to report on the implementation of the BLM Science Strategy, and to hold a joint meeting with the BLM Science Coordination Committee.

DATES: BLM will hold the public meeting on Wednesday, March 7, 2001, from 9 a.m. to 4 p.m. local time.

ADDRESSES: BLM will hold the public meeting at the University of Arizona, U.S. Geological Survey Environment and Natural Resources Building (Building No. 120), 520 North Park, Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, PO Box 25047, Denver, CO 80225–0047, 303–236–6454.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

I. The Agenda for the Public Meeting Is as Follows

8 a.m. Opening Comments and Introductions
9:30 a.m. Working Session to Develop a Work Plan for FY 2001–2002
1 p.m. Report on the Implementation of the BLM Science Strategy
2 p.m. Discussion with the BLM Science Coordination Committee on Potential Joint Activities
3 p.m. Open Discussion of Science Topics
3:30 p.m. Public Comments
4 p.m. Adjourn

II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom on Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business will be in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: lee_barkow@blm.gov. Please include the identifier ''Science4'' in the subject of your message and your name and address in the body of your message.

III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dated: February 1, 2001.

Lee Barkow,

Director, National Science and Technology Center.

[FR Doc. 01–3077 Filed 2–5–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 27, 2001. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written

comments should be submitted by February 21, 2001.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

ARIZONA

Maricopa County

Oakland Historic District (Boundary Decrease), Roughly bounded by 19th Ave. Fillmore St., Grand Ave., and Van Buren St., Phoenix, 01000164

COLORADO

El Paso County

Pauline Chapel, 2 Park Ave., Colorado Springs, 01000165

GEORGIA

Ben Hill County

Wilsey, Miles V., House, 137 Hudson Rd., Fitzgerald, 01000166

NEBRASKA

Fillmore County

Burk, J.M., House, 331 N. 11th St., Geneva, 01000169

McPherson County

Long Creek School, (School Buildings in Nebraska MPS), Long Creek Lane, Blair, 01000167

Saunders County

Ithaca Grain Elevator, Old, One Blk. S of 4th St., Ithaca, 01000168

NEW YORK

Broome County

Endicott Square Deal Arch, Main St., E of Vestal Ave., Endicott, 01000171

Sullivan County

Center Theatre, NY 52, Woodbourne, 01000170

SOUTH DAKOTA

Butte County

Ditchrider House, N of US 212, Nisland, 01000172

WISCONSIN

Manitowoc County

Sexton's House, 736 Revere Dr., Manitowoc, 01000173

Milwaukee County

West Allis Post Office, (United States Post Office Construction in Wisconsin MPS), 7440 W. Greenfield Ave., West Allis, 01000174

A request for Removal has been made for the following resource:

SOUTH DAKOTA

Davison County

Eddy and Brooks Auto Repair, 209 North Lawler, Mitchell, 95000275

[FR Doc. 01–3054 Filed 2–5–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–DES–01–03]

Potholes Reservoir Resource Management Plan, Grant County, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings for the Potholes Reservoir Resource Management Plan (RMP) draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft environmental impact statement (Draft EIS) to document the analysis of four alternatives, including the No Action Alternative, for resource management in the Potholes Reservoir Study area. The alternatives respond differently to the issues and concerns identified during project planning. The Preferred Alternative is Alternative B, which balances the management agencies' and public's long-term vision for Potholes Reservoir and recognizes the need to protect the natural and cultural environment while supporting the overall recreational interest of the visitors.

DATES: Written comments on the Draft EIS must be received no later than March 27, 2001 at the address listed in **ADDRESSES** section below.

On March 13, 2001, two public hearings will be held to accept oral comments on the Draft EIS in Moses Lake, Washington. The first public hearing will be held from 3:00 p.m. to 5:00 p.m. The second will be from 7:00 p.m. to 9:00 p.m. The facilities are physically accessible to people with disabilities.

Please contact Mr. Blanchard (see below) for sign language interpretation for the hearing impaired or other auxiliary aids by March 5, 2001, so arrangements can be made.

ADDRESSES: The public hearings will be held at the Midway Learning Center, 502 South C Street (corner of West Ivy and South C Street), Moses Lake, Washington.

Written comments on the Draft EIS should be submitted to Mr. Jim Blanchard, Bureau of Reclamation, Ephrata Field Office, 32 C Street, Box 815, Ephrata, WA 98823; or by fax (509) 754–0239.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

See Supplementary Information section for locations where copies of the Draft EIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: For information, or to obtain a copy of the Draft EIS, contact Mr. Jim Blanchard at (509) 754–0226.

SUPPLEMENTARY INFORMATION: The purpose of developing a RMP for Potholes Reservoir is to balance the resource protection and conservation objectives with the rising demand for increased recreation opportunities, visitor facilities, and support services.

Review and Inspection of the Draft EIS

Copies of the Draft EIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW, Washington, D.C.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington.
- Bureau of Reclamation, Ephrata Field Office, 32 C Street, Box 815, Ephrata, WA.

Libraries

- Bridgeport Community Library, Bridgeport WA
- Des Moines Library, 21620 11th Avenue S., Des Moines, WA
- Coulee City Community Library, Coulee City, WA

- East Wenatchee Community Library, 271 9th Street NE, East Wenatchee, WA
- Ephrata Public Library, 45 Alder NW, Ephrata, WA
- Moses Lake Public Library, 418 E. 5th Avenue, Moses Lake, WA
- Royal City Community Library, Royal City, WA
- Soap Lake Community Library, Soap Lake, WA
- Wenatchee Public Library, 310 Douglas Street, Wenatchee, WA

Internet

The Draft EIS will also soon be available on the Internet at http://www.pn.usbr.gov/

Hearing Process Information

Requests to make oral comments at the public hearings may be made at each hearing. Comments will be recorded by a court reporter. Speakers will be called in the order of their requests. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the public hearing or identified as hearing comments and mailed to be received by Mr. Blanchard no later than March 27, 2001 (the end of the public comment period).

Dated: February 1, 2001.

Kenneth R. Pedde,

Deputy Regional Director, Pacific Northwest Region.

[FR Doc. 01–3031 Filed 2–5–01; 8:45am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Berks Associates et al.*, Civil Action No. 91–4868 (E.D. Pa.) was lodged on January 19, 2001, with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the claims of the United States under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), for reimbursement of response costs incurred by the U.S. Environmental Protection Agency (''EPA'') in connection with the Douglassville Disposal Superfund Site located in Douglassville, Berks County, Pennsylvania. The settling defendants are Conrail, Cabot Corporation, CSX Transportation, Inc., the Glidden Company, Lehigh Valley Railroad, American Premier Underwriters, Inc., Kimberly Clark Corporation, Shell Oil Company, Southeastern Pennsylvania Transportation Authority, Chevron, and A&A Waste Oil, and Lester Schurr d/b/a Berks Associates, Inc.

In addition, the consent decree resolves counterclaims of the settling defendants against 8 federal agencies including the Departments of Defense, Army, Air Force, Navy, U.S. Coast Guard, U.S. Mint, U.S. Post Office, and the U.S. Government Printing Office.

Under the terms of the consent decree, EPA would receive reimbursement of $13.85 million in costs incurred by EPA at the Site. In addition, the settling defendants (with the exception of Lester Schurr, Berks Associates, and A&A Waste Oil) agree to implement, a soil stabilization remedy at the Site. The settling federal agencies will pay $5,366,922 toward reimbursement of EPA's past response cost and $978,712 toward reimbursement of private party defendant response costs. In addition, the settling federal agencies will pay $3,255,029 toward the implementation of the soil stabilization remedy.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Berks Associates et al.* DOJ # 90–11–2–303. The proposed consent decree may be examined at the offices of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106–4476. A copy of the consent decree may also be obtained by mail from the U.S. Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced-case and enclose a check in the amount of $35.50 (25 cents per page reproduction cost exclusive of exhibits), payable to the Consent Decree Library.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 01–3065 Filed 2–5–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on January 18, 2001, a proposed Consent Decree in *United States* v. *CENCO Refining Co.,* Civil Action No. CV 01–00512–RSWL (AIJx) was lodged with the United States District Court for the Central District of California.

This consent decree represents a settlement of claims brought against CENCO Refining Co. (''CENCO'') under 28 U.S.C. 2201(a) and Section 113(b) of the Clean Air Act (''the Act''), 42 U.S.C. 7413(b), for a declaratory judgment that CENCO's building, erecting installing, altering and/or replacing of any equipment at its oil refining facility that may cause the issuance of air contaminants without first obtaining all pre-construction permits required under the Act and the California State Implementation Plan, violates the Act and the California State Implementation Plan, entitling the United States to injunctive relief and civil penalties against CENCO.

Under the proposed settlement, CENCO will undertake significant injunctive measures designed to limit the facility's emissions of nitrogen oxides, sulfur oxides and volatile organic compounds.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *CENCO Refining Co.*, D.J. Ref. 90–5–2–1–07306. A copy of all comments should also be sent to Matthew A. Fogelson, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, San Francisco, CA 94105.

The Consent Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Room 7516, Federal Building, Los Angeles, California, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents

per page reproduction cost) payable to the Consent Decree Library.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–3064 Filed 2–5–01; 8:45 am]

BILLING CODE 4410–17–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on January 18, 2001, a proposed Consent Decree in *United States and State of Georgia* v. *Dalton Utilities, et al.,* Civil Action No. 4:98–CV–191–HLM was lodged with the United States District Court for the Northern District of Georgia.

In this action the United States and the State of Georgia sought civil penalties and injunctive relief to address violations of the Clean Water Act in the wastewater operations of Dalton Utilities, part of the muncipality of Dalton, Georgia. In particular, the United States and State of Georgia alleged unlawful discharges from the collection system and land application system, unlawful disposal of sewage sludge, and violations of Dalton Utilities' pretreatment program. In the Consent Decree, the defendants agree to pay a civil penalty of $6 million and to perform various injunctive relief. The defendants agree to submit to audits of their collection system and pretreatment program, and to make improvements identified during the audits. The defendants agree to monitor their land application system for one year and to correct the causes of any discharges. The State of Georgia agrees to issue a draft NPDES permit covering the land application system at the end of the monitoring period. The defendants also agree to a permanent injunction against the land application of sewage sludge and to remediate, if necessary, fields formerly used for sludge disposal.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Georgia* v. *Dalton Utilities, et al.,* D.J. Ref. 90–5–1–1–4436.

The Consent Decree may be examined at the Office of the United States Attorney, 73 Spring Street, SW, Suite 1800, Atlanta, Georgia, and at U.S. EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $28.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–3063 Filed 2–5–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on January 25, 2001 a proposed consent decree in *United States* v. *The Michael's Furniture Company,* Civil Action No. S–00–798 DFL GGH, was lodged with the United States District Court for the Eastern District of California.

In this action, which concerned the Michael's Furniture Company's facility in Sacramento, California, the United States alleged that the company initiated the construction, modification or operation of a stationary source of pollution without first obtaining the necessary permits from the local air district, failed to install the best available control technology, and exceeded the emission limitations in the permits that the company did obtain. The consent decree requires the company to pay a $185,500 penalty (plus interest) and, among other things, to (i) limit emissions of volatile organic compounds (''VOCs'') to 2,500 pounds per month and 7,500 pounds per quarter, (ii) operate its thermal oxidizer to achieve a 95 percent capture efficiency and 95 percent destruction efficiency of VOCs, and (iii) apply for new permits to operate from the local air district that reflect the requirements established in the consent decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments on the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *The Michael's Furniture Company,* Civil Action No. S–00–798 DFL GGH (E.D. Cal.), DOJ N0. 90–5–2–1–06556.

The proposed consent decree may be examined at the office of the United States Attorney, 501 ''I'' Street, Sacramento, CA, and may also be obtained my mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. To request a copy of the proposed consent decree by mail, please refer to *United States* v. *The Michael's Furniture Company,* Civil Action No. S–00–798 DFL GGH (E.D. Cal.), DOJ No. 90–5–2–06556, and enclose a check for the amount of $3.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–3062 Filed 2–5–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America v. Georgia-Pacific Corporation and Fort James Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Georgia-Pacific Corporation and Fort James Corporation,* Civil No. 1:00CV02824. On November 21, 2000, the United States filed a Complaint alleging that the proposed acquisition by Georgia-Pacific Corporation of Fort James Corporation would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Georgia-Pacific Corporation to divest four tissue-making mills located in Menasha, Wisconsin; Flagstaff, Arizona; Alsip, Illinois; and Gary, Indiana; five tissue converting facilities located in Neenah, Wisconsin; Bellemont, Arizona; Brattleboro, Vermont; Greenwich, New York; and LaGrange, Georgia; along with certain other tangible and intangible assets. Copies of the Complaint, proposed Final Judgment, Hold Separate Stipulation and order, and Competitive Impact Statement are available for inspection at the Department of Justice in

Washington, DC in Room 200, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530. (Telephone: (202) 307–0924).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. ''Purchaser'' or ''Purchasers'' means the entity or entities to whom defendants divest the Georgia-Pacific AFH Tissue Business.

B. ''AFH Tissue Product(s)'' means paper napkins, paper towels, and bathroom tissue sold into the away-from-home distribution channel, and all tissue product dispenser systems sold or leased into the away-from-home distribution channel or to away-from-home tissue customers, except for the proprietary tissue product dispenser systems and components sold or leased under the Cormatic and Ultimatic lines and all tangible and intangible assets necessary for the production, marketing and sale of the Cormatic and Ultimatic tissue product dispenser systems and components.

C. ''Fort James'' means defendant Fort James Corporation, a Virginia corporation with its headquarters in Deerfield, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Georgia-Pacific'' means defendant Georgia-Pacific Corporation, a Georgia corporation with its headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Georgia-Pacific Tissue LLC'' or ''GPT'' means Georgia-Pacific Tissue LLC, a limited liability company incorporated in Delaware with its headquarters in Atlanta, Georgia, and includes its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

F. ''Georgia-Pacific AFH Tissue Business'' means the business of developing, manufacturing, marketing, and selling AFH Tissue Products as conducted by GPT, including, but not limited to:

(1) All tangible assets used in the research, development, production, marketing, servicing or sale of any AFH Tissue Product that Georgia-Pacific Tissue LLC produced, sold, sells, has plans to sell, or leases, including, but not limited to: research and development activities; all manufacturing equipment, tooling, and fixed assets for the tissue paper making mills located in Menasha, Wisconsin, Flagstaff, Arizona, Alsip, Illinois, and Gary, Indiana, and the tissue converting facilities located in Neenah, Wisconsin, Bellemont, Arizona, Brattleboro, Vermont, Greenwich, New York, and LaGrange, Georgia (but excluding Crossett, Arkansas, Palatka, Florida, and Toluca, Mexico and other Mexican property tangible and intangible); personal property, inventory, office furniture, materials, supplies, and other tangible property used to manufacture or sell AFH Tissue Products; all licenses, permits and authorizations issued by any governmental or standard setting organization relating to the manufacture or sale of any AFH Tissue Product; all contracts, agreements, leases, commitments, certifications, and understandings used in the manufacture or sale of any AFH Tissue Product, including supply agreements; all customer lists, contracts, accounts, and credit records; and all mill operations reports and other records relevant to AFH Tissue Products and the Georgia-Pacific AFH Tissue Business; and

(2) all intangible assets used in the research, development, production, marketing, servicing or sale of any AFH Tissue Product that Georgia-Pacific Tissue LLC produced, sold, sells, or has plans to sell, or leases, including, but not limited to: all legal rights, including intellectual property rights, associated with AFH Tissue Products, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and sublicenses to such intellectual property; all legal rights to use the brand names controlled by GPT, including, but not limited to ''Park Avenue'', ''Main Street'', ''Second Nature'', and ''Coronet'', and any derivations thereof; all trade secrets; all technical information, computer software and related documentation, and know-how, including, but not limited to, recipes and formulas, and information relating to plans for, improvements to, or line extensions of, the products; all research, packaging, sales, marketing, advertising and distribution know-how and documentation, including marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Georgia-Pacific Tissue LLC provided to its own employees, customers, suppliers, agents or licensees; all specifications for materials, and safety procedures for the handling of materials and substances; all research information and data concerning historic and current research and development efforts, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments, and all employment contracts and relationships, as existing on July 17, 2000.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Georgia-Pacific AFH Tissue Business for the purpose of assuring the establishment of one or more viable competitors in the away-from-home tissue industry capable of competing effectively in supplying away-from-home tissue products to national accounts and to remedy the anticompetitive effects that the United States alleges would otherwise result from Georgia-Pacific's acquisition of Fort James Corporation. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Georgia-Pacific AFH Tissue Business operates as a competitively independent, economically viable, and ongoing business concern that will remain independent and uninfluenced by the consummation of Georgia-Pacific's acquisition of Fort James Corporation, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered

by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Georgia-Pacific AFH Tissue Business as an independent, ongoing, economically viable competitive business, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Georgia-Pacific's other operations. Except as provided in this paragraph, Georgia-Pacific shall not coordinate its production, marketing or terms of sale of any products produced by or sold by or through the Georgia-Pacific AFH Tissue Business with the sale of any other products. In no event shall Georgia-Pacific coordinate or integrate the production, marketing, or terms of sale of any products, or the operation of the facilities, acquired as a result of the transaction with Fort James with the products, or facilities used to manufacture the products, produced by or sold through the Georgia-Pacific AFH Tissue Business. Notwithstanding the foregoing provisions, Georgia-Pacific is not prohibited from continuing its historical, regular course of business, system-wide allocation of the manufacture of stock parent rolls and converted tissue products among Georgia-Pacific mills and machines, provided that Georgia-Pacific continues to support and maintain the Georgia-Pacific AFH Tissue Business as an independent, ongoing, economically viable and active competitor in the AFH Tissue Business as required by this Hold Separate Stipulation and Order (including efforts to maintain and increase the sales and revenues of the Georgia-Pacific AFH Tissue Business required under Section V.C.). Within twenty (20) days after the entry of this Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Georgia-Pacific shall take all steps necessary to ensure that (1) the Georgia-Pacific AFH Tissue Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the away-from-home tissue industry; (2) management of the Georgia-Pacific AFH Tissue Business will not be influenced by Georgia-Pacific or Fort James; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by or under any of the Georgia-Pacific AFH Tissue Business will be kept separate and apart from Georgia-Pacific's other operations.

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold under the Georgia-Pacific AFH Tissue Business, and shall maintain at 2000 levels or previously approved levels for 2001, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Georgia-Pacific AFH Tissue Business.

D. Georgia-Pacific shall provide sufficient working capital and lines and sources of credit to continue to maintain the Georgia-Pacific AFH Tissue Business as an economically viable and competitive, ongoing business, consistent with the requirements of Sections V(A) and V(B).

E. Georgia-Pacific shall take all steps necessary to ensure that all the assets of the Georgia-Pacific AFH Tissue Business are fully maintained in operable condition at no less than current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for those assets.

F. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Georgia-Pacific AFH Tissue Business.

G. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Georgia-Pacific AFH Tissue Business.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Georgia-Pacific AFH Tissue Business.

I. Georgia-Pacific's employees with primary responsibility for the Georgia-Pacific AFH Tissue Business shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendant shall provide the United States with ten (10) calendar days notice of such transfer.

J. Prior to consummation of their transaction, defendants shall appoint Lee M. Bingham to oversee the Georgia-Pacific AFH Tissue Business and to be responsible for defendants' compliance with this section. This person shall have complete managerial responsibility for the Georgia-Pacific AFH Tissue Business, subject to the provisions of this Final Judgment. In the event such person is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working

days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to monitor and complete the divestiture pursuant to the Final Judgment to a purchaser or purchasers acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture required by the proposed Final Judgment or until further order of the Court.

Dated: November 21, 2000.

For Plaintiff, United States of America.

Justin M. Dempsey,
U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307–5815.

Respectfully submitted,

For Defendant, Georgia-Pacific Corporation.

Wayne Dale Collins,
Shearman & Sterling, Lexington Avenue, New York, NY 10022, (212) 848–4127.

For Defendant, Fort James Corporation.

Ilene Knable Gotts,
Wachtell, Lipton, Rosen & Katz, 51 W. 52nd Street, New York, NY 10019, (212) 403–1247.

Order

It is so Ordered by the Court, this 21st day of November, 2000.

Richard W. Roberts,
United States District Judge.

Final Judgment

Whereas, plaintiff, the United States of America (''United States''), filed its Complaint on November 21, 2000, and defendants Georgia-Pacific Corporation (''Georgia-Pacific'') and Fort James Corporation (''Fort James''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or any admission by any party with respect to any issue of law or fact herein;

And Whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the business and assets identified below to assure that competition is not substantially lessened;

And Whereas, the United States requires defendants to make the divestitures ordered herein for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made promptly and that defendants later will raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before taking any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Georgia-Pacific'' or ''G–P'' means defendant Georgia-Pacific Corporation, a Georgia corporation with its headquarters in Atlanta, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Georgia-Pacific Tissue LLC'' or ''GPT'' means Georgia-Pacific Tissue LLC, a limited liability company incorporated in Delaware with its headquarters in Atlanta, Georgia, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Fort James'' means defendant Fort James Corporation, a Virginia corporation with its headquarters in Deerfield, Illinois, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''AFH Tissue Products(s)'' means paper napkins, paper towels, and bathroom tissue sold into the away-from-home distribution channel, and all tissue product dispenser systems sold or leased into the away-from-home distribution channel or to away-from-home tissue customers, except for the proprietary tissue product dispenser systems and components sold or leased under the Cormatic and Ultimatic lines and all tangible and intangible assets necessary for the production, marketing and sale of the Cormatic and Ultimatic tissue product dispenser systems and components.

E. ''Georgia-Pacific AFH Tissue Business'' means the business of developing, manufacturing, marketing, and selling AFH Tissue Products as conducted by GPT, including, but not limited to:

(1) All tangible assets used in the research, development, production, marketing, servicing or sale of any AFH Tissue Product that Georgia-Pacific Tissue LLC produced, sold, sells, has plans to sell, or leases, including, but not limited to: research and development activities; all manufacturing equipment, tooling, and fixed assets for the tissue paper making mills located in Menasha, Wisconsin, Flagstaff, Arizona, Alsip, Illinois, and Gary, Indiana, and the tissue converting facilities located in Neenah, Wisconsin, Bellemont, Arizona, Brattleboro, Vermont, Greenwich, New York, and LaGrange, Georgia (but excluding Crossett. Arkansas, Palatka, Florida, and Toluca, Mexico and other Mexican property tangible and intangible); personal property, inventory, office furniture, materials, supplies, and other tangible property used to manufacture or sell AFH Tissue Products; all licenses, permits and authorizations issued by any governmental or standards setting organization relating to the manufacturing or sale of any AFH Tissue Product; all contracts, agreements, leases, commitments, certifications, and understandings used in the manufacture or sale of any AFH Tissue Product, including supply agreement(s), except for (i) existing supply agreements for parent rolls with Georgia-Pacific (to be replaced by the new supply agreements under section IV.A(2)), and (ii) existing supply agreements for finished AFH tissue products transferred from the Crossett, Arkansas and Palatka, Florida tissue mills to GPT; all customer lists, contracts, accounts, and credit records; and all mill operations reports and other records relevant to AFH Tissue Products and the Georgia-Pacific AFH Tissue Business; and

(2) all intangible assets used in the research, development, production, marketing, servicing or sale of any AFH Tissue Product that Georgia-Pacific Tissue LLC produced, sold, sells, or has plans to sell, or leases, including, but not limited to: all legal rights, including intellectual property rights, associated with AFH Tissue Products, including trademarks, trade names, service names, service marks, designs, trade dress, patents, copyrights and all licenses and

sublicenses to such intellectual property; all legal rights to the brand names controlled by GPT, including, but not limited to ''Park Avenue'', ''Maine Street'', ''Second Nature'', and ''Coronet'', and any derivations thereof; all trade secrets; all technical information, computer software and related documentation, and know-how, including, but not limited to, recipes and formulas, and information relating to plans for, improvements to, or line extensions of, the products; all research, packaging, sales, marketing, advertising and distribution know-how and documentation, including marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Georgia-Pacific Tissue LLC provided to its own employees, customers, suppliers, agents or licensees; all specifications for materials, and safety procedures for the handling of materials and substances; all research information and data concerning historic and current research and development efforts, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments, and all employment contracts and relationships, as existing on July 17, 2000.

III. Applicability

A. This Final Judgment applies to Georgia-Pacific, Georgia-Pacific Tissue LLC, and Fort James, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all G–P's or Fort James's assets, or of lesser business units that include the Georgia-Pacific AFH Tissue Business, that the purchaser of G–P's or Fort James's assets agrees to be bound by the provisions of this Final Judgment, provided, however, that defendants need not obtain such an agreement from the purchaser of the Georgia-Pacific AFH Tissue Business.

IV. Divestitures

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by this Court, whichever is later, to

(1) divest the Georgia-Pacific AFH Tissue Business in a manner consistent with this Final Judgment as a viable ongoing business to one or more purchasers acceptable to the United States in its sole discretion, provided that at least one of these purchasers, in the sole judgment of the United States, becomes, as a result of the acquisition and any preexisting AFH business, capable of competing effectively in supplying AFH Tissue Products to national accounts; and,

(2) at the option of the purchaser or purchasers of the Georgia-Pacific AFH Tissue Business, enter into an agreement to supply tissue parent rolls of a quality and character substantially similar to those currently provided to Georgia-Pacific Tissue LLC pursuant to its supply contract with G–P, such agreement to (a) obligate G–P to provide up to 120,000 tons of parent roll tissue in the aggregate, (b) continue for at least 3 years if requested by the purchaser and to be renewed thereafter annually upon the request of the purchaser, with the concurrence of the United States in its sole discretion, for two periods of one-year each, to extend the total term of the agreement up to five (5) years, (c) permit the purchaser to terminate the agreement, or to reduce the total tonnage required, upon reasonable prior notice to G–P, and (d) specify commercially reasonable price and other terms for parent rolls that are reasonably designed to permit the purchaser or purchasers to compete in the sale of commercial tissue products generally and, in particular, to national accounts.

B. Defendants agree to use their best efforts to divest the Georgia-Pacific AFH Tissue Business as expeditiously as possible. The United States, in its sole discretion, may extend the time period for the divestiture two additional periods of time, not to exceed thirty (30) calendar days each, and shall notify this Court in such circumstances.

C. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Georgia-Pacific AFH Tissue Business. Defendants shall inform any person making inquiry regarding a possible purchase of the Georgia-Pacific AFH Tissue Business that it is being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information and documents relating to the Georgia-Pacific AFH Tissue Business customarily provided in a due diligence process, except such information or documents subject to the attorney-client or attorney work-product privileges. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the purchaser and the United States information relating to any Georgia-Pacific personnel primarily involved in the research, production, operation, development, marketing and sale of AFH Tissue Products by the Georgia-Pacific AFH Tissue Business to enable the purchaser to make offers of employment. Defendants will not interfere with any negotiations by the purchaser to employ any Georgia-Pacific employee whose primary responsibility is the research, production, operation, development, marketing or sale of AFH Tissue Product(s) by the Georgia-Pacific AFH Tissue Business.

E. Defendants shall permit prospective purchasers of the Georgia-Pacific AFH Tissue Business to have reasonable access to personnel and to make inspections of the physical facilities to be divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, sales, marketing, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to the purchaser of the Georgia-Pacific AFH Tissue Business that each asset of the Georgia-Pacific AFH Tissue Business will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Georgia-Pacific AFH Tissue Business.

H. Defendants shall warrant to the purchaser(s) of the Georgia-Pacific AFH Tissue Business that there are no material defects in the environmental, zoning or other permits pertaining to the operation of any of the assets of the Georgia-Pacific AFH Tissue Business, and that following the sale of the Georgia-Pacific AFH Tissue Business, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Georgia-Pacific AFH Tissue Business.

I. Unless the United States consents in writing, the divestiture pursuant to Section IV of this Final Judgment, whether by defendants or by a trustee appointed pursuant to Section VI of this Final Judgment, shall include the entire Georgia-Pacific AFH Tissue Business as defined in Section II. Prior to divestiture, the Georgia-Pacific AFH Tissue Business shall be operated pursuant to the Hold Separate

Stipulation and Order entered by this Court. The divestiture of the Georgia-Pacific AFH Tissue Business shall be accomplished by selling or otherwise conveying the Georgia-Pacific AFH Tissue Business to a purchaser(s) in such a way as to satisfy the United States, in its sole discretion, that the business to be divested can and will be used by the purchaser(s) as part of a viable ongoing AFH tissue business, and that at least one of these purchasers, in the sole judgment of the United States, becomes, as a result of the acquisition and any preexisting AFH business, capable of competing effectively in supplying AFH Tissue Products to national accounts. The divestiture of the Georgia-Pacific AFH Tissue Business, whether pursuant to Section IV or Section VI of this Final Judgment, shall be made to a purchaser(s) in a manner so as to satisfy the United States, in its sole discretion, that it: (1) Has the capability and intent of competing effectively in the development, production and sale of AFH Tissue Products; (2) has the managerial, operational, technical and financial capability to compete effectively in the development, production and sale of AFH Tissue Products; and (3) is not hindered by the terms of any agreement between the purchaser and defendants that gives either defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere with the ability of the purchaser to compete effectively.

V. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or VI of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Georgia-Pacific AFH Tissue Business, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such divestiture notice, the United States may request from defendants, the proposed purchaser, or any other third party, or the trustee if applicable, additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after the United States has been provided the additional information requested from the defendants, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section VI may not be consummated. Upon objection by defendants under the provision in Section VI(B), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

B. In the event that the required divestitures are made to more than one purchaser, all purchasers must be identified simultaneously by the defendants, or by the applicable trustee, in order that the proposed divestiture may be reviewed jointly by the United States.

VI. Appointment of Trustee

A. Immediately upon the filing of this Final Judgment, the United States may, in its sole discretion, nominate a trustee, which the Court shall appoint, if such trustee is approved by the Court. If a trustee is appointed, that person shall monitor the divestiture by defendants of the Georgia-Pacific AFH Tissue Business. This procedure will enable the trustee to be familiar with all applicable divestiture issues in the event the trustee becomes responsible, pursuant to this Final Judgment, for completing the divestiture required by this Final Judgment.

B. In the event that defendants have not completed the divestiture required by this Final Judgment within the time specified in Section IV of this Final Judgment, defendants shall notify the United States of that fact in writing. If a trustee has already been appointed under Section VI(A) of this Final Judgment, the trustee shall immediately assume the sole power and authority to effect the divestiture of the Georgia-Pacific AFH Tissue Business. If a trustee has not been appointed, the Court shall, on application of the United States, appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Georgia-Pacific AFH Tissue Business. Upon the appointment of a trustee and expiration of the time specified in Section IV of this Final Judgment, then only the trustee shall have the power and authority to accomplish the divestiture of the Georgia-Pacific AFH Tissue Business. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States at such price and on such terms as are then obtainable for the Georgia-Pacific AFH Tissue Business, upon a reasonable effort by the trustee, subject to the provisions of Section IV, V, and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(C) of this Final Judgment, the trustee shall have the power and authority to hire, after the time period described in Section IV(A) and at the cost and expense of the defendants, any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. Defendants shall not object to a divestiture by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section V of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as approved by the United States. The trustee shall account for all monies derived from the sale of the Georgia-Pacific AFH Tissue Business, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Georgia-Pacific AFH Tissue Business and based on a fee arrangement providing the trustee with an incentive

based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

D. If a trustee is appointed under Section VI(A) of this Final Judgment, defendants shall use their best efforts to assist the trustee in monitoring defendants' attempts to divest the Georgia-Pacific AFH Tissue Business pursuant to this Final Judgment. Defendants shall also use their best efforts to assist the trustee in accomplishing the required divestiture pursuant to this Section, including their best efforts to effect all necessary consents and regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Georgia-Pacific AFH Tissue Business, and defendants shall develop financial or other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth either the defendants' or the trustee's efforts, whichever is applicable, to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. After the time period described in Section IV(A), such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Georgia-Pacific AFH Tissue Business.

F. If the trustee has not accomplished the divestiture of the Georgia-Pacific AFH Tissue Business within six (6) months after it became responsible for selling the Georgia-Pacific AFH Tissue Business, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the Final Judgment. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of this Final Judgment which may, if necessary, include extending this Final Judgment and the term of the trustee's appointment by a period requested by the United States.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Compliant in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section VI of this Final Judgment, defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Sections IV or VI of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Georgia-Pacific AFH Tissue Business, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit potential purchasers for the business to be divested and to provide required information to potential purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Georgia-Pacific AFH Tissue Business pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate the Georgia-Pacific AFH Tissue Business as an active competitor, maintain its management, staffing, research and development activities, sales, marketing and pricing, and maintain the business in operable condition at current capacity configurations. Defendants shall delivery to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after the divestiture has been completed, defendants shall preserve all records of all efforts made to preserve the business to be divested and to effect the ordered divestiture.

VIII. Hold Separate Order

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Financing

Defendants are ordered and directed not to finance all or any part of any purchase made pursuant to Sections IV or VI of this Final Judgment.

X. No Reacquisition

Defendants may not reacquire any part of the Georgia-Pacific AFH Tissue Business divested during the term of this Final Judgment.

XI. Compliance Inspection

For the purposes of determining or securing compliance with this Final Judgment or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time.

A. Duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, shall be permitted:

1. Access during office hours of defendants to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, correspondence, memoranda,

and other records and documents in the custody or possession or under the control of defendants relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any matter contained in this Final Judgment or the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in this Section of this Final Judgment shall be divulged by a representative of the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material. ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar day's notice shall be given to defendants by the United States prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Date: __, 2000.

Court approval subject to procedures of the Antitrust Procedures and Penalties Act. 15 U.S.C. 16

United States District Judge.

Certificate of Service

I hereby certify under penalty of perjury that on this 21th day of November, 2000, I caused copies of the Complaint, Final Judgment, Hold Separate Stipulation and Order, and United States' Explanation of Consent Decree Procedures to be served upon the following:

Wayne Dale Collins, Esq., Shearman & Sterling, 801 Pennsylvania Avenue, NW., Washington, D.C. 20004–2604, Counsel for Georgia-Pacific Corporation

Ilene K. Gotts, Esq., Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019–6150, Counsel for Fort James Corporation

Justin M. Dempsey, Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Telephone: 202–307–5815, Facsimile: 202–307–6283.

Competitive Impact Statement

The United States, pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On November 21, 2000, the United States filed a Complaint alleging that the acquisition of Fort James Corporation (''Fort James'') by Georgia-Pacific Corporation (''Georgia-Pacific'') would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges that the Defendants (Georgia-Pacific and Fort James) are the two largest producers of away-from-home (''AFH'') tissue products in the United States. The proposed acquisition would result in Georgia-Pacific accounting for approximately 66 percent of the dollar sales of AFH tissue products sold in the United States, and would also result in Georgia-Pacific controlling approximately 36 percent of North American tissue parent roll productive capacity. As alleged in the Complaint, the transaction will substantially lessen competition in the production and sale of AFH tissue products in the United States, thereby harming consumers. Accordingly, the prayer for relief in the Complaint seeks among other things: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) permanent injunctive relief that would prevent Defendants from carrying out the acquisition or otherwise combining their businesses or assets.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Georgia-Pacific to acquire Fort James, provided that Georgia-Pacific divest its AFH Tissue Business (as defined in the proposed Final Judgment) in order to preserve competition. The settlement consists of a proposed Final Judgment and a Hold Separate Stipulation and order.

The proposed Final Judgment orders Defendants to divest the Georgia-Pacific AFH Tissue Business to an acquirer or acquirers approved by the United States. Defendants must complete the divestiture within one hundred twenty (120) calendar days after the filing of the Compliant, or five days after notice of the entry of the Final Judgment, whichever is later. The United States may nominate a trustee to monitor the divestiture process at any point. If Defendants do not complete the divestiture within the prescribed time, then, under the terms of the proposed Final Judgment, this Court will appoint a trustee to sell the Georgia-Pacific AFH Tissue Business, if a monitoring trustee has not already been appointed. If a monitoring trustee has been appointed, that person shall monitor the divestiture by the Defendants and complete the divestiture if Defendants have not completed the divestiture within the prescribed time.

The Hold Separate Stipulation and Order, which this Court entered on November 21, 2000, and the proposed Final Judgment require Defendants to preserve, maintain and continue to operate the Georgia-Pacific AFH Tissue Business as an independent, ongoing, economically viable competitive business, with the management, sales and operations held separate from Georgia-Pacific's other operations.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify or enforce the

provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Defendants

1. Georgia-Pacific Corporation

Georgia-Pacific, a Georgia corporation with its principal place of business in Atlanta, Georgia, is the second largest forest products company in the United States, and also the second largest manufacturer of AFH tissue products in the United States. In 1999, Georgia-Pacific reported sales of approximately $18 billion, with $1.4 billion of sales in tissue products in the United States, $674 million of which was derived from sales of AFH tissue products in the United States.

2. Fort James Corporation

Fort James, a Virginia corporation with its principal place of business in Deerfield, Illinois, is the largest tissue manufacturer and the largest AFH tissue products manufacturer in the United States. In 1999, Fort James reported sales of approximately $7 billion, with $3.1 billion of sales in tissue products in the United States, $1.3 billion of which was derived from sales of AFH tissue products in the United States.

B. The Proposed Acquisition

On or about July 16, 2000, Georgia-Pacific entered into an agreement with Fort James to purchase Fort James for cash and Georgia-Pacific stock with an aggregate value of approximately $11 billion. The proposed combination of Georgia-Pacific and Fort James precipitated the United States's antitrust suit.

C. The Competitive Effects of the Acquisition in AFH Tissue

1. The AFH Tissue Market

AFH tissue products are tissue products consumer primarily in commercial and other away-from-home establishments, such as office buildings, factories, restaurants, hospitals, schools, hotels and airports. The Complaint alleges that three separate categories of AFH tissue are relevant products (or lines of commerce) within the meaning of Section 7 of the Clayton Act: AFH bathroom tissue, AFH paper napkins, and AFH paper towels. There are no reasonably interchangeable substitutes for any of these relevant products to which a significant number of consumers would switch in response to a small but significant increase in price.

AFH tissue products differ from retail tissue products (those sold in grocery stories, club stores and other retail outlets) in numerous important respects, including significant physical differences, distinct distribution channels, branding, industry recognition, purchaser perception, and significant price differences. Because of these differences, a small but significant increase in the price of AFH tissue products would not cause a significant number of purchasers to switch to retail tissue products. Additionally, AFH tissue products are often produced using distinct production equipment and processes, and a significant number of tissue product manufacturers produce only AFH or retail tissue products, but not both.

A significant amount of AFH tissue products are sold to national accounts, such as quick serve restaurants. Many national account customers require national suppliers of AFH tissue products to ensure consistent product quality and timely delivery. In addition, is it usually more efficient and less costly for national accounts and distributors servicing national accounts to deal with a single tissue supplier with the ability to supply all the customers' locations, rather than with several suppliers servicing only limited regions. Therefore, for many AFH tissue purchasers, the only reasonably acceptable suppliers for AFH tissue products are the few AFH tissue manufacturers capable of servicing national accounts.

The production of AFH tissue products is a two-stage process. First, ''parent rolls'' of tissue are produced on very large, expensive and complex machines (''tissue machines''), which are suitable only for making tissue paper. A tissue machine combines water and certain types and grades of pulp at the ''wet end'' of the machine and processes these materials into various types, grades and ''basis weights'' of tissue paper, which correspond to the particular physical properties required by the finished tissue product being produced. As tissue paper comes off the ''dry end'' of the machine, it is wound into a ''parent roll'' which can weigh several tons and measure eight to ten feet in diameter and up to 25 feet in length. Tissue parent rolls are subsequently converted by specialized machines into finished tissue products.

This manufacturing process permits supply substitution by a significant number of AFH tissue manufacturers among the three AFH tissue products. Thus, while each AFH tissue product is a separate line of commerce and a relevant market for purposes of the Clayton Act, the ability of a significant number of suppliers to efficiently switch their production among AFH tissue products means that in each market the competitive effects will be similar. Thus, the Complaint alleges that AFH bathroom tissue, AFH paper napkins, and AFH paper towels can be usefully aggregated into what is referred to here as the ''AFH tissue market.''

The Complaint alleges that the relevant geographic market within the meaning of Section 7 of the Clayton Act is no larger than the United States, Mexico and Canada (''North America''), and may be smaller. AFH tissue products are light and bulky, and consequently, a relatively small amount of product will fill a truck, making shipping long distances uneconomical. Accordingly, the amount of AFH tissue products imported into the United States is negligible, and a small but significant increase in the price of any AFH tissue product would not cause a sufficient number of purchasers to switch to finished products manufactured outside the United States to make the price increase unprofitable. Parent rolls of tissue paper (those not yet converted into a final tissue product) can be shipped economically longer distances than finished tissue products, making it profitable to ship parent rolls from part of Canada and parts of Mexico to converting facilities in parts of the United States for processing into finished goods.

2. Anticompetitive Consequences of the Acquisition

The Complaint alleges that Georgia-Pacific's acquisition of Fort James would enable Georgia-Pacific to unilaterally exercise market power in the market for AFH tissue products by reducing the output of those products and the output of the AFH parent rolls used to produce AFH tissue, causing the price for AFH tissue products sold in the United States to increase following the merger.

Georgia-Pacific has approximately 11 percent of North American capacity for the production of AFH tissue, and Fort James has approximately 25 percent. Hence, the acquisition would result in Georgia-Pacific accounting for approximately 36 percent of available North American AFH parent roll capacity. This increase in industry capacity controlled by Georgia-Pacific would give it sufficient capacity to profit from the increase in price caused by a unilateral reduction in output after this merger. While in other cases, this level of industry capacity might not allow for a profitable unilateral price increase resulting from an output

reduction, two factors in this case give rise to a significant anticompetitive effect. Demand for AFH tissue products is relatively inelastic, and manufacturers of AFH parent rolls converted into products for sale in the United States are already operating at or near capacity and are not able to expand parent roll output quickly. The evaluation of the profit-maximization calculation for the merged firm, the low elasticity of parent roll demand, the contribution margin of parent rolls and the fact that competitors are operating at or very near their capacity and cannot timely increase that capacity led to the conclusion that the amount of capacity controlled post-merger would give Georgia-Pacific the opportunity and incentive to reduce output unilaterally and thereby increase its prices and profits at the expense of purchasers.

With respect to the sale of AFH tissue products. Georgia-Pacific and Fort James are the two largest producers of AFH tissue products in the United States. Georgia-Pacific has approximately a 23 percent market share of dollar sales and Fort James has approximately a 43 percent market share of dollar sales, resulting in the combined from having approximately a 66 percent share of dollar sales in the United States following the merger. Moreover, only a few suppliers of AFH tissue products typically qualify as acceptable suppliers to national account customers, due to needs relating to volume, uniform quality and consistency, timely delivery on a national basis, and distributional efficiencies. The loss of Fort James as one of the few competitors capable of competing for national accounts business will likely result in higher prices to these customers.

Entry is unlikely to be timely, likely or sufficient to prevent the exercise of market power that Georgia-Pacific would be able to engage in following the merger. Entry into AFH tissue products business would require a high sunk capital investment in equipment and facilities. AFH parent roll making machines are expensive and require extensive environmental permitting to install. Design and construction is also lengthy. The time required from initial planning for a new machine to final construction is more than two years. Furthermore, a successful new entrant would require converting lines to produce finished tissue products, a reliable distribution system and an extensive sales force. As a result of these factors, new entry into the AFH tissue products business, especially entry that would replace lost competition in sales to national accounts, is not likely to occur.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires that Georgia-Pacific divest its AFH Tissue Business to a purchaser or purchasers, approved by the United States, that can compete effectively in the AFH tissue business and thereby remedy the anticompetitive effects alleged in the Complaint. Specifically, the proposed Final Judgment requires Georgia-Pacific to divest as an ongoing business virtually all of the tangible and intangible assets of Georgia-Pacific Tissue LLC (defined in the proposed Final Judgment), the Georgia-Pacific business unit responsible for its AFH tissue manufacturing, marketing and sales. The divestiture includes all customer lists and the sales and marketing force employment contracts and relationships of Georgia-Pacific Tissue LLC along with its current productive assets. The assets include four tissue making mills located in Menasha, Wisconsin; Flagstaff, Arizona; Alsip, Illinois; and Gary, Indiana; with total tissue machine capacity of approximately 368,000 tons per year. The assets to be divested also include five tissue converting facilities located in Neenah, Wisconsin; Bellemont, Arizona; Brattleboro, Vermont; Greenwich, New York; and LaGrange, Georgia; with total tissue converting capacity of approximately 560,000 tons per year.

Georgia-Pacific is also required to offer, at the purchaser's option, a supply contract to provide the purchaser with up to 120,000 tons per year of tissue parent rolls. The supply contract is limited to an initial term of three years, with two one-year extensions possible if the United States concurs. The supply contract is intended to bridge the gap between the converting capacity and the parent roll capacity being divested, and provides adequate time for the purchaser to plan for and build a new tissue mill, which can take as long as five years. The supply contract replaces a similar agreement between Georgia-Pacific and Georgia-Pacific Tissue LLC, and is intended to ensure the continuation of the divested assets as an ongoing and viable business capable of competing effectively in the production and sale of AFH tissue products. Georgia-Pacific's compliance with the requirements of the Final Judgment will prevent an increase in market share in AFH tissue products as a result of its acquisition of Fort James, and preserve the competition that would have been lost as a result of the acquisition.

Defendants must use their best efforts to divest the Georgia-Pacific AFH Tissue Business as expeditiously as possible. The proposed Final Judgment provides that the Georgia-Pacific AFH Tissue Business be divested in such a way as to satisfy the United States, in its sole discretion, that the acquirer(s) can and will use the assets as part of a viable, ongoing business, and that if there are multiple divestitures, that at least one of the purchasers will become, as a result of the divestiture, capable of competing effectively in supplying AFH tissue products to national accounts.

The United States may at any time nominate a trustee to monitor the divestiture. If Defendants do not accomplish the ordered divestiture within the prescribed time period, then the monitoring trustee will immediately assume the sole power and authority to accomplish the divestiture. If a monitoring trustee has not yet been appointed, the Court shall appoint a trustee upon application by the United States.

If a trustee is appointed, the proposed Final Judgment provides that Defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee based on the price and terms of the divestiture and the speed with which it is accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and this Court setting forth either the Defendants' or the trustee's efforts, whichever is applicable, to accomplish the required divestiture. If at the end of six months after a trustee has become responsible for selling the Georgia-Pacific AFH Tissue Business, the divestiture has not been accomplished, then the trustee shall, and the United States and Defendants may, make recommendations to this Court, which shall enter such orders as appropriate to carry out the purpose of the Final Judgment.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal district court to recover three times the damages the person has suffered, as well as the costs of bringing a lawsuit and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final

Judgment has no effect as *prima facie* evidence in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with this Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is satisfied, however, that the divestiture of the Georgia-Pacific AFH Tissue Business, and other relief contained in the proposed Final Judgment will establish, preserve and ensure a viable competitor in the relevant market identified by the United States. Thus, the United States is convinced that the proposed Final Judgment, once implemented by the Court, will prevent Georgia-Pacific's acquisition of Fort James from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment is ''in the public interest.'' In making that determination, the court may consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia has held, the APPA, permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decreed is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[2]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States*v. *BNS, Inc.*, 858 F.2d 456, 462–63 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cer. denied*, 454 U.S. 1083 (1981); *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1458. Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. A ''proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [4]

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint, and does not authorize the

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[1] 119 Cong. Rec. 24,598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, those procedures are discretionary (15 U.S.C. 16(f)). A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *See also United States* v. *Loew's Inc.*, 783 F. Supp. 211, 214 (S.D.N.Y. 1992), *United States* v. *Columbia Artists Mgmt., Inc.*, 662 F.Supp. 865, 870 (S.D.N.Y. 1987).

[3] *United States* v. *Bechtel. Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cynamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert denied, 465 U.S. 1101 (1984).

[4] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (quoting Gillette, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 222 (W.D. Ky. 1985; *United States* v. *Carrols Dev. Corp.*, 454 F. Supp. 1215, 1222 (N.D.N.Y. 1978).

court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 25, 2001. Washington, D.C.

Respectfully submitted,

Justin M. Dempsey
(DC Bar # 425976)
Joseph M. Miller
(DC Bar # 439965)
Mark J. Botti
(DC Bar # 416948)
Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, 202–307–0924.

Certificate of Service

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via First Class United States Mail and facsimile transmission, this 25th day of January 2001, on:

Counsel for Georgia-Pacific Corporation
Wayne Dale Collins, Esq.
Sherman & Sterling,
599 Lexington Avenue,
New York, NY 10022

Counsel for Fort James Corporation
Ilene K. Gotts, Esq.
Wachtell, Lipton, Rosen & Katz,
51 West 52nd Street,
New York, New York 10019–6150

Justin M. Dempsey, Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Direct line (202) 307–5815.

[FR Doc. 01–3066 Filed 2–5–01; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 16, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Number: 1219–0088.

Affected Public: Business or other for-profit and State, Local, or Tribal Government.

Frequency: On occasion; monthly; weekly; and daily.

Number of Respondents: 980.

Number of Annual Responses: 2,262,566.

Estimated Time Per Response: Varies from approximately 16 hours for large mines to update and submit a Mine Ventilation Plan to approximately three minutes for a mine foreman to countersign a record of hazardous conditions resulting from unintentional fan stoppages of greater than 15 minutes.

Total Burden Hours: 2,725,770.

Total Annualized Capital/Startup Costs: $40.

Total Annual Costs (operating/maintaining systems or purchasing services): $194,256.

Description: The Standard for Ventilation Plans, Tests, and Examinations in Underground Coal Mines requires that mine operators maintain records concerning the ventilation system, tests, and examinations which are required by the Standard. The information is necessary to insure that the integrity of a mine's ventilation system is being maintained and that a safe and healthful work environment is provided to miners.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–3069 Filed 2–5–01; 8:45 am]
BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 31, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E–Mail King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration (ETA).

Title: Income and Eligibility Verification.

OMB Number: 1205–0238.

Affected Public: State, Local, or Tribal Government.

Frequency: Quarterly.

Number of Respondents: 53.

Number of Annual Responses: 212.

Estimated Time Per Response: Varies from an estimated 2 seconds to provide notification to claimants to 10 minutes to Obtain UI information and cross-match with wage information.

Total Burden Hours: 39,388.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $984,700.

Description: The exchange of UI wage record and benefit payment information allows child support and Social Security Agencies to verify an applicant's eligibility for benefits available under Titles II and XVI of the Social Security Act.

Maureen Hill,

Acting Departmental Clearance Officer.

[FR Doc. 01–3070 Filed 2–5–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 31, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail to King-Darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Lead in General Industry.

OMB Number: 1218–0092.

Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.

Frequency: On occasion.

Number of Respondents: 50,031.

Number of Annual Responses: 4,990,031.

Estimated Time Per Response: Varies from 5 minutes to maintain records to 1.5 hours for employee training or medical examination.

Total Burden Hours: 1,265,938.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $137,352.496.

Description: 29 CFR 1910.1025 requires employers to monitor employee exposure to lead, to provide medical surveillance, to train employees about the hazards of lead, and to establish and maintain accurate records of employee exposure to lead. These records are used by employers, employees, physicians, and the Government to ensure that employees are not harmed by occupational exposure to lead.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Asbestos in General Industry.

OMB Number: 1218–0133.

Affected Public: Business or other for-profit; Federal Government; and State, Local or Tribal Government.

Frequency: On occasion.

Number of Respondents: 233.

Number of Annual Responses: 65,893.

Estimated Time Per Response: Varies from 5 minutes to maintain records to 1.5 hours for employee training or medical evaluation.

Total Burden Hours: 23,849.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,625,143.

Description: 29 CFR 1910.1001 requires employers to monitor employee exposure to asbestos, to provide medical surveillance, to train employees about the hazards of asbestos, and to establish and maintain accurate records of employee exposure to asbestos. These records are used by employers, employees, physicians, and the Government to ensure that employees are not harmed by occupational exposure to asbestos.

Maureen Hill,

Acting Departmental Clearance Officer.

[FR Doc. 01–3071 Filed 2–5–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 31, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or E-Mail *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration (MSHA).

Title: Certificate of Electrical Training.

OMB Number: 1219–0001.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 2,886.

Number of Annual Responses: 2,886.

Estimated Time Per Response: Varies from approximately 8 hours to conduct a training course to approximately 6 minutes to complete the MSHA Form 5000–1.

Total Burden Hours: 13,265.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $409,517.

Description: Title 30 C.F.R. 75.153(a)(2) and 77.103(a)(2) require that a program be provided for the qualification of certain experienced personnel as mine electricians. MSHA Form 5000–1 is used by instructors to report to MSHA for certification those persons who have satisfactorily completed a coal mine electrical training program.

Maureen Hill,

Acting Departmental Clearance Officer.

[FR Doc. 01–3072 Filed 2–5–01; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Committee on Registered Apprenticeship

AGENCY: Employment and Training Administration, Labor Services.

ACTION: Renewal of the Federal Committee on Registered Apprenticeship (FCRA) Charter.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of the charter renewal of the Federal Committee on Registered Apprenticeship (FCRA)≤

Background

The Charter for the Federal Committee on Registered Apprenticeship (FCRA) expires on February 12, 2001, and is required to be renewed every two years from the date of the Secretary's signature. The current charter was signed by the Secretary of Labor February 12, 1999.

The charter has been revised to reflect the following changes; (1) The number of members has increased from 21 to 24. Each sector now has eight representatives—eight employer members; eight labor members; and eight public members.

In accordance with the requirements of the Federal Advisory Committee Act, the charter will be revised prior to the scheduled expiration date of February 12, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room S–1310, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Signed at Washington, DC, this 4th day of January 2001.

Raymond L. Bramucci,

Assistant Secretary of Employment and Training.

[FR Doc. 01–3068 Filed 2–5–01; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel (Visual Arts Section B, Access, Education, Heritage/Preservation categories), to the National Council on the Arts will be held by teleconference at 3:00 p.m. on February 12, 2001 in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: February 1, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–3110 Filed 2–5–01; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Forms 366, 366A, and 366B, ''Licensee Event Report.''

2. *Current OMB approval number:* 3150–0104.

3. *How often the collection is required:* Events involving reactors are reportable on occurrence.

4. *Who is required or asked to report:* Holders of operating licenses for commercial nuclear power plants.

5. *The number of annual respondents:* 104.

6. *The number of hours needed annually to complete the requirement or request:* 56,471.

7. *Abstract:* With NRC Forms 366, 366A, and 366B, the NRC collects reports of the types of reactor events and problems that are believed to be significant and useful to the NRC in its effort to identify and resolve threats to public safety. They are designed to provide the information necessary for engineering studies of operational anomalies and trends and patterns analysis of operational occurrences. The same information can be used for other analytic procedures that will aid in identifying accident precursors.

Submit, by April 9, 2001 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 31st day of January 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–3026 Filed 2–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License (OL) No. NPF–63, issued to Carolina Power & Light Company (CP&L, the licensee), for operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP), located in Wake and Chatham Counties, North Carolina.

The proposed amendment would change the OL and Technical Specifications for HNP to reflect an increase in the licensed core power level to 2900 megawatts (thermal), 4.5% greater than the current level.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 8, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 14, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 31st day of January 2001.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–3024 Filed 2–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213–OLA and ASLBP No. 01–787–02–OLA]

Connecticut Yankee Atomic Power Company Haddam Neck Plant; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 Fed. Reg. 28,710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Connecticut Yankee Atomic Power Company Haddam Neck Plant

This Board is being established pursuant to a notice of consideration of issuance of operating license amendments, proposed no significant hazards consideration determination, and opportunity for a hearing published in the **Federal Register** (65 Fed. Reg. 77,913, 77,915 (Dec. 13, 2000)). The proceeding involves petitions for intervention filed on January 10 and January 12, 2001, respectively, by Citizens Awareness Network and the Connecticut Department of Public Utility Controls challenging a license amendment request by Connecticut Yankee Atomic Power Company to add a license condition to the operating license for the Haddam Neck Plant. The amendment would approve the License Termination Plan (LTP), dated July 7, 2000, and allow the licensee to make changes to the approved LTP without prior Nuclear Regulatory Commission approval, provided criteria specified in the license condition are met.

The Board is comprised of the following administrative judges:

Ann Marshall Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 31st day of January 2001.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 01–3023 Filed 2–5–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop to Discuss Nuclear Power Reactor Steam Generator Tube Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) will host a public workshop to provide an opportunity for discussion of recent events with respect to nuclear power plant steam generators and their implications. The workshop is open to the public.

DATES: The workshop will be held on Tuesday, February 27, 2001, from 7:30 a.m. to 5:15 p.m. and Wednesday, February 28, 2001 from 8:00 a.m. to 11:45 a.m.

ADDRESSES: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. The hotel's telephone number is (301) 652–2000.

FOR FURTHER INFORMATION CONTACT: Robert L. Rothman, Mail Stop O–9D3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–3306, email rlr@nrc.gov.

SUPPLEMENTARY INFORMATION: All pressurized water reactor licensees are required by NRC regulations to provide reasonable assurance of steam generator tube integrity. These regulations pertain to design, operation and surveillance activities of steam generators and are reflected in the licensing basis of each facility. The surveillance requirements are important to maintaining integrity, since different types of tube degradation are expected to occur over the life of the steam generator. Tubes that are identified as containing defects of a specified depth are removed from service.

In recent years, the NRC staff has examined the regulatory programs which comprise the framework for ensuring the integrity of steam generator tubes. In 1997 the Nuclear Energy Institute proposed NEI 97–06, ''Steam Generator Program Guidelines,'' as a formal industry initiative to provide a consistent industry approach for managing steam generator programs and for maintaining steam generator tube integrity. In 1998, the Commission

approved an approach to work with the industry to more efficiently resolve program concerns and move toward NRC endorsement of NEI 97–06, coupled with voluntary industry implementation of improved steam generator technical specifications.

On February 4, 2000, the Nuclear Energy Institute provided the NRC staff with its proposed steam generator generic change package which was prepared under the Formal Industry initiative NEI 97–06. The staff suspended its review of NEI 97–06 as a result of regulatory activities associated with the Indian Point Unit 2 steam generator tube failure which occurred February 15, 2000. There have been several other activities in the steam generator area in the past year. These activities are discussed in Regulatory Information Summary 2000–22 dated November 3, 2000, and the lessons learned report from the review of the Indian Point Unit 2 steam generator tube failure dated October 23, 2000. These two documents are available on the NRC web site. On December 11, 2000 NEI submitted a revised Industry Steam Generator Program License Change Package and stated in their transmittal letter that the revised package supercedes the earlier version in its entirety. The NRC's Office of Nuclear Reactor Regulation (NRR) sponsored workshop will discuss recent events and their implications with respect to nuclear power plant steam generators. Proposed topics are: steam generator inspection technical issues, steam generator programmatic issues, steam generator tube integrity issues, and steam generator inspection oversight issues.

Registration

There is no registration fee for the meeting; however, notification of attendance is requested so that adequate preparations for the meeting can be arranged. Please notify R. L. Rothman at (301) 415–3306, email rlr@nrc.gov, if you plan to attend.

Solicitation of Participation by Stakeholders

The NRC staff is soliciting additional stakeholder participation from interested parties on both the technical and regulatory aspects related to the workshop topics. The staff requests that all persons wishing to formally make presentations at the workshop contact R. L. Rothman at (301) 415–3306, email rlr@nrc.gov, no later than February 10, 2001.

Dated at Rockville, MD this 31st day of January 2001.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 01–3027 Filed 2–5–01; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Public Law 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 9:00 a.m. to 11:00 a.m. on Wednesday, February 21, 2001, at the Log Cabin, Storey Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Approve the minutes of previous Board meetings; (2) Receive a staff report and take action regarding the proposed Mountain Lake Enhancement Plan; (3) Receive staff reports regarding energy conservation projects, the establishment of a community center, and the ''Unseen Treasures'' exhibition; and (4) receive public comment in accordance with the Trust's Public Outreach Policy.

Time: The meeting will be held from 9:00 a.m. to 11:00 p.m. on Wednesday, February 21, 2001.

ADDRESSES: The meeting will be held at the Log Cabin, Storey Avenue, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Craig Middleton, Deputy Director for Operations and Governmental Affairs, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: January 31, 2001.

Karen A. Cook,

General Counsel.

[FR Doc. 01–3021 Filed 2–5–01; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43904; File Nos. SR–CBOE–00–58 and SR–ISE–00–15]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; International Securities Exchange, LLC; Order Approving Proposed Rule Changes Relating to an Interim Intermarket Linkage

January 30, 2001.

I. Introduction

On November 15, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'') and the International Securities Exchange LLC (''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposals to adopt rules providing for the implementation of ''interim linkages'' with other option exchanges. On December 13, 2000, the CBOE and ISE (collectively ''Exchanges'') each submitted amendments to their rule proposals.[3] On December 19, 2000, the Exchanges' rule proposals were published for comment in the **Federal Register**.[4] The Commission did not receive comments on either the CBOE or the ISE proposals. This order approves the CBOE and the ISE proposed rule changes, as amended.

II. Description of the Proposed Rule Changes

The CBOE and ISE propose to implement certain aspects of an intermarket options linkage on an ''interim'' basis.[5] The Exchanges represent that this interim linkage would utilize existing order types to facilitate the sending and receiving of order flow between CBOE market makers and ISE market makers and their counterparts on the other options exchanges as an interim step towards development of a ''permanent'' linkage.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Timothy Thompson, Assistant General Counsel, Legal Department, CBOE, and from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 12, 2000 and December 11, 2000, respectively.

[4] *See* Securities Exchange Act Release Nos. 43745 (December 19, 2000), 65 FR 82418 (File No. SR–CBOE–0058) and 43743 (December 19, 2000), 65 FR 82426 (File No. SR–ISE–0015).

[5] Under the proposal, the interim linkage would be for a pilot period expiring on January 31, 2002.

[6] On July 28, 2000, the Commission approved a linkage plan that now includes all five options exchanges. *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4,

The Exchanges represent that all of the options exchanges continue to work towards implementation of a permanent linkage, which likely will include contracting with a third party to build a linkage infrastructure. According to the Exchanges, because the implementation of a permanent linkage is expected to take a significant amount of time, the options exchanges have proposed implementing an ''interim'' linkage. An interim linkage would use the existing market infrastructure to route orders between market makers on the participating exchanges in a more efficient manner. The Exchanges propose that the interim linkage would be in effect on a pilot basis until January 31, 2002.[7]

The interim linkage would require the participating exchanges to open their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers would be able to designate certain orders as ''customer'' orders, and thus, would receive automatic execution of those orders on participating exchanges.

The proposals would authorize the CBOE and the ISE to implement bilateral or multilateral interim arrangements with the other options exchanges to provide for equal access between market makers on the respective exchanges. The Exchanges represent that the initial arrangements would allow ISE Primary Market Makers (''PPMs''), CBOE Designated Primary Market Makers (''DPMs''), and their equivalents on the other exchanges,[8] when they are holding customer orders, to send orders reflecting the customer orders to another market for execution when such other market has a better quote. Such orders would be limited in size to the lesser of the size of the two markets' ''firm'' quotes for customer orders. The Exchanges expect that the interim linkage may expand to include limited access for pure principal orders, for orders of no more than 10 contracts.

Under the Exchanges' proposals, all interim linkage orders must be ''immediate or cancel'',[9] and a market maker can send a linkage order only when the other (receiving) market is displaying the best national bid or offer and the sending market is displaying an inferior price. The Exchanges represent that this will allow a market maker to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to ''clear'' another market displaying a superior quote. Further, the Exchanges represent that they will implement heightened surveillance procedures to help ensure that their market makers send only properly qualified orders through the interim linkage.

DPM and PMM participation in the interim linkage would be voluntary under the terms of the proposals. Only when a DPM or PMM and its equivalent on another exchange believe that this form of mutual access would be advantageous would the exchanges employ the interim linkage procedures. The Exchanges represent that the interim linkage will benefit investors and will provide useful experience that will help the Exchanges in implementing the permanent linkage.

III. Discussion

After careful review, the Commission finds that the CBOE and the ISE proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[10] and, in particular, the requirements of Section 6 of the Act.[11] Among other provisions, Section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.

The Commission notes that developing and fully implementing a permanent intermarket linkage may take a significant amount of time. According to the Exchanges, the interim linkage will be introduced on a voluntary basis, to allow participating exchanges to route customer orders to an away market that is displaying the best available price in a multiply-traded options class. The Commission believes that this interim linkage should enable customers to benefit from the Exchanges' immediate ability to use their existing market infrastructure to route their orders between market makers on the participating exchanges in a more efficient manner.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule changes (SR–CBOE–00–58 and SR–ISE–00–15) are approved, as amended, on a pilot basis until January 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3003 Filed 2–5–01; 8:45 am]

BILLING CODE 8010–01–M

2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

[7] *See supra* note 3.

[8] Specialists on other exchanges would be permitted to use the interim linkage after filing appropriate rules with the Commission and executing agreements with the participating exchanges.

[9] Thus, interim linkage orders could not be placed on an exchange's limit order book.

[10] The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43908; File No. SR–CBOE–00–53]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Permanent Approval of Live Ammo to RAES

January 30, 2001.

I. Introduction

On November 8, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to 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 to adopt the rule governing the execution of orders on the live ammo screen on a permanent basis. On December 11, 2000, the proposal was published in the **Federal Register.**[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Background

The CBOE originally proposed to amend its Rule 7.4, which governs the execution of orders by order book officials (''OBOs'') or designated primary market makers' (''DPMs'') book staff, to permit the electronic execution of certain orders on the live ammo screen, in June 1998 (''Original Proposal'').[4] The Commission approved the Original Proposal on a pilot basis on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43646 (November 30, 2000), 65 FR 77403.

[4] Securities Exchange Act Release No. 40283 (July 30, 1998), 63 FR 42085 (August 6, 1998).

February 2, 2000,[5] which was scheduled to expire on October 30, 2000. On October 26, 2000, the CBOE submitted a proposed rule change, pursuant to Section 19(b)(3)(A) of the Act,[6] to extend the pilot until December 15, 2000.[7] On December 7, 2000, the CBOE submitted a proposed rule change, pursuant to Section 19(b)(3)(A) of the Act,[8] to extend the pilot until January 31, 2001.[9]

In addition, on July 14, 2000, the CBOE submitted a related proposed rule change, pursuant to Section 19(b)(3)(A) of the Act,[10] to implement a systems change to its Order Routing System (''ORS'') to provide for the automatic rerouting of cancel replace orders.[11]

III. Description of the Proposal

The live ammo screen, which is an undisplayed portion of the CBOE's electronic customer limit order book, known as the Electronic Book or EBook, receives for further processing orders that are market orders or limit orders that improve the market. An order may be routed to the live ammo screen under a number of circumstances. First, market orders that are received through the Exchange's order shoe [12] that are manually booked are automatically routed to the live ammo screen. Second, limit orders that better the quote that are received through the order shoe and that are manually booked are automatically routed to the live ammo screen. Third, limit orders that better the quote and that are routed directly to the EBook when the routing parameters have been set at ''0'' are automatically sent to the live ammo screen.[13] Finally, marketable limit orders that are electronically booked from a floor broker's PAR workstation are automatically routed to the live ammo screen.[14]

The Original Proposal, which CBOE proposes to implement on a permanent basis, permits OBOs or DPMs, as the case may be, to designate certain orders on the live ammo screen to be electronically executed against market makers standing in the crowd, *i.e.*, the live ammo to RAES feature of the live ammo screen.[15] The live ammo to RAES feature of the live ammo screen permits an OBO (or DPM) to send RAES-eligible orders on the live ammo screen to RAES for automatic execution.[16] The OBO (or DPM) may select all or any portion of the orders displayed on the live ammo page to be routed to RAES.[17] Selected RAES-eligible orders are routed based on time priority, pursuant to CBOE Rule 6.45. Orders that are not RAES-eligible must be manually represented in the crowd by the OBO (or DPM) or sent to the EBook, if book eligible.[18]

IV. 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.[19] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[20] which provides, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market, and in general to protect investors and the public interest.

The Commission continues to believe that the live ammo to RAES feature should help in providing timely executions of orders on the live ammo screens of the CBOE's EBook. In absence of this feature, an OBO (or DPM) will be again required to manually represent each order on the live ammo screen in the crowd. As discussed in the Original Order, during periods of high volume or volatility, the OBO (or DPM) may be unable to manually represent these live ammo orders in a timely fashion, which could result in investors' orders receiving inferior executions.[21] The live ammo to RAES feature enables an OBO (or DPM) to address live ammo orders and provide for their execution faster than would occur if each order had to be individually represented in the crowd by the OBO (or DPM). Thus, the Commission believes that it is in the public interest for the live ammo to RAES feature to be implemented on a permanent basis.

In the Original Order, the Commission expressed concern that the use of the live ammo screen may disadvantage customer orders. Specifically, the Commission stated that it expected the Exchange to make systems enhancements to ensure that a maximum number of customer orders in the CBOE system are matched against each other. The Commission continues to encourage the CBOE to develop systems enhancements to ensure that a maximum number of customer orders in the CBOE system are matched against one another. However, the Commission believes that, in the meantime, the live ammo to RAES feature should provide investors with enhanced executions and should be implemented on a permanent basis.

In addition, the Commission directed the Exchange to develop systems enhancements to ensure that when there are no opportunities for the matching of customer orders in the CBOE-system, RAES-eligible orders will be routed directly to RAES without the interim step of appearing first on the live ammo screen. In response to this directive, the Exchange proposed the ORS Modification, which will permit cancel

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[5] Securities Exchange Act Release No. 42379, 65 FR 6665 (February 10, 2000) (''Original Order'').

[6] 15 U.S.C. 78s(b)(3)(A).

[7] Securities Exchange Act Release No. 43499 (October 31, 2000), 65 FR 67023 (November 8, 2000).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] Securities Exchange Act Release No. 43727 (December 14, 2000), 65 FR 80968 (December 22, 2000).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] Securities Exchange Act Release No. 43185 (August 21, 2000), 65 FR 51884 (August 25, 2000) (''ORES Modification''). The ORS Modification will permit the processing of a cancel replace order for an order residing on the EBook by routing the replace order through the ORS as a new order, after the cancel portion has been completed. The replace order, as with any new incoming order, may be eligible for execution in the Retail Automatic Execution system (''RAES''), crossing with other EBook orders through the Automated Book Priority system, routing directly to the EBook (automatically updating the quote if it improves the market), or routing to the Public Automated Routing (''PAR'') terminal or Booth Automated Routing terminal for price improvement. According to the Exchange, the ORS Modification was implemented on January 24, 2001. Telephone call between Jamie Galvin, CBOE and Kelly Riley, Division of Market Regulation, SEC, on January 30, 2001.

[12] The order shoe is where orders are manually held, *i.e.* where paper order tickets are actually placed at the trading post.

[13] The ''0'' parameter is an order routing parameter that may be implemented under high volume situations to route all limit orders to the EBook.

[14] At the time of the Original Proposal, approximately 90 percent of orders routed to the live ammo screen were cancel replace orders. According to the CBOE, the ORS Modification should significantly reduce the amount of orders routed to the live ammo screen. *See* note 11, *supra.*

[15] Prior to the Original Proposal, an OBO or DPM, acting in his or her capacity as an OBO, represented in the trading crowd each order that resided on the live ammo screen.

[16] Orders selected for automatic execution must satisfy RAES requirements. Currently, RAES accepts market and marketable limit orders that meet the applicable size requirements.

[17] A live ammo screen page may contain up to sixteen orders.

[18] A ''book all'' button permits the OBO (or DPM) to send all book eligible orders on the live ammo screen to the EBook.

[19] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* note 5, *supra.* In the Original Order, the Commission also noted that delayed execution of customer orders may implicate a broker-dealer's best execution responsibilities. *See* letter from Arthur Levitt, Chairman, SEC, to Michael Kelly, President, First Options of Chicago, Inc., dated April 13, 1999.

replace orders to be rerouted through the ORS without having to be sent to the live ammo screen. The Commission notes that, according to the Exchange, the majority of orders that were sent to the live ammo screen were cancel replace orders. Therefore, the Commission is encouraged by the new ORS Modification and its impact on the ability of customer orders to be routed directly through the ORS without having the interim step of first going to the live ammo screen. That having been said, however, the Commission urges the Exchange to continue to consider other systems modifications to address those orders that continue to be routed to the live ammo screen.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–CBOE–00–53) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3042 Filed 2–5–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43906; File No. SR–NASD–01–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Implementation of Decimal Pricing in the Nasdaq Market

January 30, 2001.

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 January 29, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt a mandatory conversion rule for the open fractional orders of Nasdaq securities commencing quotation and trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets (''Implementation Plan'' or ''Plan''), which was submitted on July 24, 2000, to the Commission. Under the proposal, Nasdaq would mandate that all open orders priced in fractions in NASD member firms' systems on the evening before that security is to commence quoting in decimals be converted to appropriately rounded decimal values of no more than two places beyond the decimal point (to the penny). An NASD member firm would be free to accept, and retain in its internal systems, decimal based orders in those securities of any number of values beyond the decimal point that the firm chooses.[3] Nasdaq proposes to implement the conversion rule change commencing March 12, 2001, and thereafter, on each Nasdaq security as it converts from fractional to decimal pricing pursuant to the Plan. The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

3220. Adjustment of Open Orders

(a) No Change.
(1)–(3) No Change.
(b) No Change.
(c) No Change.
(d) No Change.
(e) No Change.
(1)–(6) No Change.

(f) Mandatory Open Order Conversion for Securities Commencing Decimal Pricing All open orders in Nasdaq securities priced in fractions remaining in a firm's internal system on the evening prior to, or received thereafter and prior to, the security's commencing decimal pricing pursuant to the Decimals Implementation Plan for the Equities and Options Markets shall be converted, no later than midnight on that evening prior to their first day of decimal pricing, as follows:

(1) Prior to the conversion, member firms should notify their customers and inform them of the change to their open fractional order(s) as a result of the conversion to decimal pricing. Customers should be afforded the opportunity to take action if they do not wish to participate in the conversion. Customers not wishing to participate in the mandatory conversion should be allowed the opportunity to cancel their open order(s) prior to the evening of the conversion.

(2) No later than midnight on the evening prior to a security's first day of decimal pricing, all open orders priced in fractions that have not been canceled, including those with price qualifiers such as DNR and DNI, shall be converted as follows:

- *The fractional price of all open Buy Orders (GTC, GTX, Buy Stop and Buy Stop Limits) will be converted to their decimal equivalent and then ''rounded down'' to the nearest $0.01.*
- *The fractional price of all open Sell Orders (GTC, GTX, Sell Stop and Sell Stop Limits) will be converted to their decimal equivalent and then ''rounded up'' to the nearest $0.01.*

Example:

Buy 1000 MSFT 88 1/16 would convert to B 1000 MSFT 88.06 (1/16 = 0.0625)

Sell 1000 MSFT 88 1/16 would convert to S 1000 MSFT 88.07

This rule is to be in effect only in preparation for the first day of decimal trading of the newly-converted security. After conversion, firms may accept orders of any number of spaces beyond the decimal point in the newly-converted security and submit them, after appropriate rounding (See NASD Rule 4613(a)(1)(D)), to Nasdaq for display.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] Nasdaq notes that its systems will only accept and display quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that are not rounded to the penny will be rejected by Nasdaq systems. Similarly, Nasdaq's Automated Confirmation Transaction Service (''ACT'') will accept prices in trade reports only to six places beyond the decimal point and Nasdaq's Trade Dissemination Service (''NTDS'') will disseminate transaction information only to four places beyond the decimal point.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 8, 2000, the Commission ordered the exchanges and the NASD to submit a decimal pricing phase-in plan no later than July 24, 2000. Under the Plan, the NASD is to fully convert the Nasdaq market to decimal pricing no later than April 9, 2001. Before full implementation, Nasdaq is also to commence a decimal pricing pilot program for 10–15 Nasdaq issues on or before March 12, 2001. Recently, Nasdaq also determined to add a second decimal phase-in of approximately 100+ additional Nasdaq securities on March 26, 2001.

In February 2000, Nasdaq, as part of its preparations for decimal pricing, issued guidelines to all member firms on the conversion of open orders. In short, the conversion guidelines directed firms to convert, on the evening before the first day a Nasdaq security is scheduled to commence quoting in decimals, all open orders priced in fractions for that security in their systems by converting them to their decimal equivalent and then rounding them (down for buys/up for sells) to the minimum quote increment ($0.01). This would have resulted in all such open fractional orders being converted to two values beyond the decimal point.

To reduce potential confusion on the crucial first day of a security's transition to decimal pricing that could result from inconsistent conversion standards, Nasdaq proposes to adopt a mandatory conversion rule for all open orders in Nasdaq securities that are priced in fractions and reside in the internal systems of NASD member firms on the evening prior to the first day a particular security commences quoting in decimals. Under the proposal, all open orders, including those with price qualifiers such as ''Do Not Reduce'' (''DNR'') and ''Do Not Increase'' (''DNI''), priced in fractions that reside in a firm's internal system on the evening before the start of decimal pricing, will be converted as follows: (1) The price of all open Buy Orders (including ''Good-til-Canceled'' (''GTC''), ''Good-til-Executed'' and (''GTX''), Buy Stop and Buy Stop Limits) priced in fractions will be converted to their decimal equivalent and ''rounded down'' to the nearest $0.01; and (2) the price of all open Sell Orders (GTC, GTX, Sell Stop and Sell Stop Limits) priced in fractions will be converted to their decimal equivalent and ''rounded up'' to the nearest $0.01. An example of a sample fractional buy and sample fractional sell conversation is provided below:

Example:

Buy 1000 MSFT 88 1/16 would covert to B 1000 MSFT 88.06 (1/16 = 0.0625)

Sell 1000 MSFT 88 1/16 would convert to S 1000 MSFT 88.07

After the conversion, market participants would be free to accept decimal-priced orders for any number of values beyond the decimal point as they deem appropriate. Nasdaq will continue to require that firms round orders to two decimal places before submitting them to Nasdaq for display in the quote montage. Likewise, ACT will only accept trade reports up to six places beyond the decimal point and disseminate decimal priced transaction reports to four decimal points to the tape.

Nasdaq believes that a uniform open fractional order conversion methodology, one that will be followed by all industry participants, is necessary to ensure a smooth and orderly transition from fractional to decimal pricing. Such uniformity is particularly important for the first day of decimal trading in a security and for orders that may reside in multiple systems. Nasdaq believes a single fractional open order conversion standard can be expected to reduce investor confusion, prevent discrepancies in reconciliation, and reduce the potential that customers may be disadvantaged by inferior executions.

A conversion of open orders to two places beyond the decimal point also is consistent with Nasdaq's quotation and execution facilities that likewise will provide quotes and executions in pennies. Moreover, such a conversion approach should also be readily understood by investors as well as firms that have already programmed for, and participated in, a two-point conversion of open fractional orders in the listed environment. Finally, the two-point conversion standard is structured to be applicable to all firms, including those that intend to maintain limit orders files to two places beyond the decimal point on an ongoing basis, as well as those that intend to operate systems allowing quotes beyond two decimal places.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[4] in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

Nasdaq has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[4] 15 U.S.C. 78o–3(b)(6).

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–01–10 and should be submitted by February 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3043 Filed 2–5–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before April 9, 2001.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to David Ashley, Market Research Specialist, Office of Communications and Public Liaison, Small Business Administration, 409 3rd Street, S.W., Suite 2552.

FOR FURTHER INFORMATION CONTACT: David Ashley, Market Research Specialist, 202–205–6868 or Curtis B. Rich, Management Analyst, (202)205–7030.

SUPPLEMENTARY INFORMATION:

Title: National Customer Service Tracking Program.

Form No: N/A.

Description of Respondents: SBA Customer, Procurement Officials, and resource Partners.

Annual Responses: 5,000.

Annual Burden: 1,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–3030 Filed 2–5–01; 8:45am]

BILLING CODE 8025–01–P

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3317]

State of Texas; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency, dated January 29, 2001, the above-numbered Declaration is hereby amended to include Fannin County as a disaster area due to damages caused by a severe winter ice storm beginning on December 12, 2000 and continuing through January 15, 2001.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Collin, Grayson and Hunt in the State of Texas, and Bryan County in the State of Oklahoma.

Any counties contiguous to the above named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 9, 2001 and for economic injury the deadline is October 9, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 30, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–3029 Filed 2–5–01; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Import Statistics Relating to Competitive Need Limitations; Invitation for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; invitation for public comment.

SUMMARY: The Office of the U.S. Trade Representative is publishing a corrected notice in this matter. A previous notice dated January 31, 2001, and appearing at Vol. 66, No. 21, pages 8441–8459, contained numerous errors. Consequently, for the convenience of those seeking to comment in this matter, the agency is re-publishing the entire **Federal Register** notice.

The Trade Policy Staff Committee (TPSC) is informing the public of interim 2000 import statistics relating to Competitive Need Limitations (CNL) under the Generalized System of Preferences (GSP) program. The TPSC also invites public comments by 5:00 p.m., Wednesday, March 14, 2001 regarding possible *de minimis* CNL waivers with respect to particular articles, and possible redesignations under the GSP program of articles currently subject to CNLs.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

Section 503(c)(2)(A) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2463(c)(2)(A)), provides for Competitive Need Limitations on duty-free treatment under the GSP program. When the President determines that a beneficiary developing country exported to the United States during a calendar year either (1) A quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($95 million for 2000), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent'' CNL), the President shall terminate GSP duty-free treatment for that article from that beneficiary developing country by no later than July 1 of the next calendar year.

II. Discretionary Decisions

A. De Minimis Waivers

Section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)) provides the President with discretion to waive the 50 percent CNL with respect to an eligible article imported from a beneficiary developing country if the value of total imports of that article from all countries during the calendar year did not exceed the applicable amount for that year ($15 million for 2000).

B. Redesignation of Eligible Articles

Where imports of an eligible article from a beneficiary developing country ceased to receive duty-free treatment due to exceeding the CNL in a prior year, Section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)) provides the President with discretion to redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

III. Implementation of Competitive Need Limitations, Waivers, and Redesignations

Exclusions from GSP duty-free treatment where CNLs have been exceeded, as well as the reinstatement of GSP duty-free treatment to products which the President has redesignated, will be effective July 1, 2001. Decisions on these matters, as well as decisions with respect to *de minimis* waivers, will be based on full 2000 calendar year import statistics.

IV. Interim 2000 Import Statistics

In order to provide advance notice of articles that may exceed the CNLs for 2000, and to afford an earlier opportunity for comment regarding possible *de minimis* waivers and redesignations, interim import statistics covering the first 10 months of 2000 are included with this notice.

The following lists contain the HTSUS numbers and beneficiary country of origin for GSP-eligible articles, the value of imports of such articles for the first ten months of 2000, and their percentage of total imports of that product from all countries. The flags indicate the status of GSP eligibility.

Articles marked with an ''*'' are those that have been excluded from GSP eligibility for the entire past calendar year. Flags ''1'' or ''2'' indicate products that were not eligible for duty-free treatment under GSP for the first six months or last six months, respectively, of 2000.

The flag ''D'' identifies articles that, based on interim 2000 data, may be eligible for a de minimis waiver of the 50 percent CNL.

List I shows GSP-eligible articles from beneficiary developing countries that have exceeded the CNL of $95 million in 2000. Those articles without a flag identify articles that were GSP eligible during 2000 but stand to lose GSP duty-free treatment on July 1, 2001. In addition, List I shows articles (demoted with a flag ''*'' or ''2'') which did not have GSP duty-free treatment in all or the last half of 2000.

List II shows GSP-eligible articles from beneficiary developing countries that (1) have not yet exceeded, but are approaching, the $95 million CNL during the period from January through October 2000, or (2) are close to or above the 50 percent CNL. Depending on final calendar year 2000 import data, these products also stand to lose GSP duty-free treatment on July 1, 2001.

List III is a subset of List II. List III identifies GSP-eligible articles from beneficiary developing countries that are near or above the 50 percent CNL, but that may be eligible for a de minimis waiver of the 50 percent CNL. Actual eligibility for de minimis waivers will depend on final calendar year 2000 import data.

List IV shows GSP articles from beneficiary developing countries which are currently not receiving GSP duty-free treatment, but which have import levels (based on interim 2000 data) below the CNLs and which thus may be eligible for redesignation pursuant to the President's discretionary authority. Articles with a ''D'' exceed the 50 percent CNL and would require both de minimis waivers and redesignation to receive GSP duty-free treatment. The list may contain articles that may not be redesignated until certain conditions are fulfilled, as for example, where GSP eligibility for articles was suspended because of deficiencies in beneficiary countries' protection of the rights of workers or owners of intellectual property. This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamation 6425 of April 29, 1992 (57 FR 19067).

Each list is followed by a summary table that indicates the number of products listed from each beneficiary developing country and the total value of imports of those products from the beneficiary developing country.

The lists appended to this notice are provided for informational purposes only. The attached lists are computer-generated and based on interim 2000 data, and may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the lists, all determinations and decisions regarding the CNLs of the GSP program will depend on full calendar year 2000 import data with respect to each GSP eligible article. Each interested party is advised to conduct its own review of 2000 import data with regard to the possible application of GSP CNLs.

IV. Public Comments

All written comments with regard to the matters discussed above should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., room 518, Washington, DC 20508. All submissions must be in English and should conform to the information requirements of 15 CFR 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (*e.g.*, the use of the President's *de minimis* waiver authority, etc.) in which the party is interested.

A party must provide an original and fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Wednesday, March 14, 2001. Comments received after the deadline will not be accepted. If the comments contain business confidential information, an original and fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked ''confidential'' at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential''.

Written comments submitted in connection with these decisions, except for information granted ''business confidential'' status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room (202) 395–6186. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Jon Rosenbaum,

Chairman, GSP Subcommittee of the TPSC.

BILLING CODE 3190–01–M

LIST I : ITEMS GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	0603.10.70	Colombia.....	101,276,260	87.8%	Chrysanthemums, standard carnations, anthuriums and orchids, fresh cut
*	2402.10.80	Dominican Republic..	141,436,660	70.0%	Cigars, cheroots and cigarillos containing tobacco, each valued 23 cen
*	2905.11.20	Trinidad and Tobago.	168,814,058	39.9%	Methanol (Methyl alcohol), other than imported only for use in produci
	2909.19.14	Venezuela.....	154,759,607	12.6%	Methyl tertiay-butyl ether. (MTBE)
	2909.19.14	Brazil.....	111,090,400	9.1%	Methyl tertiay-butyl ether. (MTBE)
2	3212.90.00	Colombia.....	162,261,802	76.7%	Pigments dispersed in nonaqueous media, in liquid or paste form, used
*	4104.39.40	Argentina.....	131,669,312	51.4%	Upholstery leather, of bovine and equine leather, nesi, without hair o
*	4412.13.40	Indonesia.....	142,873,005	55.6%	Plywood sheets n/o 6 mm thick, with specified tropical wood outer ply,
*	7113.11.50	Thailand.....	104,479,387	24.7%	Silver articles of jewelry and parts thereof, nesoi, valued over $18 p
*	7113.19.50	Dominican Republic..	105,319,334	3.5%	Precious metal (o/than silver) articles of jewelry and parts thereo, w
*	7113.19.50	India.....	454,852,011	15.2%	Precious metal (o/than silver) articles of jewelry and parts thereo, w
	7113.19.50	Thailand.....	339,190,718	11.3%	Precious metal (o/than silver) articles of jewelry and parts thereo, w
*	7403.11.00	Peru.....	469,368,908	31.5%	Refined copper cathodes and sections of cathodes
*	7403.11.00	Chile.....	335,977,119	22.6%	Refined copper cathodes and sections of cathodes
	8414.51.00	Thailand.....	123,031,287	16.9%	Table, floor, wall, window, ceiling or roof fans, with a self-containe
*	8516.50.00	Thailand.....	112,323,163	12.9%	Microwave ovens of a kind used for domestic purposes
*	8544.30.00	Thailand.....	134,921,329	3.0%	Insulated ignition wiring sets and other wiring sets of a kind used in
	8544.30.00	Philippines.....	259,169,142	5.9%	Insulated ignition wiring sets and other wiring sets of a kind used in
*	9009.12.00	Thailand.....	112,041,220	17.0%	Electrostatic photocopying apparatus, operating by reproducing the ori

FLAGS: '*'=Excluded full yr; '1'=Excluded January/June; '2'=Excluded July/December

LIST I : ITEMS GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	131,669,312	1
Brazil.....	111,090,400	1
Chile.....	335,977,119	1
Colombia.....	263,538,062	2
Dominican Republic..	246,755,994	2
India.....	454,852,011	1
Indonesia.....	142,873,005	1
Peru.....	469,368,908	1
Philippines.....	259,169,142	1
Thailand.....	925,987,104	6
Trinidad and Tobago.	168,814,058	1
Venezuela.....	154,759,607	1
TOTAL.....	3,664,854,722	19

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	0305.20.20	Russia	226,800	75.0%	Sturgeon roe, dried, smoked, salted or in brine
D	0305.63.20	Morocco	8,200	79.4%	Anchovies, in brine or salted but not dried or smoked, in immediate ai
D	0410.00.00	Indonesia	4,003,799	52.6%	Edible products of animal origin, nesi
	0603.10.30	Colombia	27,371,493	95.4%	Miniature (spray) carnations, fresh cut
D	0705.29.00	Chile	1,876,053	48.9%	Chicory, other than witloof chicory, fresh or chilled
D	0708.20.10	Peru	49,980	70.8%	Lima beans, fresh or chilled, shelled or unshelled, if entered Novembe
D	0710.29.15	India	6,092	57.5%	Lentils, uncooked or cooked by steaming or boiling in water, frozen
D	0711.30.00	Morocco	412,670	44.4%	Capers, provisionally preserved but unsuitable in that state for immed
D	0712.90.70	Egypt	283,700	53.5%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced,
D	0713.40.20	India	1,422,713	52.7%	Dried lentils, shelled
D	0802.90.94	Ivory Coast	2,191,464	98.9%	Kola nuts, fresh or dried, shelled
D	0805.90.00	Jamaica	1,161,400	97.3%	Citrus fruit, nesi, fresh or dried, including kumquats, citrons and be
	0811.20.20	Chile	8,558,389	56.6%	Raspberries, loganberries, black currants and gooseberries, frozen, in
D	0813.30.00	Chile	3,971,177	52.6%	Apples, dried
D	0813.40.10	Thailand	1,144,859	97.5%	Papayas, dried
D	1102.30.00	Thailand	2,020,702	68.1%	Rice flour
D	1301.90.40	Brazil	88,000	65.6%	Turpentine gum (oleoresinous exudate from living trees)
D	1515.60.00	Argentina	1,005,232	49.7%	Jojoba oil and its fractions, whether or not refined, not chemically m
D	1604.14.50	Ecuador	2,240,144	42.2%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
D	1604.15.00	Chile	6,072,671	53.2%	Prepared or preserved mackerel, whole or in pieces, but not minced
D	1604.30.20	Kazakhstan	6,483,335	46.7%	Caviar
D	1605.90.10	Thailand	3,829,124	61.1%	Boiled clams in immediate airtight containers, the contents of which d
D	1701.11.05	Colombia	29,562	100.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
D	1702.90.35	Guatemala	1,227,776	44.2%	Invert molasses
D	1702.90.35	Brazil	1,546,825	55.7%	Invert molasses
D	1703.10.30	Brazil	1,177,917	53.9%	Cane molasses imported for (a) the commercial extraction of sugar or (
D	1901.20.02	Turkey	3,942	100.0%	Mixes for bakers wares, o/25% butterfat, not retail, subject to gen. n
D	2002.90.40	Morocco	473,237	66.4%	Tomatoes in powder, prepared or preserved otherwise than by vinegar or
D	2008.99.28	Turkey	210,210	48.1%	Figs, otherwise prepared or preserved, nesi
D	2008.99.35	Thailand	2,794,409	88.2%	Lychees and longans, otherwise prepared or preserved, nesi
D	2008.99.45	Philippines	65,922	55.9%	Papaya pulp, otherwise prepared or preserved, nesi
D	2008.99.50	Thailand	1,053,694	44.4%	Papayas, other than pulp, otherwise prepared or preserved, nesi
D	2008.99.80	Dominican Republic	861,342	44.6%	Pulp of fruit nesi, and other edible parts of plants nesi, excluding m
D	2103.90.74	Croatia	797,645	71.7%	Mixed condiments and mixed seasonings (described in add US note 3 to C
D	2204.21.30	Hungary	34,624	48.7%	Tokay wine (not carbonated) not over 14% alcohol, in containers not ov
D	2207.10.30	Barbados	383,454	72.0%	Undenatured ethyl alcohol of 80 percent vol. alcohol or higher, for be
D	2305.00.00	Argentina	237,649	99.0%	Oilcake and other solid residues, resulting from the extraction of pea
D	2306.30.00	Ukraine	18,173	100.0%	Oilcake and other solid residues, resulting from the extraction of veg
D	2515.12.20	Turkey	539,018	43.2%	Travertine, merely cut into blocks or slabs of a rectangular (includin
D	2603.00.00	Ukraine	5,025	48.2%	Copper ores and concentrates
D	2603.00.00	Philippines	5,380	51.7%	Copper ores and concentrates
D	2804.29.00	Ukraine	7,050,771	58.2%	Rare gases, other than argon
D	2811.29.50	Brazil	8,389,920	63.3%	Other inorganic oxygen compounds of nonmetals, nesoi
D	2819.10.00	Kazakhstan	8,015,914	66.3%	Chromium trioxide
D	2825.30.00	Republic of South Af	5,631,695	98.5%	Vanadium oxides and hydroxides
D	2825.70.00	Chile	3,091,249	45.3%	Molybdenum oxides and hydroxides
	2836.91.00	Chile	16,908,492	83.9%	Lithium carbonates
D	2841.61.00	Czech Republic	1,245,092	51.2%	Potassium permanganate
D	2841.70.10	Chile	4,125,094	42.0%	Ammonium molybdate
D	2841.90.10	Republic of South Af	434,110	51.0%	Vanadates
D	2841.90.20	Kazakhstan	1,422,738	88.4%	Ammonium perrhenate

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	2849.90.50	Republic of South Af	9,522,102	69.9%	Carbides, nesoi
D	2903.51.00	Romania	398,725	62.5%	1,2,3,4,5,6-Hexachlorocyclohexane
	2905.11.20	Venezuela	83,882,735	19.8%	Methanol (Methyl alcohol), other than imported only for use in produci
D	2909.50.40	Indonesia	2,814,407	60.5%	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phe
D	2917.19.10	Hungary	1,387,535	82.6%	Ferrous fumarate
D	2917.32.00	Indonesia	4,397,788	49.1%	Dioctyl orthophthalates
D	2918.13.50	Czech Republic	194,000	43.7%	Salts and esters of tartaric acid, nesoi
D	2918.21.10	Brazil	5,033,564	53.4%	Salicylic acid and its salts, suitable for medicinal use
D	2918.90.35	Romania	807,721	52.7%	Odoriferous or flavoring compounds of carboxylic acids with additional
D	2924.21.16	Brazil	9,050,427	65.4%	Aromatic ureines and their derivatives pesticides, nesoi
D	2928.00.10	Colombia	250,604	60.9%	Methyl ethyl ketoxime
D	2929.10.30	Poland	27,496	100.0%	3,4-Dichlorophenylisocyanate
D	2931.00.25	Brazil	2,200,961	53.1%	Pesticides of aromatic organo-inorganic (except organo-sulfur) compoun
D	2933.39.23	Guatemala	1,809,756	100.0%	o-Paraquat dichloride
D	2933.40.08	Hungary	198,520	91.0%	4,7-Dichloroquinoline
	2933.40.30	Brazil	12,182,706	76.8%	Pesticides of heterocyclic compounds with nitrogen hetero-atom(s) only
D	2933.59.10	Hungary	12,000	100.0%	Aromatic or modified aromatic herbicides of heterocyclic compounds wit
D	2935.00.32	Croatia	2,080,928	47.6%	Acetylsulfisoxazole; sulfacetamide, sodium; and sulfamethazine, sodium
D	2938.10.00	Brazil	863,721	51.5%	Rutoside (Rutin) and its derivatives
D	3801.10.10	Brazil	4,173,355	57.2%	Artificial graphite plates, rods, powder and other forms, for manufact
D	3805.10.00	Argentina	1,161,134	42.3%	Gum, wood or sulfate turpentine oils
	3921.12.19	Colombia	17,631,817	46.2%	Nonadhesive plates, sheets, film, foil and strip, cellular, of polymer
	4012.90.45	Sri Lanka (Ceylon)	10,752,443	60.8%	Interchangeable tire treads and tire flaps, of natural rubber, nesoi
	4107.90.60	Republic of South Af	12,356,688	53.2%	Leather of animals, nesi, without hair on, not including chamois, pate
D	4202.22.35	Philippines	98,609	65.7%	Handbags with or without shoulder strap or without handle, with outer
D	4202.29.20	Philippines	293,753	76.6%	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, sht
	4203.21.20	Indonesia	13,230,195	62.0%	Batting gloves, of leather or of composition leather
D	4302.20.60	Brazil	265,795	66.0%	Heads, tails, paws and other pieces or cuttings of dressed or tanned f
D	4412.13.25	Brazil	3,704,184	97.9%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
D	4412.14.25	Brazil	2,897,238	86.1%	Plywood sheet n/o 6 mm thick,outer ply of nontropical hardwood,face pl
D	4412.99.45	Brazil	386,852	52.6%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
D	4601.10.00	India	645,487	54.1%	Plaits and similar products of plaiting materials, whether or not asse
D	4602.10.23	Philippines	6,389	69.9%	Articles of a kind normally carried in the pocket or in the handbag, o
D	4811.90.10	Thailand	585,502	46.9%	Handmade paper of cellulose fibers
	4823.59.40	Indonesia	75,475,400	15.9%	Paper and paperboard of a kind used for writing, printing or other gra
D	5607.30.20	Philippines	3,336,535	87.8%	Twine, cordage, rope and cables of abaca or other hard (leaf) fibers (
D	5904.92.00	India	91,102	100.0%	Floor coverings consisting of a coating applied on a textile backing,
	7113.11.20	Thailand	35,933,810	48.2%	Silver articles of jewelry and parts thereof, nesoi, valued not over $
	7113.19.10	Peru	35,961,098	65.1%	Precious metal (o/than silver) rope, curb, etc. in continuous lengths,
	7113.19.29	Turkey	87,434,234	11.8%	Gold necklaces and neck chains (o/than of rope or mixed links)
D	7115.10.00	Ukraine	840,750	52.9%	Platinum catalysts in the form of wire cloth or grill
D	7202.11.10	Republic of South Af	16,823	87.1%	Ferromanganese containing by weight more than 2 percent but not more t
D	7202.21.10	Macedonia (Skopje)	1,696,638	70.3%	Ferrosilicon containing by weight more than 55% but not more than 80%
	7202.41.00	Republic of South Af	79,436,824	42.8%	Ferrochromium containing by weight more than 4 percent of carbon
	7202.49.50	Russia	23,941,521	47.1%	Ferrochromium containing by weight 3 percent or less of carbon
D	7202.50.00	Kazakhstan	4,783,985	46.3%	Ferrosilicon chromium
D	7202.99.10	Brazil	365,434	99.3%	Ferrozirconium
	7403.11.00	Russia	93,228,693	6.2%	Refined copper cathodes and sections of cathodes
	7403.11.00	Kazakhstan	80,640,030	5.4%	Refined copper cathodes and sections of cathodes
D	7403.12.00	Russia	8,159,622	99.8%	Refined copper, wire bars
	7403.19.00	Chile	40,056,556	46.4%	Refined copper, unwrought articles nesoi

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	7407.22.30	Turkey.....	560,153	57.1%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
	7418.19.20	India.....	19,894,544	49.5%	Copper-zinc alloy (brass), table, kitchen or other household articles
	7604.10.50	Russia.....	51,051,201	78.4%	Aluminum (o/than alloy), bar and rods, other than with a round cross s
	8108.90.60	Russia.....	19,190,648	53.4%	Titanium, wrought nesoi
D	8112.91.50	Chile.....	10,070,966	88.0%	Rhenium, unwrought; rhenium, powders
D	8112.99.00	Chile.....	4,304,692	57.4%	Gallium, hafnium, indium, niobium, rhenium, and thallium, articles the
D	8419.50.10	Malta and Gozo.....	7,120,035	55.2%	Brazed aluminum plate-fin heat exchangers
	8483.10.30	Brazil.....	73,874,893	34.6%	Camshafts and crankshafts nesi
	8527.21.10	Brazil.....	79,906,538	4.8%	Radio-tape player combinations not operable without external power sou
	8527.39.00	Indonesia.....	78,178,985	17.2%	Radiobroadcast receivers nesi, including apparatus capable of receivin
D	8528.12.80	Thailand.....	2,006,115	96.8%	Color television reception apparatus nesoi, video display diagonal ove
D	9013.10.30	Ukraine.....	947,612	50.3%	Telescopic sights for rifles designed for use with infrared light
D	9303.30.40	Czech Republic.....	140,000	94.8%	Rifles (o/than muzzle-loading), for sport, hunting or target-shootings
D	9305.10.40	Republic of South Af	85,675	88.3%	Parts and accessories nesoi, for revolvers or pistols designed to fire

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	2,404,015	3
Barbados.....	383,454	1
Brazil.....	206,108,330	17
Chile.....	99,035,339	10
Colombia.....	45,283,476	4
Croatia.....	2,878,573	2
Czech Republic.....	1,579,092	3
Dominican Republic..	861,342	1
Ecuador.....	2,240,144	1
Egypt.....	283,700	1
Guatemala.....	3,037,532	2
Hungary.....	1,632,679	4
India.....	22,059,938	5
Indonesia.....	178,100,574	6
Ivory Coast.....	2,191,464	1
Jamaica.....	1,161,400	1
Kazakhstan.....	101,346,002	5
Macedonia (Skopje)..	1,696,638	1
Malta and Gozo.....	7,120,035	1
Morocco.....	894,107	3
Peru.....	36,011,078	2
Philippines.....	3,806,588	6
Poland.....	27,496	1
Republic of South Af	107,483,917	7
Romania.....	1,206,446	2
Russia.....	195,798,485	6
Sri Lanka (Ceylon)..	10,752,443	1
Thailand.....	49,368,215	8
Turkey.....	88,747,557	5
Ukraine.....	8,862,331	5
Venezuela.....	83,882,735	1
TOTAL.....	1,266,245,125	116

LIST III : POSSIBLE de MINIMIS ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	0305.20.20	Russia	226,800	75.0%	Sturgeon roe, dried, smoked, salted or in brine
D	0305.63.20	Morocco	8,200	79.4%	Anchovies, in brine or salted but not dried or smoked, in immediate ai
D	0410.00.00	Indonesia	4,003,799	52.6%	Edible products of animal origin, nesi
D	0705.29.00	Chile	1,876,053	48.9%	Chicory, other than witloof chicory, fresh or chilled
D	0708.20.10	Peru	49,980	70.8%	Lima beans, fresh or chilled, shelled or unshelled, if entered Novembe
D	0710.29.15	India	6,092	57.5%	Lentils, uncooked or cooked by steaming or boiling in water, frozen
D	0711.30.00	Morocco	412,670	44.4%	Capers, provisionally preserved but unsuitable in that state for immed
D	0712.90.70	Egypt	283,700	53.5%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, sliced,
D	0713.40.20	India	1,422,713	52.7%	Dried lentils, shelled
D	0802.90.94	Ivory Coast	2,191,464	98.9%	Kola nuts, fresh or dried, shelled
D	0805.90.00	Jamaica	1,161,400	97.3%	Citrus fruit, nesi, fresh or dried, including kumquats, citrons and be
D	0813.30.00	Chile	3,971,177	52.6%	Apples, dried
D	0813.40.10	Thailand	1,144,859	97.5%	Papayas, dried
D	1102.30.00	Thailand	2,020,702	68.1%	Rice flour
D	1301.90.40	Brazil	88,000	65.6%	Turpentine gum (oleoresinous exudate from living trees)
D	1515.60.00	Argentina	1,005,232	49.7%	Jojoba oil and its fractions, whether or not refined, not chemically m
D	1604.14.50	Ecuador	2,240,144	42.2%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
D	1604.15.00	Chile	6,072,671	53.2%	Prepared or preserved mackerel, whole or in pieces, but not minced
D	1604.30.20	Kazakhstan	6,483,335	46.7%	Caviar
D	1605.90.10	Thailand	3,829,124	61.1%	Boiled clams in immediate airtight containers, the contents of which d
D	1701.11.05	Colombia	29,562	100.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
D	1702.90.35	Guatemala	1,227,776	44.2%	Invert molasses
D	1702.90.35	Brazil	1,546,825	55.7%	Invert molasses
D	1703.10.30	Brazil	1,177,917	53.9%	Cane molasses imported for (a) the commercial extraction of sugar or (
D	1901.20.02	Turkey	3,942	100.0%	Mixes for bakers wares, o/25% butterfat, not retail, subject to gen. n
D	2002.90.40	Morocco	473,237	66.4%	Tomatoes in powder, prepared or preserved otherwise than by vinegar or
D	2008.99.28	Turkey	210,210	48.1%	Figs, otherwise prepared or preserved, nesi
D	2008.99.35	Thailand	2,794,409	88.2%	Lychees and longans, otherwise prepared or preserved, nesi
D	2008.99.45	Philippines	65,922	55.9%	Papaya pulp, otherwise prepared or preserved, nesi
D	2008.99.50	Thailand	1,053,694	44.4%	Papayas, other than pulp, otherwise prepared or preserved, nesi
D	2008.99.80	Dominican Republic	861,342	44.6%	Pulp of fruit nesi, and other edible parts of plants nesi, excluding m
D	2103.90.74	Croatia	797,645	71.7%	Mixed condiments and mixed seasonings (described in add US note 3 to C
D	2204.21.30	Hungary	34,624	48.7%	Tokay wine (not carbonated) not over 14% alcohol, in containers not ov
D	2207.10.30	Barbados	383,454	72.0%	Undenatured ethyl alcohol of 80 percent vol. alcohol or higher, for be
D	2305.00.00	Argentina	237,649	99.0%	Oilcake and other solid residues, resulting from the extraction of pea
D	2306.30.00	Ukraine	18,173	100.0%	Oilcake and other solid residues, resulting from the extraction of veg
D	2515.12.20	Turkey	539,018	43.2%	Travertine, merely cut into blocks or slabs of a rectangular (includin
D	2603.00.00	Ukraine	5,025	48.2%	Copper ores and concentrates
D	2603.00.00	Philippines	5,380	51.7%	Copper ores and concentrates
D	2804.29.00	Ukraine	7,050,771	58.2%	Rare gases, other than argon
D	2811.29.50	Brazil	8,389,920	63.3%	Other inorganic oxygen compounds of nonmetals, nesoi
D	2819.10.00	Kazakhstan	8,015,914	66.3%	Chromium trioxide
D	2825.30.00	Republic of South Af	5,631,695	98.5%	Vanadium oxides and hydroxides
D	2825.70.00	Chile	3,091,249	45.3%	Molybdenum oxides and hydroxides
D	2841.61.00	Czech Republic	1,245,092	51.2%	Potassium permanganate
D	2841.70.10	Chile	4,125,094	42.0%	Ammonium molybdate
D	2841.90.10	Republic of South Af	434,110	51.0%	Vanadates
D	2841.90.20	Kazakhstan	1,422,738	88.4%	Ammonium perrhenate
D	2849.90.50	Republic of South Af	9,522,102	69.9%	Carbides, nesoi
D	2903.51.00	Romania	398,725	62.5%	1,2,3,4,5,6-Hexachlorocyclohexane
D	2909.50.40	Indonesia	2,814,407	60.5%	Odoriferous or flavoring compounds of ether-phenols, ether-alcohol-phe

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
D	2917.19.10	Hungary	1,387,535	82.6%	Ferrous fumarate
D	2917.32.00	Indonesia	4,397,788	49.1%	Dioctyl orthophthalates
D	2918.13.50	Czech Republic	194,000	43.7%	Salts and esters of tartaric acid, nesoi
D	2918.21.10	Brazil	5,033,564	53.4%	Salicylic acid and its salts, suitable for medicinal use
D	2918.90.35	Romania	807,721	52.7%	Odoriferous or flavoring compounds of carboxylic acids with additional
D	2924.21.16	Brazil	9,050,427	65.4%	Aromatic ureines and their derivatives pesticides, nesoi
D	2928.00.10	Colombia	250,604	60.9%	Methyl ethyl ketoxime
D	2929.10.30	Poland	27,496	100.0%	3,4-Dichlorophenylisocyanate
D	2931.00.25	Brazil	2,200,961	53.1%	Pesticides of aromatic organo-inorganic (except organo-sulfur) compoun
D	2933.39.23	Guatemala	1,809,756	100.0%	o-Paraquat dichloride
D	2933.40.08	Hungary	198,520	91.0%	4,7-Dichloroquinoline
D	2933.59.10	Hungary	12,000	100.0%	Aromatic or modified aromatic herbicides of heterocyclic compounds wit
D	2935.00.32	Croatia	2,080,928	47.6%	Acetylsulfisoxazole; sulfacetamide, sodium; and sulfamethazine, sodium
D	2938.10.00	Brazil	863,721	51.5%	Rutoside (Rutin) and its derivatives
D	3801.10.10	Brazil	4,173,355	57.2%	Artificial graphite plates, rods, powder and other forms, for manufact
D	3805.10.00	Argentina	1,161,134	42.3%	Gum, wood or sulfate turpentine oils
D	4202.22.35	Philippines	98,609	65.7%	Handbags with or without shoulder strap or without handle, with outer
D	4202.29.20	Philippines	293,753	76.6%	Handbags w. or w/o shld. strap or w/o handle of mat. (o/t leather, sht
D	4302.20.60	Brazil	265,795	66.0%	Heads, tails, paws and other pieces or cuttings of dressed or tanned f
D	4412.13.25	Brazil	3,704,184	97.9%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
D	4412.14.25	Brazil	2,897,238	86.1%	Plywood sheet n/o 6 mm thick,outer ply of nontropical hardwood,face pl
D	4412.99.45	Brazil	386,852	52.6%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
D	4601.10.00	India	645,487	54.1%	Plaits and similar products of plaiting materials, whether or not asse
D	4602.10.23	Philippines	6,389	69.9%	Articles of a kind normally carried in the pocket or in the handbag, o
D	4811.90.10	Thailand	585,502	46.9%	Handmade paper of cellulose fibers
D	5607.30.20	Philippines	3,336,535	87.8%	Twine, cordage, rope and cables of abaca or other hard (leaf) fibers (
D	5904.92.00	India	91,102	100.0%	Floor coverings consisting of a coating applied on a textile backing,
D	7115.10.00	Ukraine	840,750	52.9%	Platinum catalysts in the form of wire cloth or grill
D	7202.11.10	Republic of South Af	16,823	87.1%	Ferromanganese containing by weight more than 2 percent but not more t
D	7202.21.10	Macedonia (Skopje)	1,696,638	70.3%	Ferrosilicon containing by weight more than 55% but not more than 80%
D	7202.50.00	Kazakhstan	4,783,985	46.3%	Ferrosilicon chromium
D	7202.99.10	Brazil	365,434	99.3%	Ferrozirconium
D	7403.12.00	Russia	8,159,622	99.8%	Refined copper, wire bars
D	7407.22.30	Turkey	560,153	57.1%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
D	8112.91.50	Chile	10,070,966	88.0%	Rhenium, unwrought; rhenium, powders
D	8112.99.00	Chile	4,304,692	57.4%	Gallium, hafnium, indium, niobium, rhenium, and thallium, articles the
D	8419.50.10	Malta and Gozo	7,120,035	55.2%	Brazed aluminum plate-fin heat exchangers
D	8528.12.80	Thailand	2,006,115	96.8%	Color television reception apparatus nesoi, video display diagonal ove
D	9013.10.30	Ukraine	947,612	50.3%	Telescopic sights for rifles designed for use with infrared light
D	9303.30.40	Czech Republic	140,000	94.8%	Rifles (o/than muzzle-loading), for sport, hunting or target-shootings
D	9305.10.40	Republic of South Af	85,675	88.3%	Parts and accessories nesoi, for revolvers or pistols designed to fire

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	2,404,015	3
Barbados.....	383,454	1
Brazil.....	40,144,193	14
Chile.....	33,511,902	7
Colombia.....	280,166	2
Croatia.....	2,878,573	2
Czech Republic.....	1,579,092	3
Dominican Republic..	861,342	1
Ecuador.....	2,240,144	1
Egypt.....	283,700	1
Guatemala.....	3,037,532	2
Hungary.....	1,632,679	4
India.....	2,165,394	4
Indonesia.....	11,215,994	3
Ivory Coast.....	2,191,464	1
Jamaica.....	1,161,400	1
Kazakhstan.....	20,705,972	4
Macedonia (Skopje)..	1,696,638	1
Malta and Gozo.....	7,120,035	1
Morocco.....	894,107	3
Peru.....	49,980	1
Philippines.....	3,806,588	6
Poland.....	27,496	1
Republic of South Af	15,690,405	5
Romania.....	1,206,446	2
Russia.....	8,386,422	2
Thailand.....	13,434,405	7
Turkey.....	1,313,323	4
Ukraine.....	8,862,331	5
TOTAL.....	189,165,192	92

LIST IV : POSSIBLE REDESIGNATION ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	0202.30.10	Argentina.....	0	0.0%	High-qual. beef cuts, boneless, processed, frozen, descr in add. US no
*	0404.90.10	Argentina.....	240,098	0.1%	Milk protein concentrates
*	0703.10.20	Chile.....	11,441	0.6%	Onion sets, fresh or chilled
*	0703.20.00	Argentina.....	3,645,572	15.3%	Garlic, fresh or chilled
* D	0708.10.20	Guatemala.....	881,088	47.7%	Peas, fresh or chilled, shelled or unshelled, if entered July 1 to Sep
*	0708.90.30	Ecuador.....	104,265	34.1%	Pigeon peas, fresh or chilled, shelled or unshelled, if entered Oct. 1
*	0709.10.00	Chile.....	9,400	1.2%	Globe artichokes, fresh or chilled
* D	0709.20.10	Peru.....	7,414,678	81.2%	Asparagus, fresh or chilled, not reduced in size, if entered September
* D	0710.29.30	Ecuador.....	614,439	59.8%	Pigeon peas, uncooked or cooked by steaming or boiling in water, froze
*	0710.29.30	Dominican Republic..	0	0.0%	Pigeon peas, uncooked or cooked by steaming or boiling in water, froze
*	0710.80.70	Guatemala.....	390,497	5.9%	Vegetables nesi, uncooked or cooked by steaming or boiling in water, f
* D	0710.80.93	Guatemala.....	1,945,693	71.3%	Okra, reduced in size, frozen
*	0711.30.00	Turkey.....	184,967	19.9%	Capers, provisionally preserved but unsuitable in that state for immed
* D	0712.90.30	Peru.....	48,173	55.2%	Dried potatoes, whether or not cut or sliced but not further prepared
*	0712.90.74	Turkey.....	88,455	0.3%	Dried tomatoes in powder, but not further prepared
*	0713.33.20	El Salvador.....	162,988	8.4%	Dried kidney beans, including white pea beans, shelled, if entered May
*	0713.90.10	Peru.....	54,599	18.2%	Seeds of leguminous vegetables nesi, of a kind used for sowing
* D	0714.10.10	Costa Rica.....	4,690,476	91.1%	Cassava (manioc), frozen, whether or not sliced or in the form of pell
* D	0714.10.20	Costa Rica.....	8,706,859	96.1%	Cassava (manioc), fresh, chilled or dried, whether or not sliced or in
2 D	0714.20.10	Colombia.....	22,925	42.8%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
*	0714.20.10	Dominican Republic..	0	0.0%	Sweet potatoes, frozen, whether or not sliced or in the form of pellet
* D	0714.20.20	Dominican Republic..	3,204,498	97.7%	Sweet potatoes, fresh, chilled or dried, whether or not sliced or in t
2	0714.90.45	Costa Rica.....	203,419	25.7%	Frozen dasheens, yams, arrowroot, salep, Jerusalem artichokes and simi
* D	0802.50.20	Turkey.....	372,962	94.3%	Pistachios, fresh or dried, in shell
*	0802.90.80	Guatemala.....	131,750	12.2%	Nuts nesi, fresh or dried, in shell
*	0805.90.00	Turkey.....	0	0.0%	Citrus fruit, nesi, fresh or dried, including kumquats, citrons and be
*	0811.90.10	Costa Rica.....	1,341,924	28.4%	Bananas and plantains, frozen, in water or containing added sweetening
* D	0811.90.50	Costa Rica.....	2,532,068	78.9%	Pineapples, frozen, in water or containing added sweetening
*	0813.10.00	Turkey.....	22,666,237	95.0%	Apricots, dried
*	0813.30.00	Argentina.....	2,823,858	37.4%	Apples, dried
*	1005.90.20	Argentina.....	0	0.0%	Yellow dent corn
*	1005.90.40	Argentina.....	0	0.0%	Corn (maize), other than seed and yellow dent corn
*	1007.00.00	Argentina.....	0	0.0%	Grain sorghum
2	1102.90.30	El Salvador.....	11,750	33.1%	Cereal flours nesi, mixed together
*	1106.30.20	Ecuador.....	32,937	15.4%	Flour, meal and powder of banana and plantain
*	1301.90.40	Indonesia.....	0	0.0%	Turpentine gum (oleoresinous exudate from living trees)
* D	1403.90.40	India.....	925,609	46.7%	Piassava, couch-grass and other vegetable materials nesi, of a kind us
* D	1602.50.09	Argentina.....	10,858,874	91.6%	Prepared or preserved meat of bovine animals, cured or pickled, not co
2	1602.50.20	Brazil.....	28,752,252	56.4%	Prepared or preserved beef in airtight containers, other than corned b
*	1602.50.20	Argentina.....	20,488,613	40.2%	Prepared or preserved beef in airtight containers, other than corned b
*	1604.14.50	Colombia.....	875,733	16.5%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
*	1604.14.50	Indonesia.....	82,915	1.5%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
*	1604.14.50	Thailand.....	0	0.0%	Tunas and skipjack, not in airtight containers, not in bulk or in imme
* D	1605.90.55	Indonesia.....	977,784	49.7%	Prepared or preserved snails, other than sea snails
*	1701.11.05	Brazil.....	0	0.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Dominican Republic..	72,483,775	21.0%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Brazil.....	55,997,804	16.2%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.10	Argentina.....	15,150,514	4.4%	Cane sugar, raw, in solid form, w/o added flavoring or coloring, subje
*	1701.11.20	Guatemala.....	11,522,244	23.5%	Cane sugar, raw, in solid form, to be used for certain polyhydric alco
*	1701.11.20	Brazil.....	0	0.0%	Cane sugar, raw, in solid form, to be used for certain polyhydric alco
*	1701.12.10	Brazil.....	0	0.0%	Beet sugar, raw, in solid form, w/o added flavoring or coloring, subje

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LIST IV : POSSIBLE REDESIGNATION ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	1701.91.42	Jamaica	0	0.0%	Cane/beet sugar & pure sucrose, refined, solid, w/added flavoring, o/6
*	1701.99.05	Brazil	0	0.0%	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or
*	1701.99.10	Brazil	552,212	3.8%	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or
2 D	1702.30.22	Jamaica	42,583	50.2%	Glucose & glucose syrup nt containing or containing in dry state less
* D	1702.30.22	Argentina	42,089	49.7%	Glucose & glucose syrup nt containing or containing in dry state less
*	1702.90.35	Belize	0	0.0%	Invert molasses
*	1702.90.40	Brazil	11,999,274	45.0%	Other cane/beet syrups nesi
*	1702.90.40	Dominican Republic	0	0.0%	Other cane/beet syrups nesi
*	1703.10.30	Dominican Republic	0	0.0%	Cane molasses imported for (a) the commercial extraction of sugar or (
*	1703.90.50	Poland	3,022,351	12.2%	Molasses nesi
*	1806.10.22	Colombia	0	0.0%	Cocoa powder, o/65% but less than 90% by dry wt of sugar, subject to g
*	1806.32.55	Colombia	85,554	40.8%	Cocoa preps, not filled, in blocks, slabs or bars weighing 2 kg or les
*	2002.90.40	Turkey	0	0.0%	Tomatoes in powder, prepared or preserved otherwise than by vinegar or
*	2004.10.40	Colombia	5,280	33.9%	Yellow (Solano) potatoes, prepared or preserved otherwise than by vine
2 D	2004.10.40	Peru	10,267	66.0%	Yellow (Solano) potatoes, prepared or preserved otherwise than by vine
*	2005.10.00	Turkey	0	0.0%	Homogenized vegetables, prepared or preserved otherwise than by vinega
*	2007.99.48	Argentina	29,602	12.8%	Apple, quince and pear pastes and purees, being cooked preparations
*	2007.99.50	Brazil	930,193	11.5%	Guava and mango pastes and purees, being cooked preparations
2	2008.19.25	Peru	0	0.0%	Pecans, otherwise prepared or preserved, nesi
2	2008.19.30	Turkey	149,359	23.2%	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
*	2008.19.30	Pakistan	7,200	1.1%	Pignolia and pistachio nuts, otherwise prepared or preserved, nesi
*	2008.30.10	Dominican Republic	14,473	8.2%	Peel of oranges, mandarins, clementines, wilkings and similar citrus h
* D	2008.50.20	Argentina	14,510	87.5%	Apricot pulp, otherwise prepared or preserved, nesi
2	2008.50.20	Turkey	0	0.0%	Apricot pulp, otherwise prepared or preserved, nesi
* D	2008.99.13	Costa Rica	5,032,719	63.5%	Banana pulp, otherwise prepared or preserved, nesi
* D	2008.99.23	Dominican Republic	86,085	89.4%	Cashew apples, mameyes colorados, sapodillas, soursops and sweetsops,
2	2008.99.45	Dominican Republic	20,411	17.3%	Papaya pulp, otherwise prepared or preserved, nesi
*	2009.30.10	Honduras	0	0.0%	Lime juice, unfit for beverage purposes
*	2106.90.12	Dominican Republic	0	0.0%	Compound alcoholic preparations of a kind used for the manufacture of
*	2202.90.36	Dominican Republic	0	0.0%	Single fruit or vegetable juice (other than orange), fortified with vi
*	2401.20.57	Indonesia	0	0.0%	Tobacco, partly or wholly stemmed/stripped, n/threshed or similarly pr
*	2516.90.00	Republic of South Af	2,447,115	35.6%	Porphyry, basalt and other monument. or build. stone (except granite/s
*	2603.00.00	Chile	0	0.0%	Copper ores and concentrates
*	2603.00.00	Indonesia	0	0.0%	Copper ores and concentrates
*	2607.00.00	Peru	305,625	4.6%	Lead ores and concentrates
*	2804.69.10	Brazil	21,314,101	23.6%	Silicon, containing by weight less than 99.99 percent but not less tha
*	2805.40.00	Argentina	0	0.0%	Mercury
*	2813.90.50	Argentina	0	0.0%	Sulfides of nonmetals, excluding carbon disulfide and sulfides of arse
*	2825.90.15	Brazil	8,592,067	35.8%	Niobium oxide
*	2832.30.10	Argentina	0	0.0%	Sodium thiosulfate
*	2839.90.00	Argentina	0	0.0%	Silicates and commercial alkali metal silicates, excluding those of so
* D	2840.11.00	Turkey	472,748	90.7%	Anhydrous disodium tetraborate (refined borax)
* D	2840.19.00	Turkey	97,373	97.7%	Disodium tetraborate (refined borax) except anhydrous
*	2841.30.00	Argentina	0	0.0%	Sodium dichromate
*	2841.50.00	Argentina	0	0.0%	Chromates and dichromates except of sodium, potassium, lead or zinc; p
*	2843.30.00	Colombia	48,602,705	83.3%	Gold compounds
*	2843.30.00	Chile	0	0.0%	Gold compounds
*	2843.30.00	Argentina	0	0.0%	Gold compounds
*	2849.10.00	Argentina	28,840	7.4%	Calcium carbide
*	2850.00.50	Argentina	0	0.0%	Hydrides, nitrides, azides, silicides and borides other than of calciu
*	2902.11.00	Argentina	0	0.0%	Cyclohexane

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LIST IV : POSSIBLE REDESIGNATION ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

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*	2904.90.15	Brazil.....	0	0.0%	4-Chloro-3-nitro-alpha,alpha,alpha-trifluorotoluene; and other specifi
*	2905.12.00	Argentina.....	119,178	0.3%	Propan-1-ol (Propyl alcohol) and Propan-2-ol (isopropyl alcohol)
*	2905.13.00	Argentina.....	21,512	4.3%	Butan-1-ol (n-Butyl alcohol)
*	2905.22.50	Argentina.....	11,219	0.1%	Acyclic terpene alcohols, other than geraniol and isophytol
2	2905.42.00	Brazil.....	1,667,248	9.0%	Pentaerythritol
*	2906.11.00	Brazil.....	1,689,795	9.4%	Menthol
*	2906.14.00	Argentina.....	0	0.0%	Terpineols
*	2907.23.00	Brazil.....	31,837	1.4%	4,4'-Isopropylidenediphenol (Bisphenol A, Diphenylolpropane) and its s
*	2914.12.00	Argentina.....	0	0.0%	Butanone (Methyl ethyl ketone)
*	2914.13.00	Argentina.....	0	0.0%	4-Methylpentan-2-one (Methyl isobutyl ketone)
*	2915.31.00	Brazil.....	0	0.0%	Ethyl acetate
*	2915.70.00	Argentina.....	273,053	0.8%	Palmitic acid, stearic acid, their salts and esters
*	2917.14.50	Argentina.....	173,392	2.9%	Maleic anhydride, except derived in whole or in part from benzene or o
*	2918.21.50	Argentina.....	0	0.0%	Salicylic acid and its salts, not suitable for medicinal use
*	2918.22.10	Argentina.....	782,093	9.2%	O-Acetylsalicylic acid (Aspirin)
*	2918.22.10	Turkey.....	0	0.0%	O-Acetylsalicylic acid (Aspirin)
*	2918.22.50	Argentina.....	0	0.0%	Salts and esters Of O-acetylsalicylic acid
*	2921.42.23	Guatemala.....	0	0.0%	3,4-Dichloroaniline
*	2929.10.15	Argentina.....	0	0.0%	Mixtures of 2,4- and 2,6-toluenediisocyanates
*	2932.99.90	Argentina.....	0	0.0%	Nonaromatic heterocyclic compounds with oxygen hetero-atom(s) only, ne
*	2933.40.30	Argentina.....	0	0.0%	Pesticides of heterocyclic compounds with nitrogen hetero-atom(s) only
*	2933.90.55	Argentina.....	0	0.0%	Aromatic or modified aromatic analgesics, etc., affecting the CNS, of
*	2934.90.15	Brazil.....	673,791	4.0%	Aromatic or modified aromatic herbicides of other heterocyclic compoun
*	3204.12.20	Argentina.....	244,771	1.5%	Acid black 61 and other specified acid and mordant dyes and preparatio
*	3204.12.30	Argentina.....	0	0.0%	Mordant black 75, blue 1, brown 79, red 81, 84 and preparations based
*	3204.12.45	Argentina.....	178,910	0.8%	Acid dyes, whether or not premetallized, and preparations based thereo
*	3204.12.50	Argentina.....	12,330	0.1%	Synthetic acid and mordant dyes and preparations based thereon, nesoi
*	3209.90.00	Argentina.....	88,791	0.1%	Paints and varnishes based on synthetic polymers or chemically modifie
*	3301.12.00	Brazil.....	11,000,619	65.7%	Essential oils of orange
*	3301.19.10	Argentina.....	85,456	5.7%	Essential oils of grapefruit
*	3301.90.10	Argentina.....	0	0.0%	Extracted oleoresins consisting essentially of nonvolatile components
*	3307.20.00	Argentina.....	0	0.0%	Personal deodorants and antiperspirants
*	3307.49.00	Argentina.....	0	0.0%	Preparations for perfuming or deodorizing rooms, including odoriferous
*	3501.90.20	Dominican Republic..	0	0.0%	Casein glues
*	3504.00.50	Argentina.....	0	0.0%	Peptones and their derivatives; protein substances and their derivativ
*	3506.99.00	Argentina.....	8,378	0.0%	Prepared glues and other prepared adhesives, excluding adhesives based
*	3701.10.00	Argentina.....	0	0.0%	Photographic plates and film in the flat, sensitized, unexposed, of an
*	3702.10.00	Argentina.....	0	0.0%	Photographic film in rolls, sensitized, unexposed, for X-ray use; of a
*	3706.10.30	Argentina.....	4,991	0.3%	Sound recordings on motion-picture film of a width of 35 mm or more, s
*	3707.90.32	Argentina.....	1,453,274	0.3%	Chemical preparations for photographic uses, nesoi
*	3806.30.00	Argentina.....	0	0.0%	Ester gums
*	3824.60.00	Indonesia.....	0	0.0%	Sorbitol other than that of subheading 2905.44
*	3824.90.40	Brazil.....	1,410,396	2.5%	Fatty substances of animal or vegetable origin and mixtures thereof, n
*	3901.90.90	Argentina.....	0	0.0%	Polymers of ethylene, nesoi, in primary forms, other than elastomeric
*	3902.10.00	Argentina.....	2,774	0.0%	Polypropylene, in primary forms
*	3902.20.50	Argentina.....	2,647,002	39.1%	Polyisobutylene, other than elastomeric, in primary forms
*	3902.90.00	Argentina.....	102,578	0.2%	Polymers of propylene or of other olefins, nesoi, in primary forms
*	3903.90.50	Argentina.....	0	0.0%	Polymers of styrene, nesoi, in primary forms
*	3904.21.00	Brazil.....	1,159	0.0%	Polyvinyl chloride, mixed with other substances, nonplasticized, in pr
*	3904.40.00	Argentina.....	0	0.0%	Vinyl chloride copolymers nesoi, in primary forms
*	3906.10.00	Argentina.....	0	0.0%	Polymethyl methacrylate, in primary forms

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2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	3906.90.50	Argentina.....	0	0.0%	Acrylic polymers (except plastics or elastomers), in primary forms, ne
*	3907.30.00	Argentina.....	0	0.0%	Epoxide resins in primary forms
*	3907.60.00	Argentina.....	2,763	0.0%	Polyethylene terephthalate in primary forms
*	3907.99.00	Argentina.....	0	0.0%	Polyesters nesoi, saturated, in primary forms
*	3909.10.00	Argentina.....	0	0.0%	Urea resins; thiourea resins
*	3909.50.50	Argentina.....	720	0.0%	Polyurethanes, other than elastomeric or cements, in primary forms
*	3913.90.20	Argentina.....	0	0.0%	Polysaccharides and their derivatives, nesoi, in primary forms
*	3920.59.80	Dominican Republic..	306,512	17.8%	Plates, sheets, film, etc, noncellular, not reinforced, laminated, com
*	3921.90.50	Argentina.....	251,625	0.2%	Nonadhesive plates, sheets, film, foil and strip, nonflexible, nesoi,
*	3923.90.00	Argentina.....	82,431	0.0%	Articles nesoi, for the conveyance or packing of goods, of plastics
*	3926.20.30	Pakistan.....	1,091,267	18.8%	Gloves specially designed for use in sports, nesoi, of plastics
*	4006.10.00	Brazil.....	18,315	1.4%	"Camel-back" strips of unvulcanized rubber, for retreading rubber tire
2 D	4010.19.50	Brazil.....	882,083	44.7%	Conveyor belts/belting of vulcanized rubber, nesoi, combined w/textile
*	4011.10.10	Brazil.....	65,834,268	3.6%	New pneumatic radial tires, of rubber, of a kind used on motor cars (i
*	4011.10.10	Argentina.....	15,547,028	0.8%	New pneumatic radial tires, of rubber, of a kind used on motor cars (i
*	4011.10.50	Brazil.....	94,312	0.1%	New pneumatic tires excluding radials, of rubber, of a kind used on mo
*	4011.20.10	Brazil.....	83,481,699	5.9%	New pneumatic radial tires, of rubber, of a kind used on buses or truc
*	4011.20.50	Brazil.....	69,693	0.0%	New pneumatic tires excluding radials, of rubber, of a kind used on bu
*	4104.21.00	Argentina.....	2,281,068	13.8%	Bovine leather, without hair on, vegetable pretanned but not further p
*	4104.22.00	Brazil.....	387,745	4.6%	Bovine leather, without hair on, pretanned, other than vegetable preta
*	4104.22.00	Argentina.....	241,260	2.9%	Bovine leather, without hair on, pretanned, other than vegetable preta
*	4104.29.50	Argentina.....	14,600	0.8%	Upper & sole equine and bovine (ex. buffalo & pretanned bovine) leathe
*	4104.29.90	Argentina.....	3,453,881	17.1%	Bovine (except buffalo) leather, nesi, and equine leather, w/o hair, p
*	4104.31.40	Argentina.....	65,157,098	24.4%	Upholstery leather, of bovine and equine leather, without hair on, ful
*	4104.31.50	Argentina.....	1,254,673	4.7%	Upper & sole leather of bovine (except buffalo) or equine animals, par
*	4104.31.60	Argentina.....	83,467	0.4%	Bovine and equine leather, without hair on, nesi, full grains and grai
*	4104.31.80	Argentina.....	5,291,468	6.5%	Bovine and equine leather, without hair on, nesi, full grains and grai
*	4104.39.50	Argentina.....	1,620	0.0%	Upper & sole leather of bovine (ex. buffalo) or eqine animals, parchme
*	4104.39.60	Argentina.....	2,535,680	18.7%	Bovine and equine leather, excl. buffalo, without hair on, parchment-d
*	4104.39.80	Argentina.....	6,011,789	15.5%	Bovine and equine leather, excl. buffalo, without hair on, parchment-d
*	4105.20.60	Argentina.....	4,960	0.0%	Sheep or lamb skin leather, w/o wool on, excl. leather of heading 4108
*	4106.12.00	India.....	30,424	21.0%	Goat or kidskin leather, w/o hair on, not incl. chamois, patent, paten
* D	4106.12.00	Pakistan.....	86,111	59.6%	Goat or kidskin leather, w/o hair on, not incl. chamois, patent, paten
*	4106.19.30	Pakistan.....	296,371	40.0%	Goat or kidskin leather, without hair on, not incl. chamois, patent, p
*	4106.20.30	India.....	225,935	10.9%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
2 D	4106.20.30	Pakistan.....	1,057,532	51.3%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
* D	4106.20.60	India.....	1,741,710	55.8%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
*	4106.20.60	Pakistan.....	212,483	6.8%	Goat or kidskin leather, w/o hair on, excluding leather of heading 410
*	4107.21.00	Argentina.....	0	0.0%	Leather of reptiles, excluding leather of heading 4108 or 4109, vegeta
*	4107.90.60	Argentina.....	2,280	0.0%	Leather of animals, nesi, without hair on, not including chamois, pate
*	4109.00.70	Argentina.....	0	0.0%	Patent laminated leather or metallized leather, other than calf or kip
*	4201.00.60	Argentina.....	3,890,680	4.7%	Saddlery and harnesses for animals nesi, (incl. traces, leads, knee pa
*	4203.21.20	Pakistan.....	131,136	0.6%	Batting gloves, of leather or of composition leather
*	4203.21.55	Pakistan.....	97,796	7.0%	Cross-country ski gloves, mittens and mitts, of leather or of composit
*	4203.21.60	Pakistan.....	401,018	7.3%	Ski or snowmobile gloves, mittens and mitts, nesi, of leather or of co
*	4203.21.80	Pakistan.....	8,221,844	9.6%	Gloves, mittens and mitts specially designed for use in sports, nesi,
*	4205.00.60	Argentina.....	0	0.0%	Articles of reptile leather, nesi
*	4303.10.00	Argentina.....	1,215,651	0.8%	Articles of apparel and clothing accessories, of furskins
*	4411.29.90	Brazil.....	0	0.0%	Fiberboard nesi, density between 0.5 g/cm3 and 0.8 g/cm3
*	4412.13.25	Indonesia.....	0	0.0%	Plywood sheet n/o 6 mm thick,tropical hard wood outer ply, face ply of
*	4412.13.50	Brazil.....	847,968	3.6%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, with fac

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2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	4412.13.50	Indonesia.....	14,246,480	62.0%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, with fac
*	4412.13.60	Indonesia.....	370,310	17.1%	Plywood sheets n/o 6 mm thick, with certain specified tropical wood ou
*	4412.13.90	Brazil.....	64,602	1.8%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, surface
* D	4412.13.90	Indonesia.....	3,004,315	84.2%	Plywood sheets n/o 6 mm thick, tropical wood nesoi outer ply, surface
*	4412.14.30	Brazil.....	26,104,835	20.5%	Plywood sheets n/o 6 mm thick, outer ply of nontropical hardwood, with
*	4412.14.30	Indonesia.....	18,571,113	14.6%	Plywood sheets n/o 6 mm thick, outer ply of nontropical hardwood, with
*	4412.14.55	Brazil.....	823,559	3.9%	Plywood sheets n/o 6 mm thick, outer ply of nonconiferous wood, surfac
*	4412.14.55	Indonesia.....	349,920	1.6%	Plywood sheets n/o 6 mm thick, outer ply of nonconiferous wood, surfac
*	4412.22.30	Brazil.....	1,858,497	8.6%	Plywood nesoi, least one hardwood outer ply, w/tropical hardwood ply,
*	4412.22.30	Indonesia.....	11,373,335	52.8%	Plywood nesoi, least one hardwood outer ply, w/tropical hardwood ply,
* D	4412.22.40	Brazil.....	94,205	69.8%	Plywood nesoi, at least one hardwood outer ply, w/tropical hardwood pl
*	4412.22.40	Indonesia.....	4,167	3.0%	Plywood nesoi, at least one hardwood outer ply, w/tropical hardwood pl
*	4412.22.40	Colombia.....	0	0.0%	Plywood nesoi, at least one hardwood outer ply, w/tropical hardwood pl
*	4412.29.35	Brazil.....	545,910	8.0%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.29.35	Indonesia.....	737,821	10.8%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
* D	4412.29.45	Ecuador.....	3,288,826	85.6%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.29.45	Brazil.....	4,975	0.1%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
*	4412.29.45	Indonesia.....	97,287	2.5%	Plywood nesoi, at least one hardwood outer ply nesoi, no particle boar
2	4412.92.40	Ecuador.....	0	0.0%	Plywood nesoi,softwood outer plies,least 1 ply trop. hardwood,no parti
* D	4412.92.50	Guyana.....	205,816	56.4%	Plywood nesoi,softwood outer plies, at least 1 ply trop. hardwood, no
*	4412.92.50	Indonesia.....	0	0.0%	Plywood nesoi,softwood outer plies, at least 1 ply trop. hardwood, no
*	4412.99.55	Colombia.....	0	0.0%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no partic
*	4421.90.60	Brazil.....	0	0.0%	Wooden skewers, candy sticks, ice cream sticks, tongue depressors, dri
*	4602.10.23	Indonesia.....	814	8.9%	Articles of a kind normally carried in the pocket or in the handbag, o
*	4802.52.10	Argentina.....	0	0.0%	Writing paper, weighing 40 g/m2 to 150 g/m2, cont. n/o 10% by weight t
*	4809.10.20	Guatemala.....	0	0.0%	Carbon or similar copying paper, in rolls over 36 cm wide or rectangul
*	4823.20.10	Brazil.....	0	0.0%	Paint filters and strainers of paper or paperboard
* D	4823.90.20	Philippines.....	5,133,776	42.0%	Articles of papier-mache, nesi
*	5701.10.13	Pakistan.....	92,031	17.5%	Carpet & other textile floor covering,hand-knotted/hand-inserted,w/ov
*	5702.10.10	Pakistan.....	17,236	1.9%	Certified hand-loomed and folklore products being "Kelem", "Schumacks"
* D	5702.49.15	India.....	1,511,712	51.4%	Carpets and other textile floor coverings of pile construction, woven,
*	5702.91.20	Pakistan.....	8,760	2.2%	Certified hand-loomed & folklore floor covering, woven not on power-dr
*	5805.00.20	Pakistan.....	0	0.0%	Certified hand-loomed and folklore hand-woven tapestries nesoi and nee
*	5904.92.00	Guatemala.....	0	0.0%	Floor coverings consisting of a coating applied on a textile backing,
*	6304.99.10	Pakistan.....	0	0.0%	Wall hangings, not knitted or crocheted, of wool or fine animal hair,
* D	6304.99.40	Pakistan.....	2,285	46.3%	Certified hand-loomed and folklore pillow covers of wool or fine anima
*	6501.00.60	Colombia.....	0	0.0%	Hat forms, hat bodies and hoods, not blocked to shape or with made bri
*	6908.10.20	Thailand.....	370,789	7.0%	Glazed ceramic tiles, cubes & similar arts. w/largest area enclosable
*	6910.10.00	Brazil.....	4,713,092	4.6%	Porcelain or china ceramic sinks, washbasins, baths, bidets, water clo
*	6910.90.00	Brazil.....	65,773	0.0%	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets,
*	6910.90.00	Argentina.....	359,482	0.2%	Ceramic (o/than porcelain or china) sinks, washbasins, baths, bidets,
*	6911.90.00	Brazil.....	0	0.0%	Porcelain or china (o/than bone china) household and toilet articles (
*	6912.00.44	Brazil.....	2,229,645	2.8%	Ceramic (o/than porcelain or china) household mugs and steins w/o atta
*	7007.11.00	Argentina.....	18,542	0.0%	Toughened (tempered) safety glass, of size and shape suitable for inco
*	7106.92.50	Chile.....	7,188	0.0%	Silver (including silver plated with gold or platinum), in semimanufac
*	7109.00.00	Peru.....	0	0.0%	Base metals or silver clad with gold, but not further worked than semi
*	7113.19.21	Peru.....	15,729,357	48.1%	Gold rope necklaces and neck chains
*	7113.19.50	Turkey.....	88,599,912	2.9%	Precious metal (o/than silver) articles of jewelry and parts thereo, w
*	7114.11.60	Argentina.....	0	0.0%	Articles of silver nesoi, for household, table or kitchen use, toilet
*	7114.19.00	Peru.....	0	0.0%	Precious metal (o/than silver) articles, nesoi, whether or not plated
*	7115.90.30	Colombia.....	0	0.0%	Gold (including metal clad with gold) articles (o/than jewellry or gol

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LIST IV : POSSIBLE REDESIGNATION ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	7115.90.30	Argentina.....	0	0.0%	Gold (including metal clad with gold) articles (o/than jewellry or gol
*	7115.90.40	Argentina.....	6,600	0.1%	Silver (including metal clad with silver) articles (o/than jewellry or
*	7116.10.10	Thailand.....	0	0.0%	Natural pearl articles
*	7116.20.05	Thailand.....	4,289,905	10.3%	Jewelry articles of precious or semiprecious stones, valued not over $
*	7116.20.15	Thailand.....	2,225,489	6.8%	Jewelry articles of precious or semiprecious stones, valued over $40 p
*	7117.90.55	Peru.....	14,638	1.0%	Imitation jewelry nesoi, not of base metal, n/o 20 cents/doz. pcs or p
*	7202.21.10	Brazil.....	132,379	5.4%	Ferrosilicon containing by weight more than 55% but not more than 80%
*	7202.21.50	Brazil.....	3,768,872	2.7%	Ferrosilicon containing by weight more than 55% but not more than 80%
*	7202.21.50	Argentina.....	0	0.0%	Ferrosilicon containing by weight more than 55% but not more than 80%
*	7202.30.00	Brazil.....	20,405	0.0%	Ferrosilicon manganese
*	7202.30.00	Argentina.....	35,200	0.0%	Ferrosilicon manganese
*	7307.21.50	Brazil.....	35,036	0.0%	Stainless steel, not cast, flanges for tubes/pipes, not forged or forg
*	7307.91.30	Brazil.....	0	0.0%	Alloy steel (o/than stainless), not cast, flanges for tubes/pipes, for
*	7307.91.50	Brazil.....	89,135	0.2%	Iron or steel (o/than stainless), not cast, flanges for tubes/pipes, n
*	7308.90.70	Venezuela.....	57,299	0.5%	Steel, grating for structures or parts of structures
*	7308.90.95	Argentina.....	960,399	0.3%	Iron or steel, structures (excluding prefab structures of 9406) and pa
*	7315.90.00	Argentina.....	76,490	0.4%	Iron or steel, parts of chain (other than articulated link chain)
*	7403.12.00	Peru.....	0	0.0%	Refined copper, wire bars
*	7403.12.00	Chile.....	0	0.0%	Refined copper, wire bars
*	7403.21.00	Chile.....	0	0.0%	Copper-zinc base alloys (brass), unwrought nesoi
*	7403.22.00	Chile.....	0	0.0%	Copper-tin base alloys (bronze), unwrought nesoi
*	7403.23.00	Chile.....	0	0.0%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
*	7403.29.00	Chile.....	0	0.0%	Copper alloys (o/than copper-zinc, copper-tin, copper-nickel(cupro-nic
*	7407.21.90	Brazil.....	1,168,153	1.1%	Copper-zinc base alloys (brass), bars & rods nesoi, not having a recta
*	7407.22.30	Russia.....	0	0.0%	Copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base al
*	7409.11.50	Argentina.....	0	0.0%	Refined copper, plates, sheets and strip, in coils, with a thickness o
*	7409.21.00	Argentina.....	207,212	0.4%	Copper-zinc base alloys (brass), plates, sheets and strip, in coils
*	7409.39.50	Hungary.....	198,891	31.4%	Copper-tin base alloys (bronze), plates, sheets and strip, with a thic
*	7411.21.50	Trinidad and Tobago.	0	0.0%	Copper-zinc base alloys (brass), tubes and pipes, other than seamless
*	7604.10.30	Venezuela.....	0	0.0%	Aluminum (o/than alloy), bar and rods, with a round cross section
*	7604.29.30	Venezuela.....	1,329,067	2.4%	Aluminum alloy, bars and rods, having a round cross section
*	7605.11.00	Venezuela.....	0	0.0%	Aluminum (o/than alloy), wire, with a maximum cross-sectional dimensio
*	7605.21.00	Venezuela.....	279,551	0.8%	Aluminum alloy, wire, with a maximum cross-sectional dimension over 7
*	7614.90.20	Venezuela.....	2,299,103	29.0%	Aluminum, elect. conductors of stranded wire, cables & the like (o/tha
*	7614.90.50	Venezuela.....	38,655	7.6%	Aluminum, stranded wire, cables and the like (o/than w/steel core), no
2 D	7801.99.30	Colombia.....	29,707	100.0%	Lead (o/than refined lead), bullion
*	7801.99.30	Dominican Republic..	0	0.0%	Lead (o/than refined lead), bullion
*	7901.11.00	Argentina.....	0	0.0%	Zinc (o/than alloy), unwrought, containing o/99.99% by weight of zinc
*	7901.12.50	Argentina.....	0	0.0%	Zinc (o/than alloy), unwrought, o/than casting-grade zinc, containing
*	7904.00.00	Republic of South Af	737,008	28.1%	Zinc, bars, rods, profiles and wire
* D	7905.00.00	Peru.....	7,670,143	67.4%	Zinc, plates, sheets, strip and foil
*	8104.11.00	Russia.....	18,271,839	36.3%	Magnesium, unwrought, containing at least 99.8 percent by weight of ma
*	8112.30.60	Russia.....	411,054	9.8%	Germanium, unwrought
*	8207.20.00	Argentina.....	0	0.0%	Interchangeable dies for drawing or extruding metal, and base metal pa
* D	8211.92.60	Pakistan.....	1,688,069	53.2%	Hunting knives w/fixed blades, with wood handles
2	8211.95.50	Pakistan.....	47,750	36.5%	Base metal handles for knives (o/than table knivies) w/fixed blades
*	8408.20.20	Brazil.....	20,174,431	12.0%	Compression-ignition internal-combustion piston engines to be installe
*	8408.20.90	Brazil.....	89,006	0.3%	Compression-ignition internal-combustion piston engines used for propu
*	8409.91.50	Brazil.....	44,132,269	2.3%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.91.50	Argentina.....	6,304,117	0.3%	Parts nesi, used solely or principally with spark-ignition internal-co
*	8409.91.99	Argentina.....	2,456,858	0.6%	Parts nesi, used solely or principally with spark-ignition internal-co

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LIST IV : POSSIBLE REDESIGNATION ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE	DESCRIPTION
*	8409.99.91	Argentina.....	2,249,318	0.5%	Parts nesi, used solely or principally with the engines of heading 840
*	8413.30.10	Brazil.....	20,695,574	10.1%	Fuel-injection pumps for compression-ignition engines, not fitted with
2	8450.90.20	Ecuador.....	0	0.0%	Tubs and tub assemblies for household or laundry-type washing machine
*	8477.51.00	Argentina.....	216,800	1.3%	Machinery for molding or retreading pneumatic tires or for molding or
*	8480.30.00	Argentina.....	0	0.0%	Molding patterns
*	8481.30.20	Argentina.....	53,568	0.1%	Check valves of iron or steel for pipes, boiler shells, tanks, vats or
*	8481.80.30	Argentina.....	140,308	0.0%	Taps, cocks, valves & similar appliances for pipes, boiler shells, tan
*	8481.80.90	Argentina.....	1,233,049	0.0%	Taps, cocks, valves & similar appliances for pipes, boiler shells, tan
*	8481.90.30	Argentina.....	0	0.0%	Parts of hand operated and check appliances for pipes, boiler shells,
*	8503.00.65	Argentina.....	4,750	0.0%	Stators and rotors for electric motors & generators of heading 8501, n
*	8524.52.10	Argentina.....	0	0.0%	Pre-recorded magnetic video tape recordings of a width exceeding 4 mm
*	8528.12.16	Thailand.....	2,574	0.0%	Non-high def. color television reception app., nonprojection, w/CRT, d
*	8535.40.00	Dominican Republic..	0	0.0%	Lightning arrestors, voltage limiters and surge suppressors, for a vol
*	8536.90.80	Argentina.....	0	0.0%	Electrical apparatus nesi, for switching or making connections to or i
*	8538.90.80	Argentina.....	2,500	0.0%	Other parts nesi, suitable for use solely or principally with the appa
*	8708.40.50	Brazil.....	145,302	0.2%	Pts. & access. of mtr. vehic. of 8701, nesoi, and of 8705, gear boxes
*	8708.60.80	Argentina.....	121,914	0.0%	Pts. & access. of mtr. vehic. of 8701, nesoi, of 8702, and of 8704-870
*	8708.70.60	Argentina.....	0	0.0%	Pts. & access. of mtr. vehicc of 8701, nesoi, and of 8702-8705, pts. &
2	8708.99.67	Brazil.....	61,739,947	3.2%	Pts. & access. of motor vehicles of 8701, nesoi, and 8702-8705, pts. f
*	8708.99.80	Argentina.....	606,738	0.0%	Pts. & access., nesoi, of motor vehicles of 8701, nesoi, and 8702-8705
*	8716.90.50	Argentina.....	2,500	0.0%	Parts of trailers and semi-trailers and vehicles, not mechanically pro
*	9001.30.00	Indonesia.....	69,520,987	45.7%	Contact lenses
*	9003.90.00	Argentina.....	0	0.0%	Parts of frames and mountings for spectacles, goggles or the like
*	9105.19.10	Brazil.....	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measuring not
*	9105.19.40	Brazil.....	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measuring ove
*	9113.10.00	Argentina.....	0	0.0%	Watch straps, watch bands and watch bracelets, of precious metal or of
*	9113.20.60	Argentina.....	0	0.0%	Parts of watch bracelet of base metal, whether or not gold- or silver-
*	9405.30.00	Thailand.....	3,838,334	1.0%	Lighting sets of a kind used for Christmas trees
*	9506.62.80	Pakistan.....	756,268	0.9%	Inflatable balls (o/than footballs and soccer balls) nesoi
*	9506.91.00	Pakistan.....	384,216	0.0%	Arts. and equip. for general physical exercise, gymnastics or athletic
* D	9614.20.60	Turkey.....	119,296	91.6%	Smoking pipes and bowls, wholly of clay, and other smoking pipes w/bow

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LIST IV : POSSIBLE REDESIGNATION ITEMS

2000 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina.....	181,913,359	124
Belize.....	0	1
Brazil.....	484,924,433	57
Chile.....	28,029	10
Colombia.....	49,621,904	11
Costa Rica.....	22,507,465	6
Dominican Republic..	76,115,754	15
Ecuador.....	4,040,467	6
El Salvador.....	174,738	2
Guatemala.....	14,871,272	8
Guyana.....	205,816	1
Honduras.....	0	1
Hungary.....	198,891	1
India.....	4,435,390	5
Indonesia.....	119,337,248	19
Jamaica.....	42,583	2
Pakistan.....	14,599,373	20
Peru.....	31,247,480	12
Philippines.....	5,133,776	1
Poland.....	3,022,351	1
Republic of South Af	3,184,123	2
Russia.....	18,682,893	3
Thailand.....	10,727,091	7
Trinidad and Tobago.	0	1
Turkey.....	112,751,309	14
Venezuela.....	4,003,675	7
TOTAL.....	1,161,769,420	337

[FR Doc. 01–3067 Filed 2–5–01; 8:45 am]
BILLING CODE 3910–01–C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33998]

Northwestern Pacific Railway Co., LLC—Lease and Operation Exemption—North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District

Northwestern Pacific Railway Co., LLC (NWPY), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 pursuant to an operating agreement for NWPY to lease and operate over approximately 317.6 miles of rail line properties of North Coast Railroad Authority (NCRA), Northwestern Pacific Railroad Authority (NWPRA), and Golden Gate Bridge, Highway and Transportation District (GGBHTD). Under the agreement, NWPY will assume all of the rights, duties and obligations of NCRA, including those set out in NCRA's agreements with NWPRA and GGBHTD. The line is located in Humboldt, Trinity, Mendocino, Sonoma, Marin, and Napa Counties, CA, and consists of five segments: (1) The Eureka Segment extending from end of track at NWP milepost 302.86 near Fairhaven, CA, to NWP milepost 142.5 near Outlet Station, CA, a distance of approximately 160.4 miles, the Korblex Branch from NWP milepost 285.2 to NWP milepost 295.2, a distance of approximately 10.0 miles, and the Carlotta Branch from NWP milepost 262.7 to NWP milepost 267.7, a distance of approximately 5.0 miles; [1] (2) the Willits Segment extending from NWP milepost 142.5 near Outlet Station to NWP milepost 68.22 near Healdsburg, CA, a distance of approximately 74.3 miles; (3) the Healdsburg Segment extending from NWP milepost 68.2 near Healdsburg, CA, to NWP milepost 26.96 near Novato, CA, a distance of approximately 41.2 miles; (4) the Novato Segment extending from NWP milepost 26.96 near Novato to NWP milepost 25.6 near Ignacio, CA, a distance of approximately 1.4 miles; and (5) the Lombard Segment extending from NWP milepost 25.6 near Ignacio to Lombard Station in Napa County, CA, SP milepost 63.4, a distance of approximately 25.3 miles. In addition, NCRA has agreed to grant NWPY all of its surface freight easement rights for a total of 67.9 miles of line (the Healdsburg, Novato, and Lombard Segments described above, which are not owned by NCRA).[2] NWPY will replace NCRA as operator of the rail lines, and will become a Class III rail carrier. NWPY certifies that its projected revenues will not exceed those that would qualify it as a Class III railroad.

The earliest the transaction could be consummated was January 16, 2001, the effective date of the exemption (7 days after the exemption was filed).

If the verified 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 will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33998, must be filed with

[1] NCRA acquired the authority to operate the line in *North Coast Railroad Authority—Acquisition and Operation Exemption-Eureka Southern Railroad,* Finance Docket No. 32052 (ICC served Apr. 23, 1992).

[2] NCRA acquired the authority to operate these lines in *North Coast Railroad Authority—Lease and Operation Exemption—California Northern Railroad Company, Northwestern Pacific Railroad Authority, and Golden Gate Bridge, Highway and Transportation District,* STB Finance Docket No. 33115 (STB served Sept. 27, 1996).

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 Leonard J. LaCasse, 119 South Main Street, Ukiah, CA 95482.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 30, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–2960 Filed 2–5–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed new system of records entitled ''Treasury/DO .195—Treasury Emergency Management System.''

DATES: Comments must be received no later than March 8, 2001. The proposed system of records will be effective March 19, 2001, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Emergency Preparedness Staff, Office of Security, Department of the Treasury, Annex Building, Room 3180, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Alesia Taylor-Boyd, Acting Director, Emergency Management Preparedness, (202) 622–1130. Fax: 202–622–2057.

SUPPLEMENTARY INFORMATION: The Department of the Treasury is giving notice of a new system of records which is subject to the Privacy Act. The proposed system of records will maintain specified contact information on current Treasury employees, contractors, and reservists who may be called to support emergency assignments on teams such as the Office Business Continuity Team, Emergency Management Center Team, or the Treasury Emergency Executive Staff.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

The proposed system of records, Treasury Emergency Management System—Treasury/DO .195 is published in its entirety below.

Date: January 25, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .195

SYSTEM NAME:

Treasury Emergency Management System.

SYSTEM LOCATION:

Department of the Treasury, Annex Building, Room 3180, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Other locations at which the system is maintained by Treasury components and their associated field offices are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW, Washington, DC 20220.

b. Financial Crimes Enforcement Network (FinCEN): 2070 Chain Bridge Road, Vienna, VA 22182.

c. The Office of Inspector General (OIG): 740 15th Street, NW, Washington, DC 20220.

d. Treasury Inspector General for Tax Administration (TIGTA): 1111 Constitution Ave., NW, Washington, DC 20224.

(2) Bureau of Alcohol, Tobacco and Firearms (ATF): 650 Massachusetts Avenue, NW, Washington, DC 20226.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, SW, Washington, DC 20219–0001.

(4) United States Customs Service (CS): 1300 Pennsylvania Avenue, NW, Washington DC 20229.

(5) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW, Washington, DC 20228.

(6) Federal Law Enforcement Training Center (FLETC): Glynco, Ga. 31524.

(7) Financial Management Service (FMS): 401 14th Street, SW, Washington, DC 20227.

(8) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW, Washington, DC 20224.

(9) United States Mint (MINT): 801 9th Street, NW, Washington, DC 20220.

(10) Bureau of the Public Debt (BPD): 999–E Street, NW, Washington, DC 20239.

(11) United States Secret Service (USSS): 950 H Street, NW, Washington, DC 20001.

(12) Office of Thrift Supervision (OTS): 1700 G Street, NW.,Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Treasury employees, contractors, and Treasury Emergency Executive Reservists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Treasury employees, contractors, or Treasury Emergency Executive Reservists identification number, social security number, first name and middle initial, last name, job title, government and home addresses (city, state, zip code, zip code extension), home telephone number, work telephone number, alternate telephone number (*e.g.*, pager, cellular phone), work shift, email addresses, office code, office name, gender and other employee attributes, date of birth, place of birth, and related personnel security clearance information, emergency team assignment and emergency team location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Executive Order 12656, section 201 and part 15, Executive Order 12472, Presidential Decision Directive 67.

PURPOSES(S):

The purpose of this system of records is to support the development of and maintain a continuity of operations plans (COOP) for the Department and its component bureaus. COOP activities involve ensuring the continuity of minimum essential Department of the Treasury functions through plans and procedures governing succession to office and the emergency delegation of authority (where permissible). Vital records and critical information pertaining to all current employees, contractors, and Treasury Emergency Executive Reservists will be gathered and stored in an emergency employee locator system. This data will be used for alert and notification purposes, determining team and task assignments, developing and maintaining an emergency contact system for general emergency preparedness programs and specific situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to: (1) Disclose pertinent information to

appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose pertinent information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(3) Disclose information to the Federal Emergency Management Agency (FEMA) or other agency with national security and emergency preparedness responsibilities in order to carry out continuity of government activities;

(4) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury (agency) is authorized to appear when:

(a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(6) Disclose information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Disclose information to a contractor for the purpose of processing administrative records and/or compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(8) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where relevant or potentially relevant to a proceeding;

(9) Disclose information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor management program for the purpose of processing any corrective actions or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) Disclose information to a telecommunications company providing telecommunications support to permit servicing the account;

(11) Disclose information to representatives of the General Services Administration (GSA) or the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in hardcopy and electronic media.

RETRIEVABILITY:

Records can be retrieved by name, or by the categories listed above under ''Categories of records in the system.''

SAFEGUARDS:

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 7110, Department of the Treasury Security Manual. The files and magnetic media are secured in locked rooms. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information and have been subject to a background check and/or have a security clearance.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Director, Office of Security, Department of the Treasury, Washington, DC 20220.

The system managers for the Treasury components are:

1.(a) DO: Director of Security, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(b) FinCEN: Security Director, 2070 Chain Bridge Road Vienna, VA 22182.

(c) OIG: Personnel Officer, 740 15th St., NW, Suite 510 Washington, DC 20220.

(d) TIGTA: Security Officer, 1111 Constitution Ave., NW, Washington, DC 20224.

2. ATF: Deputy Assistant Director (Management), 650 Massachusetts Avenue, NW., Washington, DC 20226.

3. CC: Director, Administrative Services Division, 250 E Street, SW, Washington, DC 20219.

4. USCS: Chief, Security Management Branch, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

5. BEP: Director of Security, 14th & C Streets, NW, Room 113M Washington, DC 20228.

6. FLETC: Director, Glynco Facility, Glynco, GA 31524.

7. FMS: Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, MD 20782.

8. IRS: Director, Security Standards and Evaluation, 5000 Ellin Road, Lanham, MD 20706.

9. BPD: Director, Administration, 200 Third Street, P.O. Box 1328, Parkersburg, WV 261061328.

10. Mint: Director of Security, 801 9th Street, NW, Washington, DC 20220.

11. USSS: Deputy Assistant Director, Office of Administration 950 H Street NW, Washington, DC 20001.

12. OTS: Director, Procurement and Administrative Services 1700 G Street, NW, Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–L.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information is obtained from current Treasury employees, contractors, Treasury Emergency Executive Reservists, and Management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–2996 Filed 2–5–01; 8:45am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–8

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–8, Eligible Deferred Compensation Plans under Section 457.

DATES: Written comments should be received on or before April 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Eligible Deferred Compensation Plans under Section 457.

OMB Number: 1545–1580.

Notice Number: Notice 98–8.

Abstract: The Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 made changes to rules under Internal Revenue Code section 457 regarding eligible deferred compensation plans offered by state and local governments. Notice 98–8 requires state and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income in trust for the exclusive benefit of its participants and beneficiaries. Also, new non-bank custodians must submit applications to the IRS to be approved to serve as custodians of section 457 plan assets.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 10,260.

Estimated Time Per Respondent: 1 hour, 2 minutes.

Estimated Total Annual Burden Hours: 10,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3079 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208299–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–208299–90, Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation (§§ 1.475(g)–2, 1.482–8, and 1.863–3).

DATES: Written comments should be received on or before April 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation.

OMB Number: 1545–1599.

Regulation Project Number: REG–208299–90.

Abstract: This regulation provides rules for the allocation among controlled taxpayers and sourcing of income, deductions, gains and losses from a global dealing operation. The information requested in §§ 1.475(g)–2(b), 1.482–8 (b)(3), (c)(3), (e)(5), (e)(6), (d)(3), and 1.863–3(h) is necessary for the Service to determine whether the taxpayer has entered into controlled transactions at an arm's length price.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 40 hrs.

Estimated Total Annual Burden Hours: 20,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3080 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106542–98]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG–106542–98, Election to Treat Trust as Part of an Estate (§ 1.645–1).

DATES: Written comments should be received on or before April 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election to Treat Trust as Part of an Estate.

OMB Number: 1545–1578.

Regulation Project Number: REG–106542–98.

Abstract: This regulation describes the procedures and requirements for making an election to have certain revocable trusts treated and taxed as part of an estate. The Taxpayer Relief Act of 1997 added section 646 to the Internal Revenue Code to permit the election.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 24, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3081 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 98–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 98–1, Limitations on Benefits and Contributions Under Qualified Plans.

DATES: Written comments should be received on or before April 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Benefits and Contributions Under Qualified Plans.

OMB Number: 1545–1563.

Notice Number: Revenue Ruling 98–1.

Abstract: Revenue Ruling 98–1 provides guidance on the limitations on benefits and contributions under section 415 of the Internal Revenue Code as amended by section 1449 of the Small Business Job Protection Act of 1996, including various options an employer may elect when implementing the amendments.

Current Actions: There are no changes being made to the revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 70,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 35,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3082 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–104691–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–104691–97 (TD 8910), Electronic Tip Reports (§§ 31.6053–1 and 31.6053–4).

DATES: Written comments should be received on or before April 9, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Tip Reports.

OMB Number: 1545–1603.

Regulation Project Number: Reg–104691–97.

Abstract: The regulations provide rules authorizing employers to establish electronic systems for use by their tipped employees in reporting tips to their employer. The information will be used by employers to determine the amount of income tax and FICA tax to withhold from the tipped employee's wages.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 300,000.

Estimated Time Per Respondent: 2 hrs.

Estimated Total Annual Burden Hours: 600,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 29, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3083 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–24

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning

Revenue Procedure 2001–24, Advanced Insurance Commissions.

DATES: Written comments should be received on or before April 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Advanced Insurance Commissions.

OMB Number: 1545–1736.

Revenue Procedure Number: Revenue Procedure 2001–24.

Abstract: A taxpayer that wants to obtain automatic consent to change its method of accounting for cash advances on commissions paid to its agents must agree to the specified terms and conditions under the revenue procedure. This agreement is ratified by attaching the required statement to the federal income tax return for the year of change.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,270.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,318.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 30, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3084 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–20, Voluntary Compliance on Alien Withholding Program (''VCAP'').

DATES: Written comments should be received on or before April 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Compliance on Alien Withholding Program (''VCAP'').

OMB Number: 1545–1735.

Revenue Procedure Number: Revenue Procedure 2001–20.

Abstract: The revenue procedure will improve voluntary compliance of colleges and universities in connection with their obligations to report, withhold and pay taxes due on compensation paid to foreign students and scholars (nonresident aliens). The revenue procedure provides an optional opportunity for colleges and universities which have not fully complied with their tax obligations concerning nonresident aliens to self-audit and come into compliance with applicable reporting and payment requirements.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 495.

Estimated Time Per Respondent: 700 hours.

Estimated Total Annual Burden Hours: 346,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: January 31, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3085 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[TD 8223, TD 8432, and TD 8657]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax (§§ 1.884–1, 1.884–2, 1.884–2T, 1.884–4, 1.884–5).

DATES: Written comments should be received on or before April 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: TD 8223, Branch Tax; TD 8432, Branch Profits Tax; and TD 8657, Regulations on Effectively Connected Income and the Branch Profits Tax.

OMB Number: 1545–1070.

Regulation Project Number: TD 8223, TD 8432, and TD 8657.

Abstract: These regulations provide guidance on how to comply with Internal Revenue Code section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation, to tax.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 28,500.

Estimated Time Per Respondent: 27 minutes.

Estimated Total Annual Burden Hours: 12,694.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 31, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3086 Filed 2–5–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Department of the Treasury, Internal Revenue Service, gives notice of a proposed system of records entitled, ''Employee Tax Compliance Records (ETC)—Treasury/IRS 36.888.'' The Employee Tax Compliance Records were previously covered under Treasury/IRS 36.003—General Personnel and Payroll Records. However, these records have changed and become distinct enough to warrant a new system of records.

DATES: Comments must be received no later than March 8, 2001. The proposed system of records will be effective March 19, 2001 unless comments are received that result in a contrary determination.

ADDRESSES: Comments should be sent to the IRS Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection at the IRS Freedom of Information Reading Room also located at room 1621, 1111 Constitution Avenue, NW. The telephone number for the Reading Room is (202) 622–5164.

FOR FURTHER INFORMATION CONTACT: Sharon M. Oliver, Acting Director, Office of Workforce Relations, Internal Revenue Service, Room 1515, 1111 Constitution Avenue, NW., Washington, DC 20224. Her telephone number is (202) 622–7542. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Employee Tax Compliance Records (ETC) are used to detect potential non-compliance of IRS employees with the Federal tax law. The ETC records will increase the IRS' ability to ensure employee compliance with Federal tax law. The development of the Employee Tax Compliance Program was precipitated by the need to comply with the Office of Government Ethics Title 5 Code of Federal Regulations 2635.809. These records were previously covered under Treasury/IRS 36.003—General Personnel and Payroll Records. However, over time these records have become distinct enough to warrant a new system of records.

The proposed system of records, Employee Tax Compliance Records (ETC)—Treasury/IRS 36.888, will be exempted from disclosure provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). A proposed rule is being published separately in the **Federal Register**.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals.''

The proposed IRS system of records Treasury/IRS 36.888—Employee Tax Compliance Records (ETC) is published in its entirety below.

Dated: January 25, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/IRS 36.888

SYSTEM NAME:

Employee Tax Compliance Records (ETC).

SYSTEM LOCATION:

Main records are located in the Field Information Systems Organization—Southeast Region (Cincinnati, Ohio). Copies may be transferred to local offices to work cases in the National Offices, District and Regional Offices, and the Internal Revenue Service Centers. (See IRS Appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the IRS who may not be in full compliance with the Federal tax laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Tax Return and Return information, including the Employee Tax Compliance Database records, which contain name, social security number, address, facts of IRS employment, and location codes. Records may also contain administrative information that may help in locating an employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

26 U.S.C. 7801 and 7803.

PURPOSE(S):

To detect potential noncompliance of IRS employees with the Federal tax laws and provide records for a fair and uniform process for appropriate action when non-compliance is detected.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103.

POLICIES AND PROCEDURES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Records are indexed and/or retrieved by taxpayer name, taxpayer identification number (social security number) and tax year.

SAFEGUARDS:

Access controls will be in accordance with the guidelines provided in the Automated Information System Security Handbook, Internal Revenue Manual (IRM) 2(10) 00 and IRM 1(16) 12 Manager's Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in accordance with Records Disposition Handbooks, IRM 1 (15) 59.1 through IRM 1 (15) 59.32.

SYSTEM MANAGER(S) AND ADDRESS:

Internal Revenue Service, Chief, Employee Tax Compliance Unit (Cincinnati) P.O. Box 1637, Cincinnati, OH 45201–1637.

NOTIFICATION PROCEDURES:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or contest of record contents as the records are exempt.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36)

[FR Doc. 01–2995 Filed 2–5–01; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Tuesday,
February 6, 2001

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Spectacled Eider; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF92

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Spectacled Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the spectacled eider (*Somateria fischeri*), a threatened species listed pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat for the spectacled eider includes areas on the Yukon-Kuskokwim Delta (Y–K Delta), in Norton Sound, Ledyard Bay, and the Bering Sea between St. Lawrence and St. Matthew Islands. These areas total approximately 10,098,827 hectares (100,988.3 square kilometers; 38,991.6 square miles; 24,954,638 acres).

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule and economic analysis. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

DATES: The effective date of this rule is March 8, 2001.

FOR FURTHER INFORMATION CONTACT: Ann G. Rappoport, Field Supervisor, Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G–61, Anchorage, Alaska 99501 (telephone 907/271–2787 or toll-free 800/272–4174; facsimile 907/271–2786).

SUPPLEMENTARY INFORMATION:

Background

The spectacled eider is a large sea duck, 52–56 centimeters long (20–22 inches). Sea ducks, waterfowl that spend at least part of their lives at sea or on large waterbodies, are a subgroup of the subfamily Anatinae, family Anatidae. Within each subfamily, taxonomists group the waterfowl species into tribes, but while Delacour and Mayr (1945) originally placed the eiders (Tribe Somaterini) in a separate tribe from other sea ducks (Tribe Mergini), Johnsgard (1960) and others have grouped them together under Tribe Mergini. The spectacled eider was first described by Brandt in 1847 as *Fuligula fischeri*, then later placed in the genera *Lampronetta* and *Arctonetta*, and finally under *Somateria* (American Ornithologists' Union 1983). The spectacled eider is one of three species in the genus *Somateria*. All *Somateria* species' ranges include the United States.

In the winter and spring, adult male spectacled eiders are in breeding plumage with a black chest, white back, and pale green head with a long sloping forehead and black-rimmed white spectacle-like patches around the eyes. During the late summer and fall, males are mottled brown. Females and juveniles are mottled brown year-round with pale brown eye patches. Spectacled eiders are diving ducks that spend most of the year in marine waters where they primarily feed on bottom-dwelling molluscs and crustaceans.

Geographic Range

In the United States, spectacled eiders historically had a discontinuous nesting distribution from the Nushagak Peninsula in southwestern Alaska north to Barrow and east nearly to the Canadian border. Today two breeding populations remain in Alaska. The remainder of the species breeds in Arctic Russia. The species throughout its range, including the Arctic Russian population, is listed under the Act (16 U.S.C. 1531 *et seq.*) as threatened wherever it occurs.

On the Y–K Delta, spectacled eiders breed mostly within 15 kilometers (km) (9.3 statute miles (mi)) of the coast from Kigigak Island north to Kokechik Bay (Service 1996), with smaller numbers nesting south of Kigigak Island to Kwigillingok and north of Kokechik Bay to the mouth of Uwik Slough. The coastal fringe of the Y–K Delta is the only subarctic breeding habitat where spectacled eiders occur at high density (3.0–6.8 birds/square kilometer (km^2), 1.2–2.6 birds/square mile (mi^2)) (Service 1996). Nesting on the Y–K Delta is restricted to the vegetated intertidal zone (areas dominated by low wet-sedge and grass marshes with numerous small shallow water bodies). Nests are rarely more than 190 meters (m) (680 feet (ft)) from water and are usually within a few meters of a pond or lake.

On Alaska's North Slope, nearly all spectacled eiders breed north of 70° latitude between Icy Cape and the Shaviovik River. Within this region, most spectacled eiders occur between Cape Simpson and the Sagavanirktok River (Service 1996). Spectacled eiders on the North Slope occur at low densities (0.03–0.79 birds/km^2, 0.01–0.31 birds/mi^2) (Larned and Balogh 1997) within about 80 km (43.2 nautical miles (nm)) of the coast. During pre-nesting and early nesting, they occur most commonly on large shallow productive thaw lakes usually with convoluted shorelines or small islands (Larned and Balogh 1997). Such shallow water bodies with emergent vegetation and low islands or ridges appear to be important as eider nesting and brood-rearing habitat on the North Slope (Derksen *et al.* 1981, Warnock and Troy 1992, Andersen *et al.* 1998).

Within the United States, spectacled eiders molt in Norton Sound and Ledyard Bay, where they congregate in large, dense flocks that may be particularly susceptible to disturbance and environmental perturbations. During their time on the molting grounds (early July through October), each bird is flightless for a few weeks. However, there is no time in which all birds are simultaneously flightless (Petersen *et al.* 1999).

Norton Sound is located along the western coast of Alaska between the Y–K Delta and the Seward Peninsula. It is the principal molting and staging area for females nesting, and for juveniles raised, on the Y–K Delta (Petersen *et al.* 1999), the most imperiled of the three breeding populations. Some Y–K Delta male spectacled eiders, presumably subadult males, also molt in Norton Sound (Petersen *et al.* 1999). Breeding adult males from the Y–K Delta have not been observed to molt in Norton Sound, but they are known to molt in Ledyard Bay and in at least two locations in Russian waters (Petersen *et al.* 1999). As many as 4,030 spectacled eiders have been observed in Norton Sound at one time (Larned *et al.* 1995a). Spectacled eiders molted in the same portion of eastern Norton Sound each year from 1993 to 1997. Charles Lean (Alaska Department of Fish and Game (ADFG), pers. comm. 1999) reported seeing large flocks in this same area in August and September from 1982 to 1990, suggesting that this area has a history of consistent use by molting spectacled eiders. Spectacled eiders arrive in eastern Norton Sound at the end of July and depart in mid-October (Petersen *et al.* 1999). Although overall benthic biomass (quantity of organisms living on the sea floor) in this area is thought to be lower than in other parts of Norton Sound, the abundance of large gastropods (*e.g.*, snails, which are presumably a spectacled eider food item) is higher in this area than elsewhere (Springer and Pirtle 1997).

Ledyard Bay is one of the primary molting grounds for female spectacled eiders breeding on the North Slope, and

most female birds molting here are from the North Slope (Petersen *et al.* 1999). Satellite telemetry data suggest that male spectacled eiders from the North Slope appear to molt and stage in equal numbers in Ledyard Bay and the two primary molting areas in Russia, Mechigmenskiy Bay and off the coast of the Indigirka and Kolyma River Deltas (Petersen *et al.* 1999). Aerial surveys in September 1995 found 33,192 spectacled eiders using Ledyard Bay. Most were concentrated in a 37-km (23-mi) diameter circle with their distribution centered about 67 km (36.2 nm) southwest of Point Lay and 41 km (22.1 nm) offshore (Larned *et al.* 1995b).

During winter, spectacled eiders congregate in exceedingly large and dense flocks in pack ice openings between St. Lawrence and St. Matthew Islands in the central Bering Sea (Larned *et al.* 1995c). Spectacled eiders from all three known breeding populations use this wintering area (Service 1999a); no other wintering areas are currently known. Larned and Tiplady (1999) conservatively estimated the entire wintering population, and perhaps the worldwide population, of spectacled eiders at 374,792 birds (95 percent Confidence Interval = 371,278–378,305).

Although we are unaware of large numbers of spectacled eiders wintering elsewhere, it has been hypothesized that the known wintering location may not be the only location used by this species. Dau and Kistchinski (1977) hypothesized that spectacled eiders may be overwintering south of St. Matthew and Nunivak Islands in Alaska, and south of the Chukotka Peninsula in Russia. No spectacled eiders were observed on one limited reconnaissance flight south of St. Matthew Island in 1995 (Bill Larned, Service, pers. comm. 2000). We have not surveyed south of Nunivak Island during winter. To date, all satellite transmitter data gathered during winter has originated from the known wintering area.

Population Status

Between the 1970s and 1990s, spectacled eiders on the Y–K Delta declined by about 96 percent, from 48,000 pairs to fewer than 2,500 pairs in 1992 (Stehn *et al.* 1993). Based upon surveys conducted during the past few years, the Y–K Delta breeding population is now estimated to be about 3,500–4,000 pairs. This estimate is the product of three separate factors: an aerial survey population index, a subsample of intensively ground-searched plots, and a measure of detection bias (including surveyor efficiency) on the ground plots. Detection bias results from the fact that observers see only a portion of the birds that are present or that some birds are more visible than others. The error associated with the annual estimate is a measure of the error associated with the aerial survey index only (as reflected in the coefficient of variance). The population estimate for 2000, based on the number of active and failed nests (or nesting attempts by breeding pairs), expanded to the entire aerial survey area and adjusted for detection bias, was 3,709 active nests on the Y–K Delta. The aerial survey coefficient of variance was 0.159. The population trend for this nesting population can be characterized as stable to slightly increasing over the last 10 years.

The breeding population on the North Slope is currently the largest breeding population of spectacled eiders in North America. The most recent population estimate, uncorrected for aerial detection bias, is 4,744 ± 907 pairs ($\bar{x}$ ± 2SE; arithmetic mean plus or minus two times the standard error associated with the sample) (Larned *et al.* 1999). However, this breeding area is nearly nine times the size of the Y–K Delta breeding area. Consequently, the density of spectacled eiders on the North Slope is about one quarter that on the Y–K Delta (Larned and Balogh 1997, Service 1996; Robert Stehn, Service, Migratory Bird Management (MBM), pers. comm. 2000). Based on our survey data, the spectacled eider breeding population on the North Slope does not show a significant decline throughout most of the 1990s. The downward trend of 2.6 percent per year is bounded by a 90 percent confidence interval ranging from a 7.7 percent decline per year to a 2.7 percent increase per year (Service, unpubl. data).

We do not know the size of the nonbreeding segment of any population. Presumably, nonbreeding birds remain at sea year-round until they attempt to breed at age two or three. We do not know which areas at sea are important to nonbreeding spectacled eiders.

Previous Federal Action

On December 10, 1990, we received a petition from James G. King, dated December 1, 1990, to list the spectacled eider as an endangered species and to designate critical habitat on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve-Alaska. We convened a workshop on February 6 and 7, 1991, to review existing information and develop priorities and recommendations for future studies of both spectacled and Steller's eiders. On April 25, 1991, we published a 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted (56 FR 19073).

On February 12, 1992, a 12-month finding was signed, determining that listing was warranted. On May 8, 1992, we published a proposed rule to list the spectacled eider as a threatened species throughout its range (57 FR 19852). Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. We proposed that it was not prudent to designate critical habitat for the spectacled eider because there was no demonstrable benefit that could be shown at that time (50 CFR 424.12). We solicited comments from all interested parties during an extended comment period (160 days). This extended comment period was intended to accommodate Alaskan Natives, who spend substantial portions of each year away from their homes engaged in subsistence activities, and foreign scientists, whose comments may not have been received during the normal 90-day period. We particularly sought comments concerning threats to spectacled eiders, their distribution and range, whether critical habitat should be designated, and activities that might impact spectacled eiders. Notice of the proposed rule was sent to appropriate Federal agencies, State agencies, Alaska Native regional corporations, borough and local governments, scientific organizations, foreign countries, and other interested parties along with a request for information that might contribute to the development of a final rule.

After a review of all comments received in response to the proposed rule, we published the final rule to list the spectacled eider as threatened without critical habitat on May 10, 1993 (58 FR 27474). Only 5 of the 24 comments received specifically addressed critical habitat designation. Of these, one supported and four opposed the ''not prudent'' determination. Those that opposed the ''not prudent'' finding recommended that critical habitat be designated, at least for nesting areas. They also felt that we should have considered and provided information on possible marine critical habitat. In our final rule to list the spectacled eider as threatened, we maintained that designation of critical habitat was not prudent because no demonstrable overall benefit could be shown at that time (50 CFR 424.12).

We initiated recovery planning for the spectacled eider in 1993. The Spectacled Eider Recovery Team was

formed, consisting of ten members and four consultants with a variety of expertise in spectacled eider biology, conservation biology, population biology, marine ecology, Native Alaskan culture, and wildlife management. The Recovery Team and its consultants developed the Spectacled Eider Recovery Plan, which we approved on August 12, 1996. The Recovery Plan established the recovery criteria that must be met prior to the delisting of spectacled eiders. The plan also identified the actions that are needed to assist in the recovery of spectacled eiders. Additionally, subsequent to the species listing, new information has become available concerning the spectacled eiders' molting and wintering habitat. We also now have a more precise delineation of its breeding habitat.

On March 10, 1999, the Southwest Center for Biological Diversity and the Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five species in California and two in Alaska. These species include the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helmintholglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider, and the Steller's eider (*Polysticta stelleri*).

In the last few years, several court decisions have overturned Service determinations for a variety of species for which we believed designation of critical habitat was not prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions and the availability of new information concerning the species' recovery and habitat needs, we recognized the value of reexamining the question of whether critical habitat for the spectacled eider is prudent. Accordingly, the Federal Government entered into a settlement agreement whereby we agreed to readdress the prudency of designating critical habitat for spectacled eiders.

In another case, *Wilderness Society, et al.* v. *Babbitt,* Civ. No. 98–02395 (D.D.C.), filed on behalf of the Wilderness Society and seven other national and regional environmental organizations in October 1998, objections were raised to the Department of the Interior's decision to undertake oil and gas leasing in the NPR–A. One of the plaintiffs' claims in this litigation is that our failure to designate critical habitat (i.e., our not prudent determination) for spectacled and Steller's eiders was arbitrary and capricious and in violation of the Act. This claim is currently being litigated.

After reviewing the best scientific and commercial data available, we proposed to withdraw our previous finding that the designation of critical habitat for the spectacled eider was not prudent. On February 8, 2000, we proposed the designation of nine areas in northern and western Alaska as critical habitat for the spectacled eider (65 FR 6114).

We requested that all interested parties submit comments during the public comment period on the specifics of the proposal including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The comment period was initially open from February 8, 2000, until May 8, 2000. On April 19, 2000, we published a notice in the **Federal Register** extending the closing date for the open public comment period from May 8, 2000, to June 30, 2000 (65 FR 20938). On July 5, 2000, we published a notice in the **Federal Register** again extending the closing date for the open public comment period from June 30, 2000, to August 31, 2000 (65 FR 41404). On July 31, 2000, we published a notice in the **Federal Register** announcing a public hearing on critical habitat for spectacled and Steller's eiders in Barrow, Alaska (65 FR 46684). On August 24, 2000, we published a notice in the **Federal Register** announcing the availability of our draft economic analysis and extending the closing date for the open public comment period from August 31, 2000, to September 25, 2000 (65 FR 51577). The resulting comment period lasted from February 8, 2000, to September 25, 2000 (231 days).

We have made our critical habitat delineations based upon the best scientific and commercial information available. However, we recognize that we do not have complete information on the distribution of this species at all times of the year. Thus, if information becomes available indicating that additional or fewer areas are essential for the conservation of the species, and may need special management considerations and protections, we may reevaluate our critical habitat designation, including proposing additional critical habitat or proposing deletion or boundary refinement of existing critical habitat.

State of Knowledge of the Spectacled Eider

Few species make themselves less available for study than the spectacled eider. It spends most of the year in the Bering Sea, far from shore and human settlements. Summers are spent widely dispersed across the vast and nearly inaccessible arctic and subarctic tundra. Twenty-five years ago, we knew spectacled eiders were common breeders on the Y–K Delta, but we knew only a little about their breeding biology. Ten years ago, we knew they were declining in abundance on the Y–K Delta, but we did not know why. We also did not know much about where they spent three-quarters of each year during the non-breeding season. Since the species was listed in 1993, we have learned, among other things—(1) where most, if not all spectacled eiders spend the winter; (2) the locations of major molting areas at sea for each breeding population; (3) the size of the breeding populations for each of the three major breeding areas; (4) that consumption of spent lead shot is a problem for eiders breeding on the Y–K Delta; (5) that subsistence hunting probably did not cause the observed decline of eiders on the Y–K Delta, but it might be hindering or preventing recovery; (6) that direct interactions with commercial fisheries does not seem to be a problem for this species; and (7) that we will probably never know why this species declined 96 percent on the Y–K Delta since the 1970's, or whether its North Slope breeding population is at, below, or above historical population levels.

We note that the recovery plan for this species contains valuable biological information, and is cited throughout this document. However, the state of our knowledge regarding eider biology and distribution has changed markedly since publication of the spectacled eider recovery plan. The recovery criteria put forth in this recovery plan represent careful consideration on the part of a panel of highly qualified scientists. The spectacled eider recovery plan sets forth several criteria, any of which, if met, would allow us to consider delisting specific populations (North Slope, Y–K Delta, Arctic Russia breeding populations). One such recovery goal is that three annual surveys yield a minimum population estimate of at least 10,000 breeding pairs. An alternative to the first goal is that a population could be delisted if a single survey resulted in a minimum population estimate of over 25,000 breeding pairs. There is a third recovery goal, that is based upon a fairly complex statistical measure that considers population trend data and

over- and under-protection loss functions combined with a minimum breeding population estimate; however, it is sufficiently complex that it is beyond the scope of this document to explain.

The recovery criteria put forth in the plan may warrant revision in light of new information. As a result of notable research and survey efforts directed towards this species, substantial portions of the biological information presented in the recovery plan is now dated or obsolete. Thus, although the recovery plan is a valuable source of information, it cannot always be considered the final authority on the natural history and distribution of this species. Finally, we note that the recovery plan did not discuss critical habitat. However, we do not interpret the plan's silence on the topic to be an implicit endorsement that critical habitat is or is not warranted.

We do not know what critical factor or factors are limiting the recovery of this species, but we suspect that these factors are affecting survival of breeding adults. Hypotheses that continue to be implicated in the decline of the eiders include—(1) lead poisoning on the Y–K Delta; (2) changes in food supply at sea; (3) excessive subsistence take; (4) changes in predator pressure on the Y–K Delta breeding ground; and (5) disturbance of nesting birds by researchers.

Data indicate that lead poisoning is a serious problem on at least some portions of the Y–K Delta. Approximately one third of adult breeding females near the lower Kashunuk River exhibited elevated lead levels in blood, suggesting consumption of at least one lead pellet during the breeding season (Flint *et al.* 1997). In addition, nine of 43 broods sampled contained one or more ducklings that had consumed lead within 30 days of hatching (Flint *et al.* 1997). Although we have seen elevated levels of lead in long-tailed ducks (oldsquaw) (*Clangula hyemalis*) from the North Slope, we do not know if lead poisoning is a problem for spectacled eiders there.

Information is just beginning to come in suggesting a deterioration of habitat conditions favorable to spectacled eiders on their wintering grounds in the Bering Sea. South of St. Lawrence Island, a number of factors suggest that the eider's preferred food resources are in decline. Organic deposition and benthic biomass in this area have declined steadily since the late 1980s. Oceanographic studies during late winter (March–April 1999) found that particulate organic carbon concentrations in the water column were too low to support significant populations of large zooplankton or krill, indicating that spectacled eiders must be feeding on the bottom. However, a long-term trend in benthic communities continues: The formerly abundant bivalve *Macoma calcarea* has declined relative to another clam *Nuculana radiata,* which has 76 percent lower lipid content and 26 percent lower energy density (J.R. Lovvorn, Univ. Wyoming, pers. comm. 2000). The average length and mass of bivalves has also declined in the long term (J.M. Grebmeier and B.I. Sirenko, unpubl. data). Because nearly all individuals of this species may spend each winter occupying an area of ocean less than 50 km (27.0 nm) in diameter, they may be particularly vulnerable to environmental changes of limited geographic extent during this time.

We have estimated that at least 3.75 percent of the breeding adult spectacled eiders on the Y–K Delta are taken by subsistence hunters each year, but the population-level effects of this harvest are not clear. We note, however, that a spectacled eider population model (currently available to the public over the Internet at *http://abscweb.wr.usgs.gov/research/speimod/index.htm*) suggests that a harvest of this size may slow or prevent recovery of this species. We have thus far been unsuccessful in establishing a subsistence harvest survey for villages on the North Slope, and therefore, we have no estimates of the take from that breeding population.

We will probably never know what role predators played in the decline of eiders on the Y–K Delta, but as Y–K Delta goose populations rebound, any negative affect of predators on eider populations is, hopefully, diminishing. There is no reason to suspect that predator pressure on eiders has increased over historical levels on the North Slope, except perhaps locally near human habitations and oil production facilities.

Our preliminary information indicates that researchers are not having a notable effect on nesting spectacled eiders (Service 1999b), but it nevertheless remains a concern of Natives residing on the Y–K Delta. Ground-based studies for spectacled eiders on the North Slope are mostly restricted to a very small portion of their range around developed oil fields or incidental to other bird studies around Barrow.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat designation if the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * the 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.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation does not afford any additional protections under the Act against such activities.

Section 4 of the Act requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered

deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species''. Within the geographic range occupied by the species critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)) and may require special management consideration or protection.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential and that may require special management consideration or protection. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. It should be noted, however, that not all areas within the occupied geographic range of the species that contain the features and habitats that supports the species are essential and they may or may not require special management or protection. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by us represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature). Our peer review policy requires that we seek input from at least three scientists who are knowledgeable in subject matter relevant to each rule.

Critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), set aside areas as preserves, or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in section 7 consultations for specific projects, or through recovery planning.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, which contain or could contain the habitat features (primary constituent elements described below) that are essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Our decision to not designate critical habitat throughout all of our proposed critical habitat units does not imply that these non-designated areas are unimportant to spectacled eiders. Projects with a Federal nexus that occur in these areas, or anywhere within the range of spectacled eiders, which may affect spectacled eiders must still undergo section 7 consultation.

Methods

In determining which areas are essential to the conservation of spectacled eiders and may require special management consideration or protection, we used the best scientific and commercial information available. Our information sources included 1:250,000 and 1:63,360 scale U.S. Geological Survey topographic maps, satellite imagery, geographic coordinates and duration-of-use information from satellite tagged birds, geographic coordinates and dates of aerial observations of birds, ground plot surveys, ground-based biological investigations, digital bathymetry information, digital coastline information, other Geographic Information System (GIS) data, traditional Native knowledge and area-specific historic trend data, information received from the public during the public comment period, and site-specific species information and observations.

We discussed or presented our critical habitat proposal at 19 meetings and one hearing. We convened a meeting of experts in the field of eider biology to provide us with information useful in setting criteria and boundaries for habitats essential to the conservation of the spectacled eider. We considered the information gathered at our meeting of eider experts, and information that we solicited from eider experts who were unable to attend this meeting. Experts from whom we sought information included representatives of State and Federal agencies, the University of Alaska, a private environmental consulting firm, and Native governing

bodies. We considered all comments received during the open comment period, including both written and oral comments received during meetings and one public hearing, and comments received by E-mail, regular mail, facsimile, and telephone.

We made a concerted effort to solicit traditional ecological knowledge regarding habitats that are important to spectacled eiders. To this end, we contacted representatives of regional governmental and non-profit Native organizations and asked them to recommend individuals who may have traditional ecological knowledge of eiders and their habitats and who may be willing to review the spectacled eider critical habitat proposal. We attempted to contact all individuals identified by the regional representatives, and provided those individuals who agreed to review the proposal with copies of the proposed rule and additional informational materials. Comments submitted by these and other individuals with traditional ecological knowledge, transmitted either in written form or orally during the course of public meetings, have been considered during the development of the final rule.

We reviewed available information that pertains to the habitat requirements and preferences of this species. We reviewed the approach of the appropriate local, State, Native, and Federal agencies in managing for the conservation of spectacled eiders as well as the recovery tasks outlined in the Spectacled Eider Recovery Plan. Comments received through the public review process provided us with valuable additional information to use in decision making, and in assessing the potential economic impact of designating critical habitat for the species.

We sought peer review of our spectacled eider critical habitat proposal from three scientists with expertise in eider biology. All three peer reviewers provided us with comments, which we considered in developing our final designations and in drafting this rule.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

All areas designated as critical habitat for the spectacled eider contain one or more of these physical or biological features, also called primary constituent elements. These areas constitute our best assessment of the areas needed for the species' conservation using the best available scientific and commercial data available. We put forward this designation acknowledging that we have incomplete information regarding breeding ground habitat preferences, distribution of preferred breeding ground habitats, migration corridors, offshore staging areas, marine habitats used by nonbreeders, marine diet, and distribution of preferred prey items at sea. As new information accrues, we may reevaluate our critical habitat boundaries.

Primary constituent elements for Units 1 and 2 (the Central Y–K Delta Unit and South Y–K Delta Unit, respectively) include all portions of the vegetated intertidal zone, and all open water inclusions within that zone. The intertidal zone includes all lands inundated by seawater often enough to affect plant growth, habit, or community composition. Plant communities within this zone include, but are not limited to: low wet sedge tundra; grass marsh; dwarf shrub/graminoid (consisting of grasses and sedges) meadow; high and intermediate graminoid meadow; mixed high graminoid meadow/dwarf shrub uplands.

Primary constituent elements for Units 3 and 4 (the Norton Sound Unit and the Ledyard Bay Unit, respectively) include all marine waters greater than 5 m (16.4 ft) and less than or equal to 25 m (82.0 ft) in depth at mean lower low water (MLLW), along with associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

Primary constituent elements for Unit 5 (the Wintering Unit) include all marine waters less than or equal to 75 m (246.1 ft) in depth at MLLW, along with associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

Criteria Used To Identify Critical Habitat

We considered several qualitative criteria in the selection of specific areas or units for spectacled eider critical habitat. Such criteria focused on identifying—(1) areas where eiders have been documented as consistently occurring at relatively high densities; (2) areas where eiders are especially vulnerable to disturbance and contamination during breeding, molting, or wintering; (3) our knowledge of the habitat's carrying capacity, which allows us to determine how much habitat is needed for the species to achieve recovery; (4) our certainty in delineating the areas essential to survival and recovery given our best available data; and (5) whether any areas were the subject of habitat conservation planning efforts that have resulted in the preparation of biological analyses that identify habitat important for the conservation of the eider.

We used available mapping conventions to define specific map units (i.e., Critical Habitat Units). For the purpose of this final determination, terrestrial Critical Habitat Units have been described using state-plane township grids with resolution to the Section level. Maritime Critical Habitat Units have been described using prominent geographic features, shorelines, buffer distances, and geographic coordinates reported in degrees, minutes, and seconds to enable mariners to easily determine whether they are within critical habitat areas.

In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, which do not contain the primary constituent elements of spectacled eider critical habitat. Existing man-made features and structures within the boundaries of the mapped units, such as buildings, roads, pipelines, utility corridors, airports, other paved areas, and other developed areas do not contain one or more of the primary constituent elements and are therefore not critical habitat. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The designated critical habitat described below constitutes our best assessment of areas needed for the conservation of spectacled eiders and is based on the best scientific and commercial information available. The essential features found on the

designated areas may require special management consideration or protection to ensure their contribution to the species' recovery. Area of designated critical habitat by land ownership is shown in Table 1. The areas of proposed and final critical habitat units are shown in Table 2, along with the percentage change in size for each of these areas between the proposed and final rules.

Table 1. Critical habitat designations in each land-ownership category. Units are hectares, and are rounded to the nearest hectare. To convert from hectares to km², multiply hectares by 0.01. To convert hectares to acres, multiply hectares by 2.471. To convert hectares to mi², multiply hectares by 0.00386.

Location	Federal	State	Native	Private	Total
Central Y–K Delta	190,758	0	65,283	0	256,041
Southern Y–K Delta	4,509	0	18,734	0	23,243
Y–K Delta Coastal Waters	0	0	0	0	0
North Slope (land)	0	0	0	0	0
North Slope (marine)	0	0	0	0	0
Norton Sound (marine)	837,641	220,984	0	0	1,058,625
Ledyard Bay (marine)	1,298,074	97,889	0	0	1,395,963
Wintering Area (marine)	7,238,306	126,649	0	0	7,364,955
Total	9,569,288	445,522	84,017	0	10,098,827

Table 2. Area of land included in proposal vs. final rule for spectacled eider critical habitat, rounded to the nearest km². Areas may not match those in our proposal (65 FR 6114). Numbers in this table reflect refined area estimates.

Location	Area (km²)		Percent reduction
	Proposed	Final	
Y–K Delta (land)	4,618	2,793	39
Y–K Delta (marine)	16,885	0	100
North Slope (land)	32,336	0	100
North Slope (marine)	26,088	0	100
Norton Sound (marine)	17,502	10,586	40
Ledyard Bay (marine)	21,688	13,960	35
Wintering Area (marine)	73,650	73,650	0
Total	192,767	100,989	48

Unit 1: Central Yukon-Kuskokwim Delta (Proposed Unit 3)

Unit 1 is comprised of 15 entire townships and 564 sections within 27 additional townships. Our final designation encompasses 2,560.4 km² (256,041 ha) (988.6 mi²) (Table 2), a 16 percent reduction of what we proposed for this unit (3,037.6 km² or 1,172.8 mi²). Unit 1 is comprised of the vegetated intertidal zone between the Askinuk Mountains and Nelson Island. The primary constituent elements of spectacled eider critical habitat in this unit include all land within the vegetated intertidal zone, along with all open-water inclusions within that zone. The vegetated intertidal zone includes all lands inundated by tidally influenced water often enough to affect plant growth, habit, or community composition. Waters within this zone are usually brackish. Vegetative communities within this zone include, but are not limited to, low wet sedge tundra, grass marsh, dwarf shrub/graminoid (consisting of grasses and sedges) meadow, high and intermediate graminoid meadow, mixed high graminoid meadow/dwarf shrub uplands, and areas adjacent to open water, low wet sedge and grass marsh habitats. Areas within our indicated border that are not within the vegetated intertidal zone (e.g., barren mudflats and lands that are above the highest high tide line) are not considered critical habitat. In addition, areas of existing human development within our indicated border are not considered critical habitat.

Unit 2: Southern Yukon-Kuskokwim Delta (Proposed Unit 4)

Unit 2 is comprised of 103 sections within 8 townships. Our final designation encompasses 232.4 km² (23,243 ha) (89.7 mi²) (Table 2), a 65 percent reduction of what we proposed for this unit (665.3 km² or 256.9 mi²). This unit is comprised of the vegetated intertidal zone along the coast from Nelson Island south to Chefornak, Alaska. The primary constituent elements of spectacled eider critical habitat in this unit include all land within the vegetated intertidal zone, along with all open-water inclusions within that zone. This vegetated intertidal zone includes all lands inundated by tidally influenced water often enough to affect plant growth, habit, or community composition. Waters within this zone are usually brackish. Vegetative communities within this zone include, but are not limited to, low wet sedge tundra, grass marsh, dwarf shrub/graminoid (consisting of grasses and sedges) meadow, high and intermediate graminoid meadow, mixed high graminoid meadow/dwarf shrub uplands, and areas adjacent to open water, low wet sedge and grass marsh habitats. Areas within our indicated border that are not within the vegetated intertidal zone (e.g., barren mudflats and lands that are above the highest high tide line) are not considered critical habitat. In addition, areas of existing human development within our indicated border are not considered critical habitat.

Unit 3: Norton Sound (Proposed Unit 6)

Unit 3 includes the waters of Norton Sound east of 162° 47′, excluding the indicated waters within Norton Bay. Our final designation encompasses

10,586 km² (4087.3 mi²) (Table 2), a 40 percent reduction of what we proposed (17,502 km² (6,757.5 mi²)). The primary constituent elements of spectacled eider critical habitat in this unit include the marine waters greater than 5 m (16.4 ft) and less than or equal to 25 m (82.0 ft) in depth at MLLW, along with associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

Unit 4: Ledyard Bay (Proposed Unit 7)

Unit 4 includes the waters of Ledyard Bay within about 74 km (40 nm) of shore, excluding waters less than 1.85 km (1 nm) from shore. Our final designation encompasses 13,960 km² (5,390.0 mi²), a 35 percent reduction of what we proposed (21,688 km² (8,373.7 mi²)) (Table 2). The primary constituent elements of spectacled eider critical habitat in this unit include marine waters greater than 5 m (16.4 ft) and less than or equal to 25 m (82.0 ft) in depth, along with the associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

Unit 5: Wintering Area (Proposed Unit 8)

Unit 5 includes the U.S. waters south of St. Lawrence Island between the latitudes 61° N and 63° 30′ N, and between the longitudes 169° W and 174° 30′ W. No portion of St. Lawrence Island or Russia is included in Unit 5. Our final designation encompasses 73,650 km² (28,436.3 mi²), the same as what we proposed. The primary constituent elements of spectacled eider critical habitat in this unit include marine waters less than or equal to 75 m (246.1 ft) in depth, along with the associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community.

Rationale for the Final Designation

This final rulemaking reflects significant changes to critical habitat areas from the proposed rulemaking. We have substantially reduced the area of some critical habitat units, and completely eliminated others. Our final rule represents a 48 percent reduction in total area over what we proposed as critical habitat (Table 2). We have not added area to existing critical habitat units, or added new critical habitat units. The proposed rule was based on the best scientific and commercial information then available. The settlement agreement mandated a short time line for our evaluation of critical habitat. Consequently, when we developed the proposed rule we included all areas that we thought might be essential to the conservation of the species, based on the best available commercial and scientific information.

Following publication of the proposed rule we undertook an exhaustive effort to gather additional information that would help us identify more precisely those areas essential to the conservation of the species (see methods). Specific rationale for retention, modification, or exclusion of the proposed critical habitat in this final rulemaking are explained in detail below.

North Yukon-Kuskokwim Delta (Proposed Unit 1)

We excluded proposed Unit 1, the North Y–K Delta Unit, from our final designation because we determined that most of the habitat within the narrow band of coastal fringe was not suitable for spectacled eiders. We are uncertain what features of this habitat make it less suitable to eiders, but eider experts who are familiar with this area indicate that it is physiographically distinct from the portions of the vegetated intertidal zone used by eiders elsewhere on the delta. Our inspection of large scale (1:63,360) topographic maps leads us to the same conclusion. The complete lack of eider observations throughout most of this region also supports this contention. We recognize that there may be a very small inclusion of habitat within this area that is suitable for breeding spectacled eiders, but we have been unable to visit the site during the breeding season to determine its suitability due to land ownership issues and logistical difficulties. Very few spectacled eider observations have been made by biologists flying annual systematic aerial surveys in this proposed unit between 1993–1999 (5 of 916 observations delta-wide or 0.5 percent of sightings on 19 percent of proposed terrestrial CH on the Y–K Delta), suggesting that while some suitable nesting habitat may be found in this area, its contribution to the conservation of this species at this time is low. Based upon the apparent lack of suitable nesting habitat for spectacled eiders in this unit, we have concluded that this area does not now, and may not ever, have contributed significantly to the maintenance of the bird's population in the Y–K Delta. In evaluating the current and potential contribution of this unit to the recovery of the species and meeting the recovery goals identified in the species' recovery plan, we have concluded that this unit's contribution is currently low and its contribution to the future recovery of the species is limited. Consequently, we believe that this area is not essential to the conservation of the species.

Proposed Unit 2

We note that our proposed critical habitat designation did not contain a Unit 2. Our non-sequential numbering of proposed units resulted from a last-minute consolidation of what were once numbered Proposed Units 1 and 2 into one unit, and a failure on our part to re-number the remaining proposed units. We note that our draft economic analysis contained maps that did not exactly match the numerical designations in our critical habitat proposal, although the areas included within the aggregate proposed borders were identical.

Unit 1: Central Yukon-Kuskokwim Delta (Proposed Unit 3)

We reduced the size of Unit 1 (proposed Unit 3), the Central Y–K Delta Unit, based upon topography information from large scale (1:63,360 scale) maps, additional analysis of aerial survey data, information from biologists with extensive field experience in the area and the advice of eider experts. We excluded land that appeared to be over 7.6 m (25.0 ft) in elevation, and areas under 7.6 m (25 ft) in elevation that field biologists described as not suitable for eiders. Field reconnaissance indicates that the plant communities found on areas above 7.6 m in elevation do not provide the habitat and constituent elements characteristically used by spectacled eiders for nesting. The excluded areas under 7.6 m (25 ft) in elevation appear to be outside of the vegetated intertidal zone used by spectacled eiders. Furthermore, aerial survey data indicated that no eiders were observed in the excluded portions (both greater than and less than 7.6 m (25 ft) in elevation) of this proposed unit from 1993–1999. Consequently, we have determined that the excluded areas are not essential to the conservation of the species because these areas do not contain the primary constituent elements that we believe are important in successful nesting or brood-rearing.

The Y–K Delta breeding population of spectacled eiders cannot reasonably be expected to reach established any of the species' recovery goals (Service 1996) in the absence of Units 1 and 2, where over 95 percent of documented observations from aerial surveys have occurred. We believe that the entire area being designated is critical to the survival and recovery of the species because the currently occupied area represents what biologists often refer to as the ''core breeding area'' for this species following the 96 percent population decline on the Y–K Delta since the 1970s. Further restriction of their breeding range may

preclude the species ability to achieve recovery thresholds. Indeed, adverse modification of these units would probably result in the eventual loss of this population, which would represent a loss of a significant portion of the species' range, thus precluding eventual recovery of the species. Therefore, we have determined that the area we have designated as critical habitat is essential to the conservation of the species. Furthermore, we have determined that if this species achieves historical nesting densities in Units 1 and 2 then the species will exceed the recovery thresholds set forth in the spectacled eider recovery plan for a population.

We believe that special management considerations and protections may be needed for the essential features (constituent elements) found within Unit 1, primarily because lead shot present in the environment poses a continuing threat to the species.

Unit 2: South Yukon-Kuskokwim Delta (Proposed Unit 4)

We reduced the size of proposed Unit 4, the South Y–K Delta Unit, based upon topography information from large scale (1:63,360 scale) maps, additional analysis of aerial survey data, and the advice of eider experts. We excluded land that appeared to be over 7.6 m (25.0 ft) in elevation and areas under 7.6 m (25 ft) in elevation that are not coastal vegetated intertidal zone in nature, but rather occur somewhat inland within the flood basin of the Kolavinarak River, which connects Baird Inlet to the Bering Sea. We have been unable in the past to place field crews on the ground in this Unit due to land ownership issues and logistical difficulties. Doing so is a high priority. Few spectacled eider observations have been made by biologists flying annual systematic aerial surveys in the excluded portion of this proposed unit from 1993–1999 (2 of 916 observations delta-wide). Consequently, we have determined that the excluded portions of this proposed unit that are over 7.6 m in elevation are not essential to the conservation of the species because they do not contain the primary constituent elements that we believe are important in successful nesting or brood-rearing. Although we have not made site visits to the excluded areas that are not over 7.6 m in elevation, we feel safe in assuming that they are not essential to spectacled eiders because we have observed a total of only 0 to 2 eiders each year there in seven years of aerial surveys, and because we suspect that the area differs physiographically from the coastal vegetated intertidal zone used by eiders in this area because, while at similar elevations to the coastal intertidal zone, it occurs somewhat inland within the flood basin of the Kolavinarak River, which connects Baird Inlet to the Bering Sea. Our aerial survey data indicates that, for reasons unknown to us, this area is either very rarely used by eiders, or is not used by eiders at all.

As noted above, the Y–K Delta breeding population of spectacled eiders cannot reasonably be expected to reach established recovery goals (Service 1996) in the absence of Units 1 and 2, where over 95 percent of documented observations from aerial surveys have occurred. Therefore, we have determined that the area we have designated as critical habitat is essential to the conservation of the species. We believe that special management considerations and protections may be needed for the essential features (constituent elements) found within Unit 2, primarily because lead shot present in the environment poses a continuing threat to the species.

Y–K Delta Marine Unit (Part of Proposed Units 1, 3, and 4)

Although we proposed to designate as critical habitat the marine waters within 40 km (21.6 nm) of our proposed terrestrial critical habitat on the Y–K Delta, we have not designated these waters as critical habitat in our final rule. Nearly all of our information about the use of this area derives from 43 birds marked with satellite transmitters. Although satellite telemetry confirms the use of these offshore waters by many of the post-breeding spectacled eiders (Petersen *et al.* 1999), the duration of use is best described in terms of days rather than weeks or months. We do not know if birds are feeding in these waters, are loafing, or are acclimating from a freshwater environment to one of saltwater. Without better information explaining how the spectacled eiders use this marine area, we are unable to determine which, if any, physical or biological features within the area contribute towards the conservation of the species (e.g. the primary constituent elements would likely differ if the birds use the area primarily for loafing or acclimating to saltwater versus if they are feeding in the area). We do know that the spectacled eiders do not nest, molt, or winter in this marine area. We also know that they do not concentrate in the area or appear to use it for any great length of time. Furthermore, we have no reason to believe that this area, or any portion thereof, is necessary for success in nesting, molting or wintering, all critical life stages for this species. Therefore, based upon our knowledge at this time, we do not believe that this marine area is essential to the conservation of the species.

North Slope (Proposed Unit 5)

Although we proposed to designate as critical habitat 402 townships on the North Slope and all marine waters within 40 km (21.6 nm) of these townships, we have not designated this area as critical habitat in our final rule. In our proposed rule we stated: ''Absent trend information, it is impossible to know how much land on the North Slope is essential for conservation of the species. Erring in favor of conservation of the species, we believe that, with eight exceptions, those townships in which spectacled eider observations were made during annual systematic aerial surveys of breeding eiders from 1992 to 1998 are essential to the species' conservation.'' When we published our proposal to designate critical habitat we believed that the critical habitat designation should broadly identify those areas that we believe are essential to the conservation of the species. The comments we received in response to the proposal suggested that we should define critical habitat in a more specific and precise manner. Further, some of the commenters believed that our proposed designation was not consistent with the Act's definition of critical habitat (see Summary of Comments and Recommendations section). Therefore, we carefully reviewed the best available information to ensure that our approach and the designation itself provided the greatest benefit to the eider and met the requirements of the Act.

The specificity with which we can designate critical habitat is constrained by the limited information currently available (see State of Knowledge of the Spectacled Eider section). We are currently working to increase our knowledge of the breeding habitat needs of the spectacled eider on the North Slope and to improve our ability to delineate any areas essential to the conservation of the species. Our FY 2001 budget included $600,000 specifically earmarked by Congress to fund work by the Alaska Sea Life Center (ASLC) and the Service on recovery actions for the spectacled and Steller's eiders, including the development of better information upon which to base critical habitat delineations. We will work closely with the ASLC to identify the studies that would be most helpful. In particular, we will seek studies that would provide information that will help us to identify the habitat needs of both eider species, and we will seek the assistance of our partners in carrying out such studies.

However, we must make our designation based on the best information currently available, and in that context we sought to determine whether, at this time, it would be appropriate for our final designation to include the entire area on the North Slope as proposed. The spectacled eider was listed primarily due to its drastic decline on the Y–K Delta. Although at the time of listing, Warnock and Troy (1992) noted preliminary data that suggested at least a local decline of spectacled eiders in the Prudhoe Bay area, subsequent analyses of data no longer support that conclusion (Declan Troy, pers. comm, 1999). There is no other systematic data suggesting a historic decline in spectacled eider numbers on the North Slope prior to listing. In addition, there has not been a statistically significant trend in the population during the nine years we have been monitoring it. However, we note that we were able to determine that even the Y–K Delta population, which underwent a 96 percent decline, can achieve recovery on a subset of its currently occupied territory by achieving something approximating historical densities on that subset area (*i.e.,* within our designated critical habitat borders). If the North Slope population has undergone a decline, we and the eider experts believe it is reasonable to assume that the North Slope population could also achieve recovery on a subset of its currently occupied breeding territory through increases in density to historic levels. In short, even if this species has declined drastically, we do not believe that it would require all of its currently occupied breeding range on the North Slope to reach recovery thresholds, and therefore a final designation including the entire area proposed on the North Slope is not appropriate at this time.

While the entire North Slope is not required for spectacled eiders to reach recovery thresholds, this population cannot reasonably be expected to reach established recovery goals (Service 1996) in the complete absence of breeding habitat on the North Slope. Therefore, we believe that some subset of the North Slope breeding habitat is essential to the conservation of the species. Moreover, we believe that these lands may require special management considerations and protections given the extent of oil and gas exploration and development has occurred in the area and may reasonably be anticipated in the future.

We sought to determine which subset of the area proposed should be included in the final designation. However, we lack reliable scientific data about the habitat preferences of nesting females and females with broods. Therefore, we are currently unable to ascertain why females nest in one area, but not in another that appears to provide similar habitat conditions. However, we can use the actual distribution of a species as evidence of which areas have the habitat features essential to the conservation of the species, even if we do not have sufficient information to describe precisely what discriminates those features from other similar, but non-essential features.

We thoroughly examined available bird distribution data in a number of ways to ascertain which portion of the entire breeding area was needed to conserve the species (i.e., reach the recovery thresholds set forth in the spectacled eider recovery plan). We used a number of different techniques to evaluate the observation data. This included geographical analysis of the observation data, including density isopleths, minimum convex polygons around aerial observations at 10 percent intervals, eider density kernels at 10 percent intervals, and eider densities on a township by township basis. These complex GIS-based spatial analyses can help us answer questions such as (1) How much area is encompassed by 20, 40, 60, or 80 percent of the birds? (2) Which townships have the highest density of eiders? (3) Which townships would we choose if we wanted to encompass 30, 50, 70, or 90 percent of the best habitat (as indicated by bird density)? and (4) How many townships would we need to achieve recovery thresholds if every township were to eventually support eider populations as dense as the current most densely populated township? These analyses offered methods that can be used to identify areas that can be included within critical habitat borders, and since the entire area incorporated into these analyses is utilized for nesting by the species at varying densities, it was assumed that they contained the physical and biological features necessary for successful breeding and brood rearing and thus may be essential to the conservation of the species. Unfortunately, none of the analyses helped us in determining which specific areas were essential to the conservation of spectacled eiders because each was based on a statistical threshold that may or may not be confirmed in future scientific studies.

Nonetheless, the designation of critical habitat on a subset of the area proposed based on such methods would be consistent with the Act's requirement to use the best available information. However, the relative benefits to the species of such a designation must also be weighed in our decision as to where to designate critical habitat. Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

The benefits of including lands in critical habitat are often relatively small. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. However, it is important to note that, as result of the spectacled eider being listed as a threatened species, we already consult on activities on the North Slope that may affect the species. While these consultations do not specifically consider the issue of adverse modification of critical habitat, they address the very similar concept of jeopardy to the species. Under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define ''jeopardize the continued existence of'' and ''destruction or adverse modification of'' in virtually identical terms. Jeopardize the continued existence of means to engage in an action ''that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

Since the spectacled eider was listed in 1993, we have consulted with Federal agencies on a variety of actions to evaluate impacts to the species on the North Slope. In most cases, the consultations have determined that the actions would not adversely affect spectacled eiders because the projects

occurred during seasons when the eiders are absent and no permanent impact to habitat would result or because only a minimal amount of habitat would be affected or would occur in areas where the species occurs at low densities. In only a few cases have we determined that a proposed project included habitat alterations that might adversely affect spectacled eiders. Our biological opinions on these consultations provided reasonable and prudent measures designed to minimize the incidental take of the proposed projects on spectacled eiders. When applicable, the reasonable and prudent measures included provisions to minimize the proposed project's impact to habitat. Therefore, because of the species' abundant habitat on the North Slope and the protections provided though the current consultation process, we can envision no benefit that critical habitat designation would have imparted in the consultations conducted to date. Furthermore, we have considered the spectacled eiders conservation needs, and we believe that future section 7 consultations on any proposed action on the North Slope that would result in an adverse modification conclusion would also result in a jeopardy conclusion. Thus, the principal regulatory benefit from a critical designation for the spectacled eider on the North Slope is expected to be small.

There are also educational benefits associated with designation as critical habitat, such as informing the public which areas are important for the long-term survival and conservation of the species. Critical habitat could also potentially foster a sense of ownership for the resource, encouraging concerned individuals to act as caretakers of important habitat. However, such benefits are largely negated by our inability to identify specific areas on the North Slope that are essential to conservation of the species (i.e., providing meaningful educational information is dependent upon the ability to provide meaningful information on the conservation needs of the species). Furthermore, we have been working closely with North Slope residents for years in order to engender support for eider conservation. We have worked to eliminate use of lead shot and to minimize subsistence harvest. Because of these continuing cooperative efforts, we are confident North Slope residents and their local government bodies are well aware of the species' plight and the need to address threats and protect habitat. Likewise, presumably because the North Slope is sparsely populated by humans, relatively few Federal projects occur on the North Slope that require consultation under section 7 and most are conducted, funded, or permitted by relatively few Federal agencies. As a result, the Federal agencies involved with activities on the North Slope are aware of the spectacled eider's threatened status and the need to consult, and additional educational benefits would be very limited. For all these reasons, then, we believe that designation of critical habitat has little educational benefit on the North Slope.

In contrast, the benefits of excluding the North Slope from our critical habitat designation appear to be greater than the benefits of including it. We acknowledge that some portion of the proposed North Slope unit is essential to the recovery of the species. However, as discussed above, there is insufficient information available today with which to delineate with confidence specific areas essential to the recovery of the species. To designate an area at this time, without a more reliable biological basis, would likely convey an inaccurate message about the size and location of the area needed for recovery. We believe there are strong implications regarding habitat importance that are associated with critical habitat designation. We believe that we have this level of reliable information for the other important spectacled eider habitats, but we do not believe that we have information that is equally reliable for the North Slope breeding area. Delineating critical habitat on the North Slope at this time may mislead Federal agencies and others wishing to carry out activities on the North Slope about the areas that are truly essential to the recovery of the species.

In summary, at this time the benefits of including the North Slope in critical habitat for the spectacled eider include minor, if any, additional protection for the eider and would serve little or no educational functions. The benefits of excluding the North Slope from being designated as critical habitat for the spectacled eider include the preservation of partnerships that may lead to future conservation actions, and eliminating the negative effects that we believe would result from a designation based on limited, unpersuasive biological information currently available to us. We have determined that the benefits of exclusion of the North Slope from critical habitat designation outweigh the benefits of delineating critical habitat on the North Slope. Furthermore, we have determined that this exclusion will not result in the extinction of the species. Consequently, in accordance with subsection 4(b)(2) of the Act, these lands have not been designated as critical habitat for the spectacled eider.

We will continue to protect occupied breeding habitat on the North Slope as appropriate through section 7 consultations, the section 9 prohibition on unauthorized take, and other mechanisms. We will expand our conservation efforts with the Native community, industry, local governments, and other agencies and organizations on the North Slope to address the recovery needs of the eider. Additionally, we will soon embark upon a complete revision of the spectacled eider recovery plan, and will address our recovery goals for each population. We will continue to closely monitor the current population trend of North Slope spectacled eiders. We will continue our efforts to develop a visibility correction factor (survey information that would allows us to refine our population estimates) for this species on the North Slope. This is particularly important as the preliminary information suggests the very real possibility that the North Slope population may be large enough to warrant delisting (see our response to Comment 3), but that our current surveys are simply not detecting a high enough proportion of birds to indicate that this is the case. We hope to initiate ground-based studies outside of currently developed areas to get an indication of true breeding density and nesting success for this species on the North Slope.

Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise this final designation accordingly. Similarly, if new information indicates any of these areas should not be included in the critical habitat designation, we may revise this final critical habitat designation. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

Although we also proposed to designate as critical habitat all marine waters within 40 km (21.6 nm) of the terrestrial portion of our proposed North Slope Unit, we have not designated these waters as critical habitat in our final rule. Our information on the importance of the Beaufort Sea to migrating spectacled eiders, in both spring and fall, does not currently support designation of critical habitat.

Only one spectacled eider was observed among 420,000 eiders migrating past point Barrow during

spring (Woodby and Divoky 1982), suggesting that either the timing of this survey was not concurrent with spectacled eider spring migration, or spectacled eiders do not migrate along the Beaufort Sea coast in spring. Little else is known of North Slope spectacled eider spring migration routes.

During Beaufort Sea sea duck and waterbird surveys flown from shore to 81 km (43.7 nm) offshore during June, July, August, and September 1999, biologists observed only two flocks of eiders, both with four or fewer birds per group. (Bill Larned, Service, MBM, pers. comm. 1999; TERA 1999). No spectacled eiders were observed on these offshore surveys during June and July, nor were spectacled eiders seen on surveys of the near shore lagoon areas and within bays. However, eider species in summer plumage are exceedingly difficult to distinguish from one another on aerial surveys. Nine groups of unknown eiders were observed in the vicinity of Harrison Bay between August 31 and September 2, 1999. Aerial observers hypothesize that spectacled eider family groups use the waters offshore of the Colville River Delta and west, and within Harrison Bay during the summer (Bill Larned, Service, MBM, pers. comm. 1999). Satellite telemetry supports this hypothesis. Most satellite-tagged post-nesting female spectacled eiders from Prudhoe Bay used Harrison Bay briefly (5 of 13 tagged birds were detected there once from satellite telemetry data that is acquired every 3 days, another 5 of 13 were detected there twice, resulting in a mean residence time of at least 4 days) (TERA 1999). Satellite telemetry data from 2000 did not indicate that Harrison Bay received much use by eiders. However, none of the birds that were implanted with transmitters during the summer of 2000 were successful breeders (*i.e.*, if Harrison Bay is used during brood rearing, birds without broods may not have reason to go there) (Declan Troy, TERA, pers. comm. 2000). Satellite telemetry indicates that molt migration and fall migration of North Slope spectacled eiders from Prudhoe Bay and points east takes place in the offshore waters of the Beaufort and Chukchi Seas (Peterson *et al.* 1999). We believe that the Beaufort and Chukchi seas may contain important habitat for eiders that nest west of Prudhoe Bay as well.

Although satellite telemetry confirms the use of these offshore waters by many of the post-breeding spectacled eiders from Prudhoe Bay (Petersen *et al.* 1999, TERA 1999), the duration of use is best described in terms of days rather than weeks or months. We do not know if birds are feeding in these waters, are loafing, or are acclimating from a freshwater environment to one of saltwater. Without better information explaining how the spectacled eiders use this marine area, we are unable to determine which, if any, physical or biological features within the area contribute towards the conservation of the species (e.g. the primary constituent elements would likely differ if the birds use the area primarily for loafing or acclimating to saltwater versus if they are feeding in the area). We do know that the spectacled eiders do not nest, molt, or winter in this marine area. We also know that they do not concentrate in the area or appear to use it for any great length of time. Use of the area is perhaps best described as a migration corridor, and perhaps as a brood staging area prior to migration. We do not have enough information to conclude that this area, or any portion thereof, is necessary for successful nesting, molting or wintering, all critical life stages for this species. Therefore, based upon our knowledge at this time, we do not believe that this marine area is essential to the conservation of the species.

Unit 3: Norton Sound (Proposed Unit 6)

We reduced the size of proposed Unit 6, the Norton Sound Unit, from 17,502 km^2 (6757.5 mi^2) to 10,586 km^2 (4087.3 mi^2), a 40 percent reduction in size (Table 2). This modification was based upon information gained from overlaying our eider observations and satellite telemetry locations upon digital bathymetry data from the National Oceanic and Atmospheric Administration (NOAA) and information obtained from eider experts. Only one spectacled eider observation and three satellite derived locations have occurred in the excluded portions of this proposed area from 1993–1999. None of these observations occurred in Norton Bay, one of the excluded portions of this unit. We do not know whether any of the observations within the excluded area along the western edge of this unit represent molting birds. We are fairly certain, however, that birds do not congregate in this excluded area to molt, and suspect that our sparse observations of birds in the excluded portion of this unit represent birds on their way from the breeding grounds to the molting grounds or from the molting grounds to the wintering grounds. Consequently, we have determined, based upon the likelihood that birds do not normally molt in the excluded area, and the low level of eider use received by the excluded area, that the excluded areas are not essential to the conservation of the species.

While the recovery plan for the spectacled eider does not identify recovery goals specifically for molting habitat, it is clear that if the Norton Sound molting area were destroyed or degraded so that it was no longer able to be utilized by the species, the recovery and the conservation of the Y–K Delta population of the species would be imperiled. We believe that the entire area within our modified border is essential to the conservation of the species due to—(1) the extremely high and regular use of the area for an extended period of time by birds that are known to be undergoing a flightless molt; (2) the high biomass of gastropods in the area; (3) the energetic demands placed upon the birds while they are molting; and (4) the assertion by Petersen *et al.* (1999), that it is the only documented molting area for breeding female spectacled eiders from the Y–K Delta (the area where eiders have declined by 96 percent). As many as 4,030 spectacled eiders have been observed in one portion of eastern Norton Sound at one time (Larned *et al.* 1995a). Use of this area by molting eiders has been documented regularly from 1982 to 1999 (Charles Lean, ADFG, pers. comm. 1999; Bill Larned, Service, MBM, pers. comm. 1999; Petersen *et al.* 1999). The area is used by spectacled eiders from mid-July until the end of October (Petersen *et al.* 1999). For several weeks during this time, each bird experiences a period of flightlessness during molt, followed by the energetic demands incurred by feather growth. Energy needs of waterfowl during molt are high (Hohman *et al.* 1992). The benthic biomass in the portion of Norton Sound that spectacled eiders inhabit apparently meets the high metabolic needs for the many birds that molt there. Indeed, the abundance of large gastropods is higher in this area than elsewhere in Norton Sound (Springer and Pirtle 1997).

We believe that special management considerations and protections may be needed for these essential features (constituent elements) found within Unit 3, because a fuel distribution hub for western Alaska exists in Norton Sound and large volumes of heating oil, diesel fuel, and gasoline are transported through this area each year. If a release of these materials occurs at any time of year such that it affects the benthic community used by eiders for food or if a release occurs such that it affects the eiders directly, the consequences to the Y–K Delta breeding population could prove catastrophic for the species. In addition, we understand that a

commercially viable snail fishery may exist in the vicinity, and future overexploitation of the snail resource could result in adverse modification of critical habitat and subsequent harm to the most imperiled spectacled eider breeding population.

Unit 4: Ledyard Bay (Proposed Unit 7)

We reduced the size of proposed Unit 7, the Ledyard Bay Unit, from 21,688 km^2 (8,373.7 mi^2) to 12,369 km^2 (4775.7 mi^2), a 43 percent reduction in size (Table 2). We modified the borders of this unit based upon traditional Native environmental knowledge, information gained from overlaying our observations upon NOAA digital bathymetry data, and advice from eider experts.

Local Natives have observed that spectacled eiders do not venture near shore in Ledyard Bay, stating that they are exploiting krill populations which remain at least several miles offshore. Although we do not know anything about the dietary preferences of eiders in this area, satellite telemetry and aerial survey data confirm the observation that the birds congregate more than 1 nm offshore. Therefore, we concluded that waters in the eastern and southern portions of this unit within 1 nm of the shore do not contain the physical or biological features essential to the conservation of the species and have excluded them from our final designation.

Digital bathymetry data from NOAA indicates that spectacled eiders in Ledyard Bay make almost exclusive use of waters between 5 and 25 m (16.4 to 82.0 ft) in depth. We have modified the description of primary constituent elements to reflect the information gained from our bathymetric overlay. This change in description of the primary constituent elements leads us to conclude that the western portion of this unit does not contain the physical or biological features essential to the conservation of the species. The western portion of the area that we excluded from final critical habitat designation exceeds 25 m (82.0 ft) in depth, except for two small disjunct areas that are between 20–25 m in depth where no eiders have been documented. Only three satellite-derived locations have been recorded in the western excluded portions of this proposed area from 1993–1999. These satellite fixes could easily be from birds that were on their way from the molting area to their wintering area south of St. Lawrence Island. We have never made direct observations of spectacled eiders in these excluded waters.

While the recovery plan for the spectacled eider does not identify recovery goals specifically for molting habitat, it is clear that if the Ledyard Bay molting area were destroyed or degraded so that it was no longer able to be utilized by the species, the recovery and the conservation of the North Slope population of the species would be imperiled. We believe that the entire area within our modified border is essential to the conservation of the species due to—(1) the extremely high use of the area by birds that are known to be undergoing a flightless molt; (2) the energetic demands placed upon the birds while they are molting; and (3) the assertion by Petersen *et al.* (1999) that it is the principle molting area for breeding female spectacled eiders from the North Slope, and most female birds molting here are from the North Slope (Petersen *et al.* 1999).

Male spectacled eiders from the North Slope appear to molt and stage in equal numbers in Ledyard Bay and the two primary molting areas in Russia: Mechigmenskiy Bay and off the coast of the Indigirka and Kolyma River Deltas (Petersen *et al.* 1999). Ledyard Bay is used by eiders from late June through mid-October (Petersen *et al.* 1999). As stated earlier, the energy needs of birds during molt is high. Given the large concentrations of eiders in Ledyard Bay and the ability of the benthos in this area to meet the energy requirements of spectacled eiders during molt, we believe that Ledyard Bay is essential to the conservation of the species.

Spectacled eiders molting in Ledyard Bay may be particularly susceptible to disturbance because they occur in dense concentrations and are flightless for several weeks. Aerial surveys in September 1995 found 33,192 spectacled eiders primarily concentrated in a 37 km (20.0 nm) diameter circle in Ledyard Bay (Larned *et al.* 1995b). This set of observations represents eider use during a snapshot of time. Satellite telemetry information indicates that other portions of Ledyard Bay are used as well. We are unaware of the volume of shipping traffic that occurs in this area. However, we note that a single ill-timed fuel or oil-spill in this area could potentially harm thousands of eiders. If a release of these materials occurs at any time of year such that it affects the benthic community used by eiders for food or if a release occurs such that it affects the eiders directly, the consequences to the North Slope breeding population could prove catastrophic for the species. Therefore, we believe special management considerations or protections may be required.

Unit 5: Wintering Area (Proposed Unit 8)

We did not alter the boundary of Unit 5 (proposed Unit 8), the Wintering Area Unit. However, we did modify our definition of primary constituent elements for this unit to include only those marine waters less than or equal to 75 m (246.1 ft) in depth (the proposal included all waters, regardless of depth), along with the associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Information gained from overlaying our observations upon NOAA digital bathymetry data indicated that wintering eiders do not make use of waters over 75 m (246.1 ft) deep. Therefore, waters within Unit 8 that are greater than or equal to 75 m (246.1 ft) do not appear to contain the physical or biological features that are essential to the conservation of the species.

Prior to the formation of sea ice in the area, spectacled eiders inhabit waters directly south of Powooiliak Bay, St. Lawrence Island, moving farther off shore as winter progresses. Once ice forms, spectacled eiders from all three main breeding populations (Y–K Delta, North Slope, and Arctic Russia) concentrate within a 50-km (27.0 nm) diameter circle in small openings in the sea ice (Service 1999a). The location of this area changes between and within years, often just slightly, but sometimes dramatically. The distribution of wintering eiders overlapped for the surveys conducted in late winter of 1996–1999, but was far removed from that area in 1995 (Larned and Tiplady 1999). The most recent estimate of the number of spectacled eiders wintering in this area is 374,792 ± 3,514 birds ($\bar{x}$ ± 2SE) (Larned and Tiplady 1999). Most, perhaps all, of the worldwide population of spectacled eiders congregates for several months in this small portion of the central Bering Sea.

Spectacled eiders typically winter south and southwest of St. Lawrence Island in the central Bering Sea; they wintered in the same place in 4 of the 5 years since the discovery of their wintering area. In the year when they are known to have wintered elsewhere, they were found further south and east between St. Lawrence and St. Matthew Islands. Our critical habitat boundary includes both areas. We do not believe that our best scientific information warrants restricting the borders we have drawn around this species' wintering area. Our observations of wintering eiders made thus far have occurred during relatively mild winters. It is likely that spectacled eiders will use different locations within this critical

habitat area depending on ice conditions, which are variable throughout time. Ice conditions in this area are a function of many unpredictable environmental variables, including atmospheric temperature, wind direction and velocity, oceanic currents and temperature of surface waters. It is true that during most winters, the birds make use of a relatively small portion of this area. However, during periods of extreme weather, they may be precluded from using this favored area by heavy ice conditions, such as occurred during March 1995. During such times, other portions of the wintering area that are seldom used may become critically important to the survival of the species.

While the recovery plan for the spectacled eider does not identify recovery goals specifically for wintering habitat, since the entire worldwide population of the species appears to congregate in this area for months at a time, if the area were destroyed or degraded so that it was no longer able to be utilized by the species, the recovery and the conservation of the species would be jeopardized. Consequently, we consider the entire area within our designated borders to be essential to the conservation of the species.

The ecosystem of the Bering Sea seems to be in flux, as indicated by population declines in many of its resident species (e.g., harbor seal (*Phoca vitulina richardsi*), northern fur seal (*Callorhinus ursinus*), Steller's sea lion (*Eumetopias jubatus*), Aleutian population of the sea otter (*Enhydra lutris*), Steller's eider, spectacled eider, scoters (*Melanitta* spp.), and long-tailed duck (*Clangula hyemalis*)) (National Research Council 1996). We do not know what is causing these declines or if these apparent changes are human-caused or influenced. However, because the worldwide population is congregated in this one location, we believe that special management considerations and protections may be needed to conserve the essential habitat features (constituent elements) found there.

Elsewhere in the Species Range

We have a recent record of a single spectacled eider nest on St. Lawrence Island (Shawn Stephensen, Service, pers. comm. 1998). We are unaware of any reports suggesting that this area is essential to the conservation of the species, and we have no other recent breeding records outside of the previously discussed breeding areas. We occasionally receive reports of spectacled eiders wintering near the Pribilof Islands, or occurring during spring, summer, or autumn in Kuskokwim Bay in low numbers. We consider the occurrences of birds in these locations to be accidental or occasional in nature. We are unaware of any information that indicates that there are other waters within the United States, other than those that we have designated as critical habitat, that are essential to the conservation of the species. We are aware of a report of spectacled eiders nesting at locally high densities southeast of Kipnuk, Alaska (Brian McCaffery, Service, 2000 pers. comm). This area is of unknown size and is outside of our aerial survey boundary. We have been unable to place crews on the ground in this location to gather subsequent data, but we expect to do so in the 2001 field season.

Summary of Critical Habitat Designation

We have designated critical habitat on the Y–K Delta, in Norton Sound, Ledyard Bay, and the waters between St. Lawrence and St. Matthew Islands. We believe all of these areas meet the definition of critical habitat in that they contain physical or biological elements essential for the conservation of the species and may require special management considerations or protection. Designation of these areas will highlight the conservation needs of the species, and perhaps increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act.

In accordance with the regulations implementing the listing provisions of the Act (50 CFR 424.12(h)), we have not proposed any areas outside the jurisdiction of the United States (e.g., within Russian waters).

In addition to the areas that we have designated as critical habitat, other areas currently used by spectacled eiders include Alaska's North Slope and its coastal waters, portions of the Y–K Delta outside of our critical habitat border, coastal waters of the Y–K Delta, the Seward Peninsula, St. Lawrence Island, elsewhere between the Y–K Delta and North Slope, and migratory corridors. In addition, there may be other areas important to this species that are unknown to us. Our best available information did not suggest that there is any currently unoccupied habitat that is essential to the conservation of this species, therefore none was designated.

The areas we have designated as critical habitat are those areas that we determined, based on the best available commercial and scientific information, are essential to the conservation of spectacled eiders. Should additional information on the value of any area to spectacled eiders become available, we will consider that information in future critical habitat decision making processes.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR

402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat. Further, some Federal agencies may have conferenced with us on proposed critical habitat. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the spectacled eider or its critical habitat will require section 7 consultation. Activities on private or state lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the spectacled eider is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly adversely affect critical habitat include, but are not limited to:

(1) Removing, disturbing, or destroying spectacled eider habitat (as defined in the primary constituent elements discussion), whether by paving, covering, draining, impounding, hydrologically altering, contaminating, or otherwise altering through mechanical means or through ecological disruption (e.g., gravel pad construction, travel by motorized vehicle across unfrozen tundra, overharvest of marine organisms, fuel transport and related fueling operations, introduction of contaminants, operation of open landfills, use of lead shot while hunting); and

(2) Appreciably decreasing habitat value or quality through indirect effects (e.g., noise, operation of open landfills and other activities that may enhance predator populations or concentrate them near eider habitat, disturbance of benthic communities through trawling, offal discharge, and harvest of benthic organisms).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit from critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of commercial fisheries by the National Marine Fisheries Service;

(4) Law enforcement in United States Coastal Waters by the U.S. Coast Guard;

(5) Road construction and maintenance by the Federal Highway Administration;

(6) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(7) Military training and maneuvers on applicable DOD lands;

(8) Regulation of subsistence harvest activities on Federal lands by the U.S. Fish and Wildlife Service;

(9) Regulation of mining and oil development activities by the Minerals Management Service;

(10) Regulation of home construction and alteration by the Federal Housing Authority;

(11) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(12) Construction of communication sites licensed by the Federal Communications Commission;

(13) Wastewater discharge from communities and oil development facilities permitted by the Environmental Protection Agency; and

(14) Other activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

All areas designated as critical habitat are within the geographical area occupied by the species, and contain the physical or biological features that are likely to be used by spectacled eiders during portions of the year, or under certain environmental and climatic conditions during some years. Thus, we consider all critical habitat to be

occupied by the species. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate additional regulatory protection will result from critical habitat designation.

TABLE 3.—ACTIVITIES POTENTIALLY AFFECTED BY SPECTACLED EIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities involving a federal action potentially affected by species listing only [1]	Additional activities involving a federal action potentially affected by critical habitat designation [2]
Federal activities potentially affected [3]	Activities that the Federal Government carries out such as scientific research, land surveys, law enforcement, oil spill response, resource management, regulation of commerce, and construction/expansion of physical facilities.	None.
Private activities Potentially Affected [4]	Activities that also require a Federal action (permit, authorization, or funding) such as scientific research, commercial fishing, sport and subsistence hunting, shipping and transport of fuel oil and, and village maintenance, construction and village expansion.	None.

[1] This column represents impacts of the final rule listing the spectacled eider (May 10, 1993) (58 FR 27474) under the Endangered Species Act.
[2] This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Summary of Comments and Recommendations

Our critical habitat proposal was submitted to the **Federal Register** on February 1, 2000, and was published in the **Federal Register** on February 8, 2000 (65 FR 6114). In it, we requested that all interested parties submit comments during the public comment period on the specifics of the proposal including information, policy, and proposed critical habitat boundaries as provided in the proposed rule. The comment period was initially open from February 8, 2000, until May 8, 2000. On April 19, 2000 (65 FR 20938), we published a notice in the **Federal Register** extending the closing date for the open public comment period from May 8, 2000, to June 30, 2000. On July 5, 2000 (65 FR 41404), we published a notice in the **Federal Register** again extending the closing date for the open public comment period from June 30, 2000, to August 31, 2000. On August 24, 2000 (65 FR 91577), we published a notice in the **Federal Register** announcing the availability of our draft economic analysis and extending the closing date for the open public comment period; from August 31, 2000, to September 25, 2000. The resulting comment period lasted from February 8, 2000, to September 25, 2000 (231 days).

We extended the comment period on these three occasions to accommodate Alaska Natives, who spend considerable time away from their homes engaged in subsistence activities. The third extension also allowed for public comment on our draft economic analysis.

We solicited comments from all interested parties, and we particularly sought comments concerning spectacled eider distribution and range, whether critical habitat should be designated, and activities that might impact spectacled eiders. Notice of the proposed rule was sent to appropriate State agencies, Alaska Native regional corporations, borough and local governments, Federal agencies, scientific and environmental organizations, fishing and oil industry representatives, and other interested parties. In total, we sent copies of our proposal and a request for input to over 300 entities.

We discussed our spectacled eider critical habitat proposal at the following venues throughout Alaska: eider critical habitat public meetings for agency, industry, Native, and environmental organization representatives at our Region 7 Regional Office, Anchorage on February 1 and 2, 2000; briefing of the Association of Village Council Presidents staff in Bethel on February 7, 2000; Alaska Forum on the Environment in Anchorage on February 9, 2000; eider critical habitat public meeting in Barrow on February 16, 2000; Waterfowl Conservation Committee meeting in Bethel from February 22–24, 2000; eider critical habitat public meeting in Toksook Bay on February 25, 2000; eider critical habitat public meeting in Chevak on March 1, 2000; Nome Eskimo Community IRA Tribal Council meeting in Nome on May 5, 2000; eider critical habitat public meeting in Nuiqsut on August 21, 2000; eider critical habitat public meeting in Wainwright on August 23, 2000; eider critical habitat public meeting in Point Lay on August 24, 2000; eider critical habitat public meeting in Atqasuk on August 25, 2000; eider critical habitat public hearing in Barrow on August 28, 2000 (65 FR 46684); eider critical habitat public meeting in Sand Point on September 18, 2000; eider critical habitat meeting with Sand Point local tribal council in Sand

Point on September 19, 2000; eider experts meeting at the Campbell Creek Science Center in Anchorage on September 21–22, 2000; eider critical habitat meeting with Kodiak Regional Advisory Council in Cold Bay on September 27, 2000; and an eider critical habitat meeting for the Bristol Bay Regional Council in Naknek on October 13, 2000. At those meetings held outside of the public comment period, we presented information only; public comment was not sought or accepted. When possible and appropriate, we publicized our public meetings through newspaper and radio advertisements.

The required legal notices announcing publication of our critical habitat proposal appeared in the Anchorage Daily News on February 10, 13, and 16, 2000, in the Bristol Bay Times on February 10, 2000, and in the Tundra Drums on February 17, 2000.

We entered comments received after February 8, 2000, and postmarked or received by September 25, 2000, into the administrative record. All comments, notes from public meetings, and the transcript for the public hearing held in Barrow are available for inspection (see **ADDRESSES** section).

We requested three scientists with expertise in eider biology to peer review the proposed critical habitat designation. All three submitted comments and these comments have been taken into consideration in the final rule.

We received a total of 327 oral and written comments during the comment period. Oral comments received during public meetings were recorded by topic; we did not record how many individuals made the same comment at each meeting. During our public hearing, eight of the commenters submitted oral testimony only, and seven submitted both oral and written testimony. In total we received comments as follows: Ten from officials representing Federal Agencies, two from elected Federal officials, three from State agencies, three from elected State officials, nine from local governments, 23 from Native organizations, and 277 from individuals, private companies, and non-Native organizations. We reviewed all comments received for substantive issues and new data regarding spectacled eiders and critical habitat. We grouped comments of a similar nature into four general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination: Biological Justification and Methodology, Policy and Regulations, Economic Issues, and Other Relevant Issues. These are addressed in the following summary.

Issue 1: Biological Justification and Methodology

Comment 1: Many respondents had comments concerning habitat as a factor in the species conservation, including statements indicating that habitat is not limiting the species population size, habitat loss was not a threat to the species, loss of breeding habitat did not cause the decline and was not limiting recovery of this species, and critical habitat was not needed for survival and recovery.

Our response: The information available when the species was listed in 1993 did not indicate that habitat loss or degradation was considered to be a threat to the species. However, we have gathered a considerable amount of information in the past seven years. Among other things, we have learned that habitat degradation on the Y–K Delta resulting from deposition of lead shot is probably limiting recovery of this species, and may have contributed to the observed 96 percent decline. In addition, organic deposition and benthic biomass in the wintering area south of St. Lawrence Island have declined steadily since the late 1980s. Oceanographic studies during late winter (March-April 1999) found that particulate organic carbon concentrations in the water column were too low to support significant populations of large zooplankton or krill, indicating that spectacled eiders must be feeding on the bottom. Moreover, a long-term trend in benthic communities continues: the formerly abundant bivalve *Macoma calcarea* has declined relative to another clam *Nuculana radiata,* which has 76 percent lower lipid content and 26 percent lower energy density (J.R. Lovvorn, Univ. Wyoming, pers. comm. 2000). The average length and mass of bivalves presumably preferred as food by spectacled eiders has also declined in the long term (J.M. Grebmeier and B.I. Sirenko, unpubl. data). Taken together, these factors suggest a deterioration of habitat conditions favorable to spectacled eiders on their Y–K Delta breeding grounds and Bering Sea wintering area. We do not know to what extent contaminants, increased predation, and increased human disturbance are degrading the quality of eider habitats. However, we note that a ill-timed fuel or oil-spill in wintering or molting areas could potentially harm thousands of eiders.

An examination of threats that are limiting a species survival and recovery and to what degree the threats are limiting are key components of our decision of whether a species warrants listing as threatened or endangered. For the spectacled eider, that determination was made in 1993 when the species was listed.

After we decide that a species warrants listing, the Act directs us to identify and designate critical habitat. For those areas within the current range of the species, critical habitat can be any area that contains physical or biological features that are essential to the conservation of the species and that may require special management consideration or protection. For areas outside the current range of the species, critical habitat can be any area that is considered essential for the conservation of the species; we need not consider whether special management consideration or protection is needed. Based upon what we have learned about lead shot in the environment on the Y–K Delta, and what we are learning about clam population changes on the spectacled eider wintering grounds, we cannot conclude that habitat degradation is not a factor adversely impacting the species (*i.e.,* these areas may require special management). Our evaluation of the available information shows that the areas we have designated are essential to the species and may require special management consideration or protection.

As for whether critical habitat is needed for survival and recovery, the Act obligates us to designate, to the maximum extent prudent, those areas that meet the definition of critical habitat. It does not require us to determine that the act of designating land as critical habitat is a necessary step in ensuring the survival or achieving the recovery of the species.

Comment 2: Many respondents stated that they thought there was no new data or insufficient data to warrant a reversal of our previous ''not prudent'' finding, or to support designation of critical habitat as proposed; the reasons for the birds decline are unknown.

Our response: We invite interested parties to inspect the volumes of new scientific information gathered since the listing of this species in 1993. As a result of this new information, we now have a much better idea of which habitats are essential to spectacled eider conservation.

Additionally, several of our past determinations that critical habitat designation would not be prudent have been overturned by courts in recent years (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v.

Babbitt, 2 F. Supp. 2nd 1280 (D. Hawaii 1998)). Although this information is not biological in nature, we reassessed the potential benefits from a critical habitat designation in light of these decisions.

We believe that new biological information, and the recent court rulings, support our conclusion that the designation of critical habitat is prudent. Should credible, new information suggest that our designation should be modified, we will reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation. In reaching our current decision, we have considered the best scientific and commercial information available to us at this time, as required by the Act.

Comment 3: Several respondents stated that because the species was not declining on the North Slope, it made no sense to designate critical habitat there. Several respondents also suggested that the North Slope population of spectacled eiders may warrant delisting.

Our response: It is true that there is no historical trend data on nesting abundance or distribution for spectacled eiders on the North Slope. However, recent trend data for the North Slope portion of the spectacled eider breeding area indicate that the North Slope population may be in decline over the period 1993–2000, although the trend is not statistically significant. The downward trend of 2.6 percent per year is bounded by a 90 percent confidence interval ranging from a 7.7 percent decline per year to a 2.7 percent increase per year (Service, unpubl. data). Furthermore, we note that since our spectacled eider surveys began in 1992, the minimum population estimate has never approached the delisting threshold of 10,000 pairs. In fact, for 6 of the 8 years, the population meets one of the criteria for reclassification to endangered (''minimum estimated population size is <3000 breeding pairs for ≥ year''). However, the preliminary information (albeit limited) also suggests the very real possibility that the North Slope population may be large enough to warrant delisting, but that our current surveys are simply not detecting a high enough proportion of birds to indicate that this is the case. If future data indicate that this species, or any distinct vertebrate population segment no longer warrants protection under the Act, we will propose removing the species or that segment from the list of threatened and endangered species. As discussed above, however, we have not designated critical habitat on the North Slope in accordance with section 4(b)(2) of the Act.

Comment 4: Several respondents commented extensively on the final recovery plan for the spectacled eider, noting, among other things, that the delisting thresholds are exceedingly conservative.

Our response: As to the recovery plan, we are unable to incorporate the commenters suggestions into this already-approved recovery plan, as the public comment period has long-since closed (February 23, 1995; 59 FR 53660). We will, however, keep these comments on file and consider them when this approved recovery plan is revised. Until such a revision is approved, we are adhering to the recovery criteria in the approved recovery plan.

The delisting criteria cited by the commenters from the spectacled eider recovery plan states that ''* * * the minimum estimated population size is ≥10,000 breeding pairs over ≥ 3 surveys (1 survey/year, with surveys preferably being consecutive) or the minimum estimate of abundance exceeds 25,000 breeding pairs in any one survey.'' The commenters state that minimum population estimates have exceeded this threshold twice, and suggest that the 1999 survey data may result in this population meeting the delisting threshold for a third time.

We note that the commenters are mistaken in the interpretation of our survey data on several counts. The survey estimates they cite as exceeding 10,000 pairs are not minimum population estimates, they are point estimates. Minimum population estimates, as defined in the recovery plan, are the lower 95 percent confidence limits of the survey or the actual number of birds seen on the survey. In addition, they mistakenly cite an estimate of the number of breeding birds as an estimate for the number of breeding pairs. To get the minimum population estimate for the number of breeding pairs, one must divide the minimum population estimate of the number of breeding birds in half. Thus, recent minimum population estimates for the number of pairs of spectacled eiders comprising the North Slope breeding population are as follows: for 1993: 3,669; for 1994: 2,828; for 1995: 2,803; for 1996: 2,179; for 1997: 2,107; for 1998: 3,800; for 1999: 2,679; and for 2000: 2,567. In none of the years does the minimum population estimate even approach the delisting threshold of 10,000 pairs. In fact, for 6 of the 8 years, the population meets one of the criteria for reclassification to endangered (''minimum estimated population size is <3000 breeding pairs for ≥ year''). However, the preliminary information (albeit limited) also suggests the very real possibility that the North Slope population may be large enough to warrant delisting, but that our current surveys are simply not detecting a high enough proportion of birds to indicate that this is the case.

The commenters suggest that, with the application of a visibility correction factor, the minimum population estimate for delisting may be reached. We note that to validly apply a visibility correction factor to achieve a minimum population estimate, as suggested by the commenters, we must also incorporate the variance of the visibility correction factor into the final minimum population estimate. At present, we do not have a usable visibility correction factor for spectacled eiders due to the wide confidence limits around the correction factor thus far derived. We note that development of a useful visibility correction factor is a high priority for future work.

Comment 5: Several respondents stated that we need to base our decisions on objective studies based on science.

Our response: We believe that all of the studies that we used as a basis for our decisions were scientifically sound and objective. The respondents were not specific in saying which documents or studies they felt were non-objective or unscientific. All of the studies that we used in our decision-making process are part of our administrative record.

Comment 6: Several respondents stated that they thought our critical habitat proposal included areas not used by the species, specifically, that the Ledyard Bay molting area was extended too far west, and contained nearshore waters not used by spectacled eiders. They also believed the proposed wintering area was too large given the areas that the birds have been observed using.

Our response: We have adjusted the boundary of the Ledyard Bay wintering area unit to better reflect patterns of use during the time in which this species molts and stages there during fall. This change is based upon aerial observations, satellite transmitter data, bathymetry data and traditional Native knowledge regarding eider use of these waters obtained during the public comment period. Waters within 1 nm of shore between Cape Lisburne north to Icy Cape are not within our final designation. Our data does indicate nearly exclusive and repeated use of Ledyard Bay waters between 5 and 25 meters in depth across years. As such, these waters remain part of our final designation. We note that the observation by local Natives that

spectacled eiders use waters 15–75 nm from shore is largely supported by the scientific data available to us. However, all of the Ledyard Bay critical habitat unit (Unit 4) is within 75 nm of shore.

We do not believe that our best scientific information warrants restricting the borders we have drawn around this species' wintering area. It is true that during most winters, the birds make use of a relatively small portion of this area. However, during periods of extreme weather, they may be precluded from using this favored area by heavy ice conditions, such as occurred during March 1995. During such times, other portions of the wintering area that are seldom used may become critically important to the survival of the species. We believe that the borders we have drawn, coupled with our description of the primary constituent elements for that location, are the best representation of the area that is essential to the conservation of the species, and for which we have the authority to designate critical habitat. Should additional survey data generated over a spectrum of winters of varying severity indicate that the borders of the critical habitat warrant amending, we will consider such information and take appropriate action.

Comment 7: A few respondents stated that there was insufficient data to describe primary constituent elements.

Our response: We disagree. In accordance with the regulations, primary constituent elements may include, but are not limited to, the following: Roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geologic formation, vegetation type, tide, and specific soil types (50 CFR 424.12). In addition, the regulations state that we are to make our determinations based upon the best scientific data available (50 CFR 424.12). We believe that we have described the primary constituent elements of the different habitats used by this species using the best scientific data available. Additional data may have allowed us to describe primary constituent elements in more detail, but the lack of this additional data does not preclude us from describing the primary constituent elements using the information that we have.

Comment 8: A few respondents asked whether it is possible that the eiders have simply relocated.

Our response: Sea ducks in general, and spectacled eiders in particular, exhibit breeding site fidelity. That is, female waterfowl tend to return to the area where they hatched for their first nesting effort, and subsequently return to this same area year after year (Anderson *et al.* 1992). Genetics studies indicate that there are differences in mitochondrial DNA between females that breed on the Y–K Delta, North Slope, and Arctic Russia. This is an indication that there is limited exchange of females between breeding areas. Although males that lose a mate may subsequently pair with a female from a different breeding area, and consequently may breed in different areas, we do not believe that female eiders regularly change breeding areas, or that there was a mass movement of birds from one breeding area to another. There is no evidence to support this type of movement in sea ducks, nor reason to believe that it may have happened with spectacled eiders.

Comment 9: A few respondents stated that our proposed North Slope Unit is too big for Spectacled eiders, noting that this species only occur 1–2 miles inland.

Our response: Although we are not designating critical habitat on the North Slope at this time, we strongly disagree with the observation that this species only occurs within 2 miles of the coast. There are hundreds of confirmed sightings of spectacled eiders as far as 60 mi from the coast made by professional biologists with years of aerial survey experience. Perhaps the commenters may be confusing spectacled eiders with the more coastal eider species, the common eider (*Somateria mollissima*).

Comment 10: Several commenters noted that critical habitat designation could hamper recovery by suggesting that threats to the bird are located in one place when they are actually located elsewhere.

Our response: As we have previously stated, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. However, even given that limitation, we do not believe that our final critical habitat designation will hamper the recovery of the spectacled eider.

Comment 11: Two respondents stated that 5 percent annual harvest of spectacled eiders on the Yukon Kuskokwim Delta during spring has minimal impact on the population.

Our response: Subsistence harvest survey information estimates a slightly lower harvest rate from 1993–1999 (3.75 percent), but that survey cannot account for the under-reporting of the number of animals harvested for which harvest is prohibited. For many species, a 5 percent annual harvest rate would be inconsequential, but for a long lived species with relatively low annual reproductive output, and an already depressed population level such as the spectacled eider, such harvest can have notable effects on the population. We simulated the Y–K Delta spectacled eider population using both a deterministic model (one that does not account for uncertainty) and a stochastic model (one that incorporates effects of chance events) developed for this species, with starting conditions that approximate observed reproductive parameters and that result in the stable to slightly increasing population of eiders, such as that which has been occurring over recent years (Paul Flint, BRD, pers. comm. 2000). When we released the modeled population from hunting pressure, the deterministic model predicted that the population would grow about 20 percent in 10 years. We ran 100 iterations of the stochastic model and observed that the population change for this population, upon release from hunting pressure for 10 years, ranged from a 13 percent decline to a 50 percent increase (average population change was about a 20 percent increase). This information suggests that while hunting may not currently be driving the population further towards extinction, it is hindering, and may be preventing, recovery of the species.

Comment 12: Two respondents thought we should have included the area south and east of Teshekpuk Lake in our proposal.

Our response: We considered including this area in our proposal, but aerial survey data indicated that this area is not used by spectacled eiders. In eight years of aerial surveys, we have only encountered spectacled eiders in this area twice.

Comment 13: A few respondents note that eiders are tolerant of development, implying that designation of critical habitat in these areas is therefore unnecessary.

Our response: We agree that spectacled eiders occur in developed areas. Spectacled eiders regularly occur in ponds within developed oil fields at Prudhoe Bay. However, we also note that spectacled eiders do not occur at high densities near any of the Native villages on the North Slope or Y–K Delta. We do not know whether this reflects intolerance for development, local extirpation due to hunting, or simply that villages are located on lands unsuitable as eider habitat.

Development may affect species in a number of ways, such as altering distribution or decreasing productivity or survival rates. At this time, the effects of development on spectacled eiders are unknown.

Comment 14: One respondent stated that our data were not very compelling for including the marine waters off the North Slope and the North Y–K Delta unit as critical habitat.

Our response: Our initial interpretation of satellite transmitter data from the Beaufort and Chukchi seas and aerial survey data from the Y–K Delta compelled us to include these areas in our proposal. Subsequent transmitter data from the summer of 2000 caused us to reconsider our inclusion of the coastal waters of the Beaufort and Chukchi seas within 40 km of shore. The data did not clearly indicate that these waters are essential to the conservation of the species. Many individuals use this area for less than a few days, and some of them appear to fly across it nearly nonstop on their way to Ledyard Bay.

Upon closer scrutiny of habitat within the northern portion of our Y–K Delta unit, we believe that most of the habitat there is unsuitable for spectacled eiders. However, we note that there may be one or two small pockets of habitat in this unit that are suitable, and that appear on maps to be distinctly different from the surrounding area. We have not yet conducted ground-based surveys in these areas. If future data indicates that these areas are suitable habitat for spectacled eiders, and are essential for the conservation of the species and may require special management considerations or protection, we will consider designating them as critical habitat at a future date.

Comment 15: One respondent suggested that our aerial surveys may be ill-timed to detect spectacled eiders.

Our response: Ground data from the Prudhoe Bay area indicate that, while our eider aerial surveys are not always perfectly timed to detect the maximum number of spectacled eiders, in general, they do a good job of surveying a very large area during the short window of time in which a high proportion of highly-visible males are present on the breeding grounds. In some years, our survey timing is nearly perfect; in other years, weather delays have impinged on our ability to optimally time our survey efforts.

Comment 16: One respondent pointed out that we should explicitly state that Ledyard Bay is essential to the conservation of the species.

Our response: We have modified our final rule to explicitly state that Ledyard Bay is essential to the conservation of the species.

Comment 17: One respondent stated that our proposals did not encompass enough of the species range to ensure recovery, and that areas proposed may actually be population sinks.

Our response: Our proposal encompassed nearly all of the species currently occupied range (excluding migratory corridors). We do not believe that areas outside of the proposed borders would have contributed markedly to the species survival and recovery. Our final rule excludes large portions of the proposal. However, this is not meant to imply that habitat outside the designation is unimportant or may not be required for recovery.

We have preliminary data on local population sinks (areas where mortality exceeds production, but where populations are maintained through immigration from other areas) and sources on the Y–K Delta only. These areas have been included in the final designation. Furthermore, we believe that areas that are currently population sinks need not remain population sinks indefinitely. We hope that with additional management measures, we can turn many local population sinks into population sources.

Comment 18: One respondent stated that commercial fishing operations were not responsible for the decline in eider populations, and therefore critical habitat should not restrict commercial fishing. The respondent also disagreed with a statement in the proposal that suggested trawl fishing may be a potential threat to spectacled eiders on the wintering grounds.

Our response: We made no mention of trawl fisheries in our critical habitat proposal nor are we aware of data indicating that commercial fisheries are or are not responsible for declines in eider populations. We did state that ''* * * activities that may have the potential to destroy or adversely modify critical habitat for spectacled eiders include, but are not limited to: (1) Commercial fisheries, (2) oil exploration and development, and (3) petroleum product transport.'' We did not intend to imply that commercial fisheries had caused the observed population decline of spectacled eiders, but rather that commercial fisheries, as well as the other factors mentioned, may have the potential to be a threat to the species or its habitat. We note that, with respect to commercial fisheries, possible ways in which eiders or their habitat may be affected now or in the future include—(1) large numbers of small fuel and oil spills, including the practice of discharging oily bilge water; (2) fundamental changes in the marine ecosystem brought about by harvest or overharvest of fish and shellfish; (3) vessel strikes in which eiders collide with fishing vessels that are using bright lights during inclement weather; and (4) the alteration of the benthic environment by trawling gear. Again, we do not mean to imply that the commercial fishing industry is currently affecting the species in these ways. We currently lack the information we need to determine whether, and to what degree, fisheries are affecting spectacled eiders. Further analysis of potential affects of the fishing industry on spectacled eiders will be considered in future section 7 consultations with the National Marine Fisheries Service (NMFS) on the fisheries.

We note that the commenter stated that, due to ice, it was theoretically impossible to conduct trawl fishing operations in the spectacled eider wintering area during the time of year that the birds are present. We agree with this assessment, but note that eiders are present at high densities on their wintering grounds prior to the formation of sea ice and also note that bottom trawl fisheries conducted in this area at any time of year could potentially adversely modify spectacled eider critical habitat; the birds need not be present during fishing operations for harm to occur. We acknowledge, however, that according to the data provided by the commenter, trawl fisheries did not occur within the borders of the spectacled eider wintering area critical habitat between 1995–1999. We appreciate receiving this data.

Issue 2. Policy and Regulations

Comment 19: Many respondents stated that they thought critical habitat would create a need for section 7 consultations on projects with a federal nexus, and that consultation would be costly, cause permitting delays, potentially preclude some development, or cause widespread unemployment.

Our response: The designation of critical habitat for the spectacled eider does not impose any additional requirements or conditions on property owners or the public beyond those imposed by the listing of the eider in 1993 as a threatened species. All landowners, public and private, are responsible for making sure their actions do not result in the unauthorized taking of a listed species, regardless of whether or not the activity occurs within designated critical habitat. Take is defined as ''harass, harm, pursue, hunt, shoot, wound, capture, collect, or attempt to engage in

any such conduct.'' Take is further defined by regulation to include ''significant habitat modification or degradation that actually kills or injures wildlife,'' which was upheld by the U.S. Supreme Court in *Sweet Home Chapter of Communities for a Great Oregon et al.* v. *Babbitt*, 515 U.S. 687 (1995).

Furthermore, all Federal agencies are responsible to ensure that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of critical habitat designation. ''Jeopardize the continued existence of'' means to engage in an action that reasonably would 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 (50 CFR 402.02). Because we designated only areas within the geographic range occupied by the spectacled eider, any activity that would result in an adverse modification of the eider's critical habitat would virtually always also jeopardize the continued existence of the species. Federal agencies must consult pursuant to section 7 of the Act on all activities that will adversely affect the eider taking place both within and outside designated critical habitat.

The consultation process will change only to the extent that Environmental Impact Statements, Environmental Assessments, Biological Assessments, and other National Environmental Policy Act documents must consider the effect of the project on critical habitat. However, these documents already need to consider the effects of the project on habitat (in the absence of critical habitat designation). Therefore, we anticipate that the additional workload burden created by critical habitat will amount to changes in terminology and organization of these documents. Any marginal increase in consultation costs will ultimately be borne by the lead Federal agency in the consultation process or its designated representative.

We disagree with those commenters who believe that the consultation workload that is due to critical habitat is 30 percent, 50 percent, or 90 percent of the total consultation workload. Since our consultation process, regardless of the designation of critical habitat, would include an evaluation of the proposed action in terms of the habitat effects on the species, we do not anticipate that our portion of the section 7 consultation process will take any longer to complete due to the presence of critical habitat. Therefore, we do not believe that any permitting delays will result from this designation. Similarly, we do not believe that critical habitat designation will, by itself, preclude development. The Act authorizes us to require only minor changes to projects that are likely to adversely affect listed species. Only when a project will jeopardize the continued existence of a listed species, or will destroy or adversely modify critical habitat can we require more than minor changes (called ''reasonable and prudent alternatives''). We believe that the threshold for reaching ''adverse modification'' is equal to that of ''jeopardy''. Consequently, we cannot envision how an action could cause adverse modification of occupied eider critical habitat without also jeopardizing the species. As a result, any reasonable and prudent alternatives that we may require would have come about due to the listing of the species, with or without critical habitat. Therefore, we believe that the existence of critical habitat alone will not preclude any development.

Finally, we stand by the determination in our economic analysis that critical habitat will not have a notable economic impact. Consequently, we do not believe that it will create jobs or cause jobs to be lost.

Comment 20: Many respondents stated that they thought critical habitat afforded no additional benefits beyond those already provided by listing, and that critical habitat offers no net benefits.

Our response: It has long been our position that the benefits afforded by critical habitat were small relative to the benefits provided by listing. As such, we chose to focus scarce resources towards the listing of additional species. Our position should not be misinterpreted to mean that we believe critical habitat affords no additional benefits. To the contrary, we believe critical habitat may enhance management on Federal lands, and may help prevent adverse impacts on private lands resulting from Federal actions. The courts have repeatedly asserted that we have an obligation to designate critical habitat under the Act, and any decision not to do so should be the exception rather than the rule. We believe that the designation of critical habitat serves to educate and inform agencies, organizations, and the public that the survival of the species is dependent upon the availability of healthy habitats. However, in some circumstances the benefits of excluding an area from the critical habitat designation will be greater than including the area in the designation. If such an exclusion will not result in the extinction of the species, subsection 4(b)(2) the Act allows us to exclude the area from the critical habitat designation. The circumstances on the North Slope currently warrant such an exclusion (see *Rationale for the Final Designation* section).

Comment 21: Many respondents pointed out that the Act indicates that we are not to designate critical habitat throughout a species range.

Our response: Section 3(5)(C) of the Act states that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by an endangered or threatened species. We have designated critical habitat in less than 50 percent of the spectacled eider's historical range within the United States. The Secretary of the Interior has determined that the areas designated are essential to conserve this species and may require special management considerations or protection.

Comment 22: Several respondents stated that we need to balance protection and development.

Our response: There are provisions for balancing protection and development in sections 6, 7, and 10 of the Act. In addition, we provide the opportunity for balancing protection and development in our critical habitat designation process by undertaking an economic analysis. Our analysis concluded that the economic effects on development would be minimal or nonexistent. Therefore, we believe that we have balanced and continue to balance protection and development.

Comment 23: Several commenters expressed concern that designation of critical habitat will result in restrictions on development, subsistence hunting and fishing, commercial fishing, and transportation.

Our response: We are unaware of any information indicating any new State or local laws, restrictions, or procedures will result from critical habitat designation. Should any State or local regulation be promulgated as a result of this rule, this would be outside our authority under the Act. The comment is correct in that projects funded, authorized, or carried out by Federal agencies, and that may affect critical habitat, must undergo consultation under section 7 of the Act on the effects of the action on critical habitat. However, as stated elsewhere in this final rule, we do not expect the result of those consultations to result in any restrictions that would not be required as a result of listing the spectacled eider as a threatened species.

Comment 24: One commenter stated that village residents do not believe us

when we say that designating critical habitat will not noticeably affect them.

Our response: We understand the commenter's reservations; however, we continue to maintain that the designation of critical habitat does not impose any additional requirements or conditions on the public beyond those that are imposed by the listing of the spectacled eider in 1993 as a threatened species.

Comment 25: Several respondents pointed out that critical habitat is not called for in the recovery plan.

Our response: The recovery plan for the spectacled eider was finalized in 1996. This plan neither endorses the need for, nor states that there is no need for, designation of critical habitat for this species. There is not a requirement that a recovery plan call for critical habitat before we designate critical habitat. The Act mandates that critical habitat be designated at the time a species is listed, to the maximum extent prudent, which is well before the development and finalization of recovery plans.

Comment 26: Two respondents stated that we should have consulted the recovery team in our decision-making process.

Our response: We did not ask the Recovery Team to make recommendations or provide formal comments on the critical habitat proposal. That is not the role of the Recovery Team provided for in the Act. However, we did consider comments from individual members of the Recovery Team as part of the public review and comment process. On September 21–22, 2000, in Anchorage, Alaska, we convened a meeting of experts in the field of spectacled eider biology. We invited all members of the recovery team in addition to other eider experts who are not on the team. At this meeting, we sought input from the experts on what habitats they believed to be essential to the recovery of the species. A transcript of this meeting is part of our administrative record, and it was considered in our decision making process, as were comments received by mail, fax, phone, e-mail, and in public meetings and at our public hearing in Barrow, Alaska.

Comment 27: One respondent said that designating such a huge area as critical habitat may trivialize the concept of critical habitat.

Our response: The Act requires that we designate critical habitat to the maximum extent prudent. For wide-ranging species, this may result in large expanses of land and water falling within critical habitat borders.

Comment 28: One respondent compares the listing of the short-tailed albatross with that of the spectacled eider, and asked why it is prudent to designate critical habitat for the eider, but not for the albatross when the criteria for determination are nearly identical.

Our response: The decline in abundance of short-tailed albatrosses was notable in that it was directly attributable to one cause; direct persecution of the birds by humans such that the species was driven to the brink of extinction (and in fact, for many years, the short-tailed albatross was thought to be extinct). When commercial harvest of this species discontinued, the species population began to grow at near its maximum biological potential. There is nothing about the short-tailed albatross' habitat that is preventing it from growing at or near its biological maximum capacity for growth. The current population is but a very small fraction of the number of birds that the habitat once supported. In short, we know what caused this species to decline, and its decline was completely unrelated to anything in its habitat. We also know that there is no aspect of short-tailed albatross habitat in the U.S. that is preventing it from recovering nearly as fast as it is capable of doing (65 FR 46643). This is not the case for the spectacled eider.

We do not know why the spectacled eider has declined, but lacking evidence of excessive direct take by humans, we believe that we can conclude that the decline can be attributed to some factor associated with the species habitat. Furthermore, certain aspects of its habitat (e.g., lead shot on the breeding grounds, and shifting prey distributions), may be slowing or preventing recovery. As such, special management protections and considerations may be needed, and the designation of critical habitat is appropriate.

Comment 29: Several commenters stated that we did not consult with Alaska Native communities or local/tribal governments regarding our critical habitat proposals.

Our response: Due to the short deadline we were working under, which resulted from a settlement agreement, we did not consult with the Alaska Native community prior to proposing to designate critical habitat. However, we attempted to notify all potentially affected communities, local and regional governments regarding the proposed designation after it was published in the **Federal Register** on February 8, 2000 (65 FR 6114). As noted earlier, we published notices in the **Federal Register** announcing the proposed designation of critical habitat, and the availability of the draft economic analysis. We extended our public comment period three times at the request of Alaska Natives. We sent letters and informational materials pertaining to the proposal, draft economic analysis and notices of the extensions of the comment period to over 300 individuals, communities, and local and regional Native governments potentially affected by the proposed critical habitat. We provided a briefing opportunity on the proposal for Alaska Native representatives at the beginning of the comment period. We contacted specific individuals with traditional ecological knowledge of spectacled eiders and solicited their comments on the proposal. We discussed our critical habitat proposal at 19 meetings (13 of which were public meetings and 16 of which had Natives in attendance). We held meetings in the Native/rural villages and towns of Chevak, Toksook Bay, Bethel, Barrow, Point Lay, Wainwright, Nuiqsut, Atqasuk, Sand Point, and Nome. At those meetings that were held during the public comment period, meeting attendees were given the opportunity to comment on the proposal. We gave equal weight to oral and written comments on the proposal, and we incorporated traditional environmental knowledge obtained at these meetings into our final decision.

Comment 30: Two respondents stated that we are not in compliance with the National Environmental Policy Act and that an Environmental Impact Statement should be completed.

Our response: We have determined that we do not need to prepare Environmental Impact Statements or Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1979 (NEPA), in connection with regulations adopted pursuant to section 4(a) of the Act. The Ninth Circuit Court determined that NEPA does not apply to our decision to designate critical habitat for an endangered or threatened species under the Act because (1) Congress intended that the critical habitat procedures of the Act displace the NEPA requirements, (2) NEPA does not apply to actions that do not change the physical environment, and (3) to apply NEPA to the Act would further the purposes of neither statute, *Douglas County* v. *Babbitt*, 48 F.3d 1495, 1507–0 (9th Cir. 1995). Alaska is within the jurisdiction of the ninth Circuit Court of Appeals.

Comment 31: Several commenters said that we should explain in detail why the proposed critical habitat is

essential to the species' survival and recovery. Commenters also stated that we should identify more explicitly the criteria used to determine what areas are considered essential and what special management or protections are needed.

Our response: We believe that we have addressed these concerns throughout the final rule. Please see the ''Critical Habitat'' and ''rationale for final designation'' sections of this Final Rule. As described in the section titled ''Primary Constituent Elements'' we identified the habitat features (primary constituent elements) that provide for the physiological, behavioral, and ecological requirements essential for the conservation of spectacled eiders. Within the historical range of the spectacled eider we identified areas which provide the primary constituent elements and which met the criteria discussed under ''Critical Habitat Designation'' in this rule. Then, based in part on information from eider experts, we selected qualifying portions of these areas necessary for the conservation of the spectacled eider and then determined whether those areas might require special management considerations or protection.

Comment 32: Some commenters stated that ''adverse modification'' and ''jeopardy'' are two different standards and thus disagreed with our position that critical habitat will impose no addition regulatory burden.

Our response: Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly where, as here, only habitat within the geographic range occupied by the spectacled eider is designated as critical habitat. The designation of critical habitat for the spectacled eider does not add any new requirements to the current regulatory process. Since the adverse modification standard for critical habitat and the jeopardy standard are, for this species, indistinguishable, the listing of the spectacled eider initiated the requirement for consultation. This critical habitat designation adds no additional requirements not already in place due to the species' listing.

Comment 33: Some commenters stated that the proposed critical habitat designation was inconsistent with the guidelines set forth in the Act because it encompassed more habitat than is necessary for the conservation of the species.

Our response: The critical habitat areas identified in the proposed rule constituted our best assessment of the areas needed for the species' conservation using the best available scientific and commercial data that was available to us at the time. During the public comment period for the proposed rule we received additional information and recommendations from eider experts, individuals with traditional environmental knowledge of the species' habitat needs and patterns of use, and other individuals and organizations that enabled us to refine our assessment of the areas needed to ensure survival and recovery of the species. The critical habitat designated in this rule reflects our assessment of the areas needed for the conservation of spectacled eiders in accordance with the parameters set forth in the Act's sections 3(5)(A) and 4(b)(2) and as described in the section of this rule titled ''Critical Habitat.'' We will continue to monitor and collect new information and may revise the critical habitat designation in the future if new information supports a change.

Comment 34: Several commenters stated that our previous determination that designation of critical habitat was ''not prudent'' was the appropriate decision for this species. These commenters criticized us for agreeing to reevaluate critical habitat for the spectacled eider in response to litigation, and stated that additional biological information is necessary before critical habitat for spectacled eiders can be reevaluated.

Our response: At the time the initial ''not prudent'' determination was made for this species, we believed that designation afforded few, if any, benefits to the species beyond those conferred by listing. In general, Federal Courts have not agreed with our analysis of the benefits of critical habitat and during the last several years have overwhelmingly ruled that the Service must in almost all cases designate critical habitat for listed species. In March 1999, a lawsuit challenging our decision to not designate critical habitat for the spectacled eider was filed. In light of recent court rulings, we opted to reconsider our earlier prudency decision, as stipulated in the terms of a settlement agreement, rather than expend our limited resources on protracted litigation.

We recognize that there may be informational or educational benefits associated with critical habitat designation. Furthermore, we have gathered a tremendous amount of additional biological information on this species since the time of its listing, making our reevaluation of critical habitat both necessary and timely. This additional information concerning the biology and ecology of this species has helped us identify more specifically the types and locations of habitat that are essential to its conservation. While there is still much to be learned about this species, the information currently available to us supports our determination that designation of critical habitat is prudent, and that the areas we are designating as critical habitat are essential to the conservation of the species and may require special management considerations or protections.

Comment 35: One commenter stated the designation of critical habitat should not occur until discussions had been held to ensure that the designation is consistent with international management regimes, such as those under the auspices of the Migratory Bird Treaty Act and the Arctic Council's working group for the Conservation of Arctic Flora and Fauna.

Our response: We agree that collaboration and consistency with international efforts to conserve the eider are very important. We have a working relationship with eider experts in Russia, and our research and management efforts are complimentary to those conducted under other conservation programs. We will continue to coordinate with other research and conservation entities. The parameters set forth in the Act and the settlement agreement preclude deferral of designation of critical habitat for this species pending discussions of the type suggested by the commenter.

Comment 36: One respondent pointed out that critical habitat designation will result in the need to reinitiate section 7 consultation on projects on which consultation has previously been completed.

Our response: We agree. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions when

critical habitat is designated subsequent to consultation. However, this reinitiation need be undertaken only if the action is ongoing. We are in the process of contacting Federal agencies to inform them that they should review their ongoing actions that have been previously consulted upon to determine if the reinitiation of consultation is warranted.

Comment 37: There are no benefits of designating critical habitat.

Our response: We disagree. We believe that critical habitat designation contributes to species conservation by identifying important habitat for the species and by describing habitat features that are thought to be essential for the species. This can alert public and private entities to the area's importance and result in cooperative strategies for habitat conservation. In particular, critical habitat designation makes it clear to Federal agencies that consultation under section 7 of the Act is required for all actions that may affect the species or its habitat.

Comment 38: One commenter asked whether critical habitat designation would shorten the permitting process for the oil industry or reduce the obligation of the oil industry to seek Native concurrence.

Our response: We believe that designating critical habitat will neither simplify nor complicate the Federal permitting process for any actions, including oil exploration or development. Because the only regulatory affect of critical habitat designation is through section 7 of the Act, which only affects Federal actions and permitting, it should not affect interactions between Alaska Natives and the oil industry.

Issue 3: Economic Issues

Comment 39: Many commenters disagreed with our assessment that the designation of critical habitat for the spectacled eider would not lead to any new section 7 consultations and our conclusion, as a result, that economic impacts of the proposed designation would be minimal.

Our response: Because the spectacled eider is a federally protected species under the Act, Federal agencies are already required to consult with us on any actions they authorize, fund, or carry out that may affect this species. For Federal actions that may adversely affect spectacled eiders, Federal agencies need to enter into a formal section 7 consultation process with us to avoid violating section 9 of the Act, which makes it unlawful for any person to ''take'' a listed species. The term ''take'' is defined by the Act (section 3(18)) to mean ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The U.S. Supreme Court clarified the definition of harm to include adverse modification of habitat (*Sweet Home Chapter of Communities for a Great Oregon, et al.* v. *Babbitt,* 515 U.S. 687 (1995).

We are only designating critical habitat that is occupied by the eiders, essential to the conservation of the species, and may require special management considerations or protections. While this designation will require Federal agencies to further consider whether the actions they authorize, fund, or carry out within designated critical habitat boundaries may affect the habitat, it is unlikely that an agency could conclude that an action may affect designated critical habitat without simultaneously concluding that the action may also affect the eiders given the presence of eiders within designated critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for both the survival and recovery of the listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy when the area of the proposed action is occupied by spectacled eiders.

While Federal agencies will be required to consider the effect of their actions on critical habitat in determining whether or not to consult with us under section 7 of the Act, the designation of critical habitat for spectacled eiders will not affect activities undertaken within critical habitat boundaries that do not involve a Federal nexus. While any person, public or private, is required to ensure that their actions do not result in the taking of a federally listed species, only Federal agencies are required to consult with us about their action's effect on designated critical habitat under section 7 of the Act. Persons undertaking activities within critical habitat boundaries that do not have a Federal nexus (*i.e.,* Federal funds or permits) and that do not result in either the direct or indirect taking of a federally protected species are not required to consult with us concerning the effect their activities may have on designated critical habitat.

Comment 40: Many commenters stated that by designating critical habitat for spectacled eiders, section 7 consultation costs would likely increase due to the extra resources needed to determine whether a proposed government action could result in the destruction or adverse modification of designated critical habitat.

Our response: We disagree that the designation of critical habitat for spectacled eiders would significantly increase the costs associated with conducting a section 7 consultation. First, as previously described, we have only proposed to designate occupied habitat as critical habitat and as a result the designation would not result in an increase in section 7 consultations because any Federal action that may affect a species' designated critical habitat, which would trigger a section 7 consultation, would also affect the listed species itself due to its presence in the area. For those Federal actions that we find may likely adversely affect a species or its critical habitat, we already consider habitat impacts of the proposed action along with whether or not an action is likely to jeopardize a listed species or constitute ''take'' pursuant to section 9 of the Act during the formal section 7 consultation process. As a result, the designation of critical habitat in the areas already occupied by spectacled eiders will not add any appreciable time or effort required by an action agency, third party applicant, or by our personnel to conduct a section 7 consultation.

Comment 41: Some comments stated that the economic analyses failed to consider the effect of reinitiating previously conducted consultations to consider an action's effect on designated critical habitat.

Our response: Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated. Because we have already considered the habitat impacts of the action during the consultation process,

we do not believe that any significant resources would be expended by either the action agency or by our personnel to comply with the reinitiation requirement. We anticipate fulfilling the requirements of 50 CFR 402.16 by sending a letter to an action agency undertaking activities on which we have already consulted, and requesting that they make a determination as to whether the ongoing action may affect designated critical habitat. Because habitat impacts were already considered as part of the initial consultation, we believe that most, if not all non-jeopardy activities already consulted upon will likely not adversely modify or destroy critical habitat. We are committed to working with all Federal agencies that may be affected by the designation of critical habitat to expedite any consultations that require reinitiation.

Comment 42: The draft economic analysis failed to consider that Nationwide permits under section 404 of the Clean Water Act will no longer be allowed without a section 7 consultation.

Our response: The conditions, limitations, and restrictions of the Army Corps Nationwide permit program state in 33 CFR 330.4 that no activity is authorized by any nationwide permit if that activity is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Act or to destroy or adversely modify the critical habitat of such species. Federal agencies are required to follow their own procedures for complying with the Act while non-federal permittees are required to notify the District Engineer (DE) if any federally listed (or proposed for listing) endangered or threatened species or critical habitat might be affected or is in the vicinity of the project. In such cases, the prospective permittee may not begin work under authority of the nationwide wetland permit until notified by the DE that the requirements of the Act have been satisfied and that the activity is authorized. If the DE determines that the activity may affect any federally listed species or critical habitat, the DE must initiate section 7 consultation in accordance with the Act. Because we are only designating occupied habitat as critical habitat for spectacled eiders, prospective permittees already are required to notify the Army Corps of their activities within these areas. As a result, we do not anticipate that critical habitat designation for spectacled eiders would result in any additional section 7 consultations with the Army Corps concerning activities needing a general permit to proceed.

Comment 43: Some commenters stated that minor permitting delays, resulting from an increase in section 7 consultations, can result in a year-long delay given the limited operation windows due to climate conditions in Alaska. As a result, these commenters believed that marginal projects may face funding losses as financing capital is withdrawn due to increased uncertainty associated with such a project.

Our response: We disagree that there will be an increase in section 7 consultations that will be attributable to critical habitat designation for spectacled eiders. Federal agencies are already required to consult with us in situations where actions they undertake, fund, or permit may adversely affect the eiders. We do not believe that the designation of critical habitat will lengthen the section 7 process because we already consider habitat impacts as part of the consultation process. Because we are only designating critical habitat in areas that are occupied by the eiders, we do not believe that there will be an increase in section 7 consultations due to the designation.

Comment 44: Several commenters stated that the draft economic analyses failed to adequately address critical habitat effects on the North Slope petroleum economy, including the costs associated with section 7 consultations and project modifications, which may result in project delays and reduced development, associated effects on the regional and State economy, and land value impacts in areas where production may be curtailed.

Our response: Our draft economic analyses for the proposed critical habitat rule discussed the potential economic impacts to the oil and gas industry operating on the North Slope. Specifically, we discussed the responsibilities of the Bureau of Land Management and the Minerals Management Service in managing oil and gas exploration and production drilling in this area and their current responsibility to consult with us on activities they authorize, fund, or carry out that may affect spectacled eiders. The analyses discussed previous consultations with these Federal agencies concerning oil and gas activities and concluded that for section 7 consultations for which a ''not likely to adversely affect'' determination was made by the agency, and for which we concurred, we fully expect to concur with a corresponding determination that such an action is not likely to result in the destruction or adverse modification of critical habitat. Only for those actions resulting in jeopardy to spectacled eiders would we expect to meet the threshold for destruction or adverse modification of critical habitat during the section 7 process. Similarly, we believed that property value decreases, to the extent that they can be attributed to spectacled eiders and result in actual restrictions in land use, would be a result of the listing of the species as a federally protected species and not because of critical habitat designation. Consequently, we do not believe that critical habitat designation, as proposed, would have an adverse effect on oil and gas industry operations on the North Slope nor have any indirect effects on the regional or State economy. In this final rule, however, we have withdrawn the North Slope unit from critical habitat designation. As a result, the concerns expressed in this comment are no longer an issue relevant to the final designation.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Comment 45: One commenter believed that the economic analyses failed to adequately address potential benefits associated with critical habitat designation.

Our response: We believe that many of the benefits to the species that result from critical habitat will be non-economic in nature. Critical habitat designation for spectacled eiders may have some educational benefit to Alaskans. Other benefits may result from Federal agencies becoming more

aware of their obligation to consult on their activities as per section 7 of the Act. However, because we are designating only occupied habitat as critical habitat for spectacled eiders, we believe that the economic consequences (both positive and negative) associated with the designation are limited. We arrive at this conclusion because the designation of critical habitat is unlikely to have any significant effect on both current and planned economic activities within the designated areas. For reasons previously stated, Federal agencies are already required to consult with us on activities that may affect spectacled eiders.

Comment 46: The analysis ignores the effect that critical habitat designation may have on commercial fisheries, such as those occurring in the Bering Sea, along the Alaska Peninsula, and in Cook inlet based on judicial rulings on the fisheries impact on critical habitat for the Steller sea lions.

Our response: On July 20, 2000, U.S. District Court Judge Thomas S. Zilly issued an injunction on all groundfish trawl fishing within federally regulated waters of the Bering Sea/Aleutian Islands and the Gulf of Alaska within Steller sea lion critical habitat. The judge issued this injunction because he found that the NMFS failed to issue a legally adequate biological opinion addressing the combined, overall effects of the North Pacific groundfish trawl fisheries on Steller sea lions and their critical habitat pursuant to the Act. It is important to note that while the judge limited fishing within Steller sea lion critical habitat, he issued the injunction primarily out of concern that NMFS failed to comply with section 7 of the Act. Consequently, we do not believe that critical habitat designation for the Steller sea lion played a significant role in the judge's decision to issue the injunction but rather was simply used by the judge to determine the boundaries of the injunction.

Our analyses did not address the potential effects of third-party lawsuits directly due to the limited information and experience that critical habitat designation could have on such a lawsuit. However, we recognize that it is possible that some third parties may elect to sue us over future decisions we may make about whether an activity adversely modifies critical habitat. As of yet, we have not faced any such lawsuits and because we are only designating occupied eider habitat as critical habitat, we find it highly unlikely that we would ever determine that a Federal action could adversely modify critical habitat without simultaneously jeopardizing the continued existence of spectacled eiders due to the similarity between the two definitions.

Our economic analyses did address the potential for impacts to commercial fisheries resulting from proposed critical habitat designation. In these analyses we described how we have conducted semi-annual formal consultations on fisheries management with NMFS on the Bearing Sea fisheries. To date, we are unaware of any spectacled eiders having been taken by these fisheries. As a result, we discontinued formal consultations on this fishery and began conducting only informal consultations. We do not anticipate that the designation of critical habitat will change our approach to consultations. As a result, we do not expect any adverse economic impacts to occur in the Ledyard Bay, Norton Sound, and St. Lawrence/St. Matthew Islands spectacled eider critical habitat areas as a result of this final rule. As a result, we believe the potential for a third-party lawsuit that could affect the commercial fishing industry as a result of critical habitat designation is minimal.

Comment 47: Several commenters stated that the economic analysis is flawed because it does not quantify any of the expected impacts that may result from critical habitat designation.

Our response: The draft economic analyses did not identify any potential impacts associated with critical habitat designation for spectacled eiders. As a result, the analysis was unable to quantify any effects. Although the analyses acknowledged the possibility of impacts associated with project delays and other activities due to section 7 consultations (the Act only requires Federal agencies to consult with us concerning the effect their actions may have in critical habitat areas), we are only designating occupied habitat as critical habitat for spectacled eiders. Because Federal agencies are already required to consult with us concerning the effect their activities may have on spectacled eiders in these areas, we do not believe that the designation will result in any additional impacts. While the Act requires Federal agencies to consult with us on activities that adversely modify critical habitat, we do not believe that within areas being designated as critical habitat for spectacled eiders there will be any Federal government actions that will adversely modify critical habitat without also jeopardizing spectacled eiders due to their presence in designated critical habitat areas.

We have also recognized that in some instances, the designation of critical habitat could result in a distorted real estate market because participants may incorrectly perceive that land within critical habitat designation is subject to additional constraints. However, we do not believe that this effect will result from the designation of critical habitat for spectacled eiders. We arrived at this determination based on the fact that we believe that critical habitat designation for spectacled eiders will not add any additional protection, beyond that associated with the addition of the species to the list of federally protected species. As a result, we believe that any resulting real estate market distortion would be temporary and have a relatively insignificant effect as it should become readily apparent to market participants that critical habitat for spectacled eiders is not imposing any additional constraints on landowner activities beyond any currently associated with the listing of spectacled eiders.

Comment 48: Some commenters stated that the analysis does not consider the cumulative impact of added uncertainty for projects.

Our response: While our economic analyses identified some of the concerns stakeholders may have regarding our concern over current or anticipated activities on eider critical habitat, we do not believe that the designation of critical habitat for spectacled eiders will impose any additional restrictions or considerations on projects having a Federal nexus. While section 7 consultations could lead to project delays if they are not properly anticipated for by project planners, we do not believe that the designation of critical habitat will result in any new or additional section 7 consultations above and beyond those that would be required due to an activity's potential to affect spectacled eiders. We already consider the impact that an action has on the eider's habitat as part of our current section 7 process so we do not believe that the section 7 process will take any longer than it currently does once critical habitat is designated.

Comment 49: Some commenters felt that the economic analysis is flawed because it is based on the premise that we have proposed designating only occupied habitat as critical habitat and that the economic analysis was wrong to assume that all future section 7 consultations within designated critical habitat would occur regardless of critical habitat designation due to the presence of spectacled eiders.

Our response: The determination of whether or not designated critical habitat is occupied by spectacled eiders is part of a biological decision-making

process and lies beyond the scope of an economic analysis. The Act requires all Federal agencies to consult with us on government actions that may either directly or indirectly affect a listed species. Even without critical habitat designation, Federal agencies would be required to consult with us on actions that could adversely modify eider habitat because such actions could also affect spectacled eiders for reasons previously explained. Consequently, we do not believe that the designation of critical habitat for spectacled eiders in occupied habitat areas will lead to any economic impacts beyond those currently imposed as a result of the listing.

Comment 50: Some commenters believed that we failed to adequately address the requirements of the Small Business Regulatory Enforcement Fairness Act in our draft economic analysis.

Our response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic impact on a substantial number of small entities and as a result we do not need to prepare either an initial or final regulatory flexibility analysis.

We have based our finding on the fact that this rule will not result in any significant additional burden to the regulated community, regardless of the size of the entity. Our economic analysis identified several potential impacts associated with critical habitat designation, including increased consultation costs, project modification costs, and potential temporary decreases in property values. However, because we have only designated property that is within the geographic range occupied by spectacled eiders and because spectacled eiders are already federally protected species, other Federal agencies are already required to consult with us on activities that they authorize, fund, or carry out that have the potential to jeopardize spectacled eiders. Any associated costs related to these section 7 consultations, including project modifications, will therefore be attributable to the listing of the species and not to designation of critical habitat due to the similarity in the definition of jeopardy and adverse modification. In other words, Federal actions that could appreciably reduce the value of critical habitat for both the survival and recovery of spectacled eiders would also, by default, ''jeopardize the continued existence'' of spectacled eiders due to the action's ability to appreciably reduce the likelihood of both the survival and recovery of the species due to its presence in critical habitat areas.

Issue 4: Other Relevant Issues

Comment 51: Many respondents were concerned that designating critical habitat will invite lawsuits by those aiming to obstruct oil development on the North Slope.

Our response: We cannot predict what future litigation may be brought under the Act, nor can we use the threat of litigation as an excuse for not designating critical habitat. The Act and regulations at 50 CFR 424.12 require us to designate critical habitat to the maximum extent prudent, and require that we base critical habitat determinations on the best scientific and commercial data available and that we consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection.

Comment 52: A few respondents asked whether it is possible that there will be additional time in which to submit comments and whether another draft will be presented for public comment before the final rule.

Our response: Our public comment period of 231 days (February 8, 2000—September 25, 2000) was nearly four times the length of public comment period required by regulation. We extended the open comment period on three separate occasions to accommodate interested parties. We believe that we allowed ample time for comments. Our proposed rule published on February 8, 2000, and the draft economic analysis represent the only documents for which public comment will be sought relative to this rulemaking. However, we welcome at any time new information on the life history, distribution, and status of the spectacled eider, as well as information on the quality, quantity, and viability of the habitats it uses.

Comment 53: A few respondents asked whether critical habitat could be the first step towards making the area a refuge.

Our response: Critical habitat designation is completely unrelated to the formation of wildlife refuges, and in no way affects or is a precursor to establishment of a wildlife refuge. Critical habitat can be designated on existing parks and refuges, state, and private lands. Such designation carries with it no implication of future land ownership change, nor does it allow for public access to private land.

Comment 54: One respondent stated that our proposal resulted from a politically motivated decision.

Our response: Our proposal resulted from an out-of-court settlement in which we agreed to reexamine our initial decision that designation of critical habitat for this species was not prudent. We objectively reexamined the best scientific and commercial data available to us at the time, determined that designation of critical habitat was prudent, and developed the proposal upon which this final rule is based.

Comment 55: One respondent stated that designating critical habitat ensures collaboration between Federal, State, and Private agencies and industries, and that it would foster comprehensive planning and wise management.

Our response: We pursue comprehensive planning and management opportunities regardless of the presence of critical habitat. However, we note that the heightened awareness surrounding conservation issues and the delineation of critical habitat areas on maps has resulted in agencies becoming more fully aware of the need to consult with us under section 7 of the Act. In addition, we believe that the critical habitat maps and description make it easier for all involved to know whether any particular activity is located in an area important to threatened and endangered species.

Comment 56: One respondent stated that designating as critical habitat the large area proposed on the North Slope would harm listed eiders by irreparably damaging cooperative and collaborative working relationships between the Service and local and Native governments.

Our response: We regard working relationships with local and Native governments to be essential for effecting the recovery of spectacled eiders on the North Slope. We note numerous cooperative conservation actions that are in progress, including jointly conducted or funded research and monitoring projects, efforts to eliminate the use of lead shot by waterfowl hunters, and public education projects. We agree that any action that damages these cooperative efforts will harm listed eiders. It should be noted that in this final rule, we have withdrawn the North Slope unit from critical habitat designation primarily for the reason cited by this respondent. Section 4(b)(2)

of the Act says that we may choose to not designate critical habitat on an area if the relevant impacts of such designation outweigh the benefits of such a designation. We determined that, on the North Slope, this would be the case (see *Rationale for the Final Designation* section).

Comment 57: One respondent challenged our metric/English conversions (40 km = 25 nm) used to describe critical habitat units, contending the imprecision in this conversion could cause ambiguity in unit boundaries.

Our response: We believe that our use of significant digits in our metric to English conversion factors was commensurate with the accuracy of our information regarding the locations of birds on the ground or water. There is a discrepancy of approximately 820 feet (250 m) between the two distances from shore that we cited (40 km and 25 nm). This difference amounts to approximately one half of 1 percent of the width of the proposed area. Nevertheless, we recognize that this discrepancy has the potential to cause future confusion. The critical habitat units to which this comment applies are the coastal waters of the Y–K Delta and North Slope. We note that future confusion over the precise location of these boundaries has been mooted because these marine areas have been eliminated from our final critical habitat designation.

Comment 58: The risks of not designating or designating too small an area appear greater than the risks of designating too large an area.

Our response: We believe that any risks associated with the designation of critical habitat derive from misperceptions surrounding critical habitat, and the way in which these misperceptions may affect working relationships between parties with conflicting interests or goals. Conversely, we do not believe that there are notable risks to the listed species that would result from a failure to designate critical habitat.

Comment 59: One respondent asked whether critical habitat remains forever or is eliminated if the species is delisted.

Our response: The critical habitat designation is removed at the time the species is delisted.

Comment 60: The oil industry commented that the original listing of eiders and subsequent critical habitat designation may have indirect negative effects on eiders by stimulating more intrusive research on the North Slope and elsewhere, resulting in increased disturbance during nesting.

Our response: The only effect of critical habitat designation is through section 7 of the Act, which requires Federal agencies to consult with the Service on actions they permit, fund, or conduct that may adversely affect listed species or adversely modify or destroy critical habitat. We believe that neither the need to consult or outcome of consultations will be affected by critical habitat designation because we currently consider the potential habitat impacts of proposed projects during consultation. Any research on the North Slope or anywhere else in the occupied range of the spectacled eider that might result in ''take'' occurring would require a section 10(a)(1)(A) permit from the Service. If the authorization of such a permit may affect a listed species, an intra-agency section 7 consultation must be initiated. Any such consultation will consider any direct, indirect, interrelated, or interdependent effects of the action. No permits would be issued if significant adverse impacts were anticipated.

Comment 61: Preventative measures like critical habitat designation are cheaper and more productive and efficient than piecemeal restoration after environmental damage is done.

Our response: We view critical habitat as more of an educational tool than as a preventive measure. Critical habitat designation adds few, if any, regulatory requirements, and it is difficult to envision a scenario in which critical habitat may prevent any action from occurring that would not already be prevented by virtue of the presence of the listed species itself. An exception to this would be if a project were to adversely modify or destroy critical habitat that had been designated in unoccupied habitat. However, we have not designated any unoccupied habitat as critical habitat for the spectacled eider.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat for the spectacled eider, we reevaluate our proposed designation of critical habitat for the species. This resulted in eight significant changes that are reflected in this final rule. These are—(1) the reduction in size of the minimum mapping unit from township to section for terrestrial critical habitat; (2) the elimination of Proposed Unit 1 (North Y–K Delta Unit); (3) exclusion of lands within Proposed Units 3 and 4 (Central and South Y–K Delta Units, respectively) that are not within the vegetated intertidal zone; (4) the elimination of marine waters associated with Units 1, 3, and 4; (5) the elimination of Proposed Unit 5 (North Slope Unit); (6) the reduction in size of Proposed Unit 6 (Norton Sound Unit); (7) the reduction in size of Proposed Unit 7 (Ledyard Bay Unit); and (8) refinement in the definition of primary constituent elements for all units. A detailed discussion of the basis for changes from the proposed rule can be found under the *Rationale for the Final Designation* section.

We changed our level of resolution from townships to sections in an effort to minimize inclusion of nonessential and unsuitable habitats within our critical habitat border. Although doing so resulted in a reduction of total area included as critical habitat, we do not believe that it resulted in any exclusion of habitat that contained the primary constituent elements found in the vegetated intertidal zone.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Economic effects caused by listing the spectacled eider as a threatened species and by other statutes are the baseline against which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic and conservation effects and benefits of the critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. A draft analysis of the economic effects of spectacled eider critical habitat designation was prepared (Industrial Economics, Incorporated, 2000) and made available for public review (August 24, 2000; 65 FR 51577).

The final analysis, which reviewed and incorporated public comments, concluded that no significant economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the spectacled eider. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. The analysis examined the

effects of the proposed designation on: (1) Re-initiation of section 7 consultations, (2) length of time in which section 7 consultations are completed, and (3) new consultations required due to critical habitat designation. Because areas proposed for critical habitat are within the geographic range occupied by the spectacled eider, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation whether or not critical habitat is designated. We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species, and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Thus, no regulatory burden or associated significant additional costs would accrue because of critical habitat above and beyond that resulting from listing. Our economic analysis does recognize that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to perceived increase in the regulatory burden. We believe this impact will be short-term.

A copy of the final economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

The spectacled eider was listed as a threatened species in 1993. Since it was listed, we have conducted 5 formal section 7 consultations on projects or actions that were likely to adversely affect spectacled eiders. In addition, since 1998, we issued 17 section 10(a)(1)(A) permits for research projects that may have affected or were likely to adversely affect spectacled eiders. We have not issued any section 10(a)(1)(B) incidental take permits for this species or within the range of this species.

The areas designated as critical habitat are currently within the geographic range occupied by the spectacled eider. Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (Table 4). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of areas within the geographic range occupied by the spectacled eider does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat although they continue to be bound by the provisions of the Act concerning ''take'' of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the spectacled eider since the species was listed in 1993. The prohibition against adverse modification of critical habitat is not expected to impose any restrictions in addition to those that currently exist because all designated critical habitat is within the geographic range occupied by the spectacled eider. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any significant incremental effects.

(d) This rule will not raise novel legal or policy issues. This final determination follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 4.—IMPACTS OF SPECTACLED EIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal activities potentially affected [3]	Removing, disturbing, or destroying spectacled eider habitat (as defined in the primary constituent elements discussion) or appreciably decreasing habitat value or quality through indirect effects, whether by paving, covering, draining, impounding, hydrologically altering, contaminating, or otherwise altering through mechanical means or through ecological disruption (*e.g.,* gravel pad construction, travel by motorized vehicle across unfrozen tundra, fuel transport and related fueling operations, introduction of contaminants, use of lead shot while hunting, commercial fishing, operation of open landfills and other activities that may enhance predator populations or concentrate them near eiders, disturbance of benthic communities through trawling, offal discharge, and harvest of benthic organisms).	None.

TABLE 4.—IMPACTS OF SPECTACLED EIDER LISTING AND CRITICAL HABITAT DESIGNATION—Continued

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Private activities potentially affected [4]	Removing, disturbing, or destroying spectacled eider habitat (as defined in the primary constituent elements discussion) or appreciably decreasing habitat value or quality through indirect effects, whether by paving, covering, draining, impounding, hydrologically altering, contaminating, or otherwise altering through mechanical means or through ecological disruption (*e.g.,* gravel pad construction, travel by motorized vehicle across unfrozen tundra, fuel transport and related fueling operations, introduction of contaminants, use of lead shot while hunting, commercial fishing, and activities that may enhance predator populations or concentrate them near eider habitat.	None.

[1] This column represents the activities potentially affected by listing the spectacled eider as a threatened species (May 10, 1993, 58 FR 27474) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above and in this final determination, this designation of critical habitat for the spectacled eider is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Critical Habitat Designation section) we have designated property owned by Federal, State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of commercial fisheries by the National Marine Fisheries Service;

(4) Law enforcement in United States Coastal Waters by the U.S. Coast Guard;

(5) Road construction and maintenance by the Federal Highway Administration;

(6) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(7) Regulation of subsistence harvest activities on Federal lands by the U.S. Fish and Wildlife Service;

(8) Regulation of mining and oil development activities by the Minerals Management Service;

(9) Regulation of home construction and alteration by the Federal Housing Authority;

(10) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(11) Construction of communication sites licensed by the Federal Communications Commission; and

(12) Wastewater discharge from communities and oil development facilities permitted by the Environmental Protection Agency;

(13) Other activities funded by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. These actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this final determination will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of

critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the spectacled eider. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the spectacled eider.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat within the geographic range occupied by the spectacled eider imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning (rather than waiting for case by case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The determination uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the spectacled eider.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that ''Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, we shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' While this Order does not apply to the State of Alaska, we recognize our responsibility to inform affected Native Corporations, and regional and local Native governments of this proposal. During the open comment period, we coordinated extensively with Native communities, sought traditional Native knowledge, extended the open comment period on two occasions to accommodate the traditional Alaska Native lifestyle, and held 16 meetings with Native organizations, in rural Alaska Native communities, or that were attended by Alaska Natives.

References Cited

A complete list of all references cited in this rule is available upon request from the Ecological Services Anchorage Field Office (see **ADDRESSES** section).

Author

The primary authors of this document are Greg Balogh and Terry Antrobus (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11 (h) revise the entry for ''spectacled eider'' 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							
Eider, spectacled	Somateria (=*Arctonetta, =Lampronetta,*) *fischeri.*	USA (AK); Russia	Entire	T	503	17.95 (b)	NA
*	*	*	*	*	*	*	*

3. Amend § 17.95 (b) by adding critical habitat for the spectacled eider (*Somateria fischeri*) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) Birds.

* * * * *

SPECTACLED EIDER (*Somateria fischeri*)

1. Critical habitat units are depicted for Unit 1 (Central Yukon-Kuskokwim Delta), Unit 2 (South Y–K Delta Unit), Unit 3 (Norton Sound), Unit 4 (Ledyard Bay), and Unit 5 (the Wintering Unit in the Bering Sea between St. Lawrence and St. Matthew Islands) for reference only. The areas in critical habitat are described below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of feeding, nesting, brood rearing, roosting, molting, migrating and wintering. The primary constituent elements for Units 1 and 2 (the Y–K Delta units) include the vegetated intertidal zone and all open water inclusions within this zone. Primary constituent elements for the Norton Sound Unit (Unit 3) and the Ledyard Bay Unit (Unit 4) include all marine waters greater than 5 m (16.4 ft) in depth and less than or equal to 25 m (82.0 ft) in depth, along with associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Primary constituent elements for the Wintering Unit (Unit 5) include all marine waters less than or equal to 75 m (246.1 ft) in depth, along with associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Critical habitat does not include those areas within the boundary of any unit that do not fit the description of primary constituent elements for that unit.

3. Critical habitat does not include existing features and structures, such as buildings, roads, pipelines, utility corridors, airports, other paved areas, and other developed areas.

4. This final rule designating critical habitat for the spectacled eider uses published coordinates of prominent landmarks, when appropriate, obtained from the Dictionary of Alaska Place Names.

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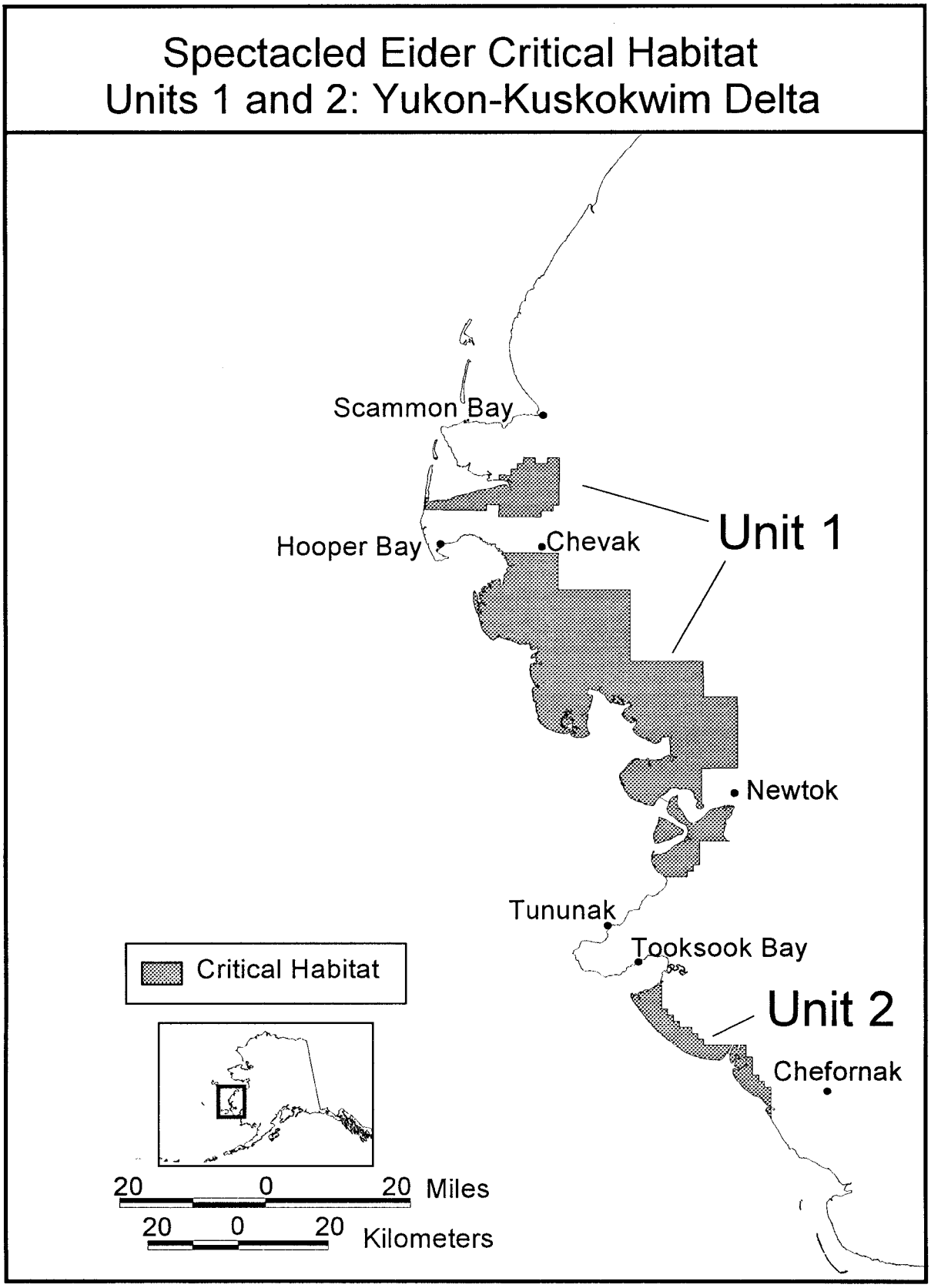

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Unit 1. Central Y–K Delta Unit

Seward Meridian: T19N, R91W, Sections 24, 25, 26, 33, 34, 35, 36; T19N, R90W, Sections 13, 14, 17, 18, 19–36; T18N, R90W, Sections 1–24, 26–33; T18N, R91W, Sections 1–5, 7–28, 33–36; T18N, R92W, Sections 10–30; T18N, R93W, Sections 21–27; T16N, R91W, Sections 1–36; T16N, R92W, Sections 1–4, 10–15, 21–36; T16N, R93W, Section 36;T15N, R89W, Sections 1–36; T15N, R90W, Sections 1–36; T15N, R91W, Sections 1–36; T15N, R92W, Sections 1–36; T15N, R93W, Sections 1,2, 11–14, 23–26, 36; T14N, R89W, Sections 1–36; T14N, R90W, Sections 1–36; T14N, R91W, Sections 1–29, 32–36; T14N, R92W, Sections 1–18, 24; T14N, R93W, Sections 1, 12; T13N, R87W, Sections 1–36; T13N, R88W, Sections 1–36; T13N, R89W, Sections 1–36; T13N, R90W, Sections 1–36; T13N, R91W, Sections 1–5, 8–17, 20–29, 32–36; T12N, R87W, Sections 1–36; T12N, R88W, Sections 1–29, 31–36; T12N, R89W, Sections 1–35; T12N, R90W, Sections 1–4, 9–14, 23–25; T12N, R91W, Sections 1–36; T12N, R92W, Sections 1–4, 9–16, 21–28, 34–36; T11N, R87W, Sections 1–36; T11N, R88W, Sections 1–36, T11N, R89W, Sections 1–6, 9–12, 25–36; T11N, R91W, Sections 1–6; T10N, R88W, Sections 1–26, 29–33, 35, 36; T10N, R89W, Sections 1–35; T10N, R90W, Sections 1, 2, 11–14, 24, 25; T9N, R87W, Sections 1–35; T9N, R88W, Sections 1, 4–10, 13–36; T9N, R89W, Sections 13, 14, 23–26, 35, 36; T8N, R89W, Sections 1–5, 7–24, 26–34; T8N, R90W, Sections 1–2, 11, 13, 14, 23–26, 36;

Unit 2. South Y–K Delta Unit

Seward Meridian: T4N, R90W, Sections 30–32; T4N, R91W, Sections 1–3, 8–17, 20–28, 34–36; T3N, R89W, Section 19; T3N, R90W, Sections 4–11, 13–28, 34–36; T3N, R91W, Sections 1–3, 11–13; T2N, R88W, Sections 4–9, 16–22, 26–30, 32–36; T2N, R89W, Sections 1–6, 12, 13, 24; T1N, R88W, Sections 1–4, 11–14, 24–25.

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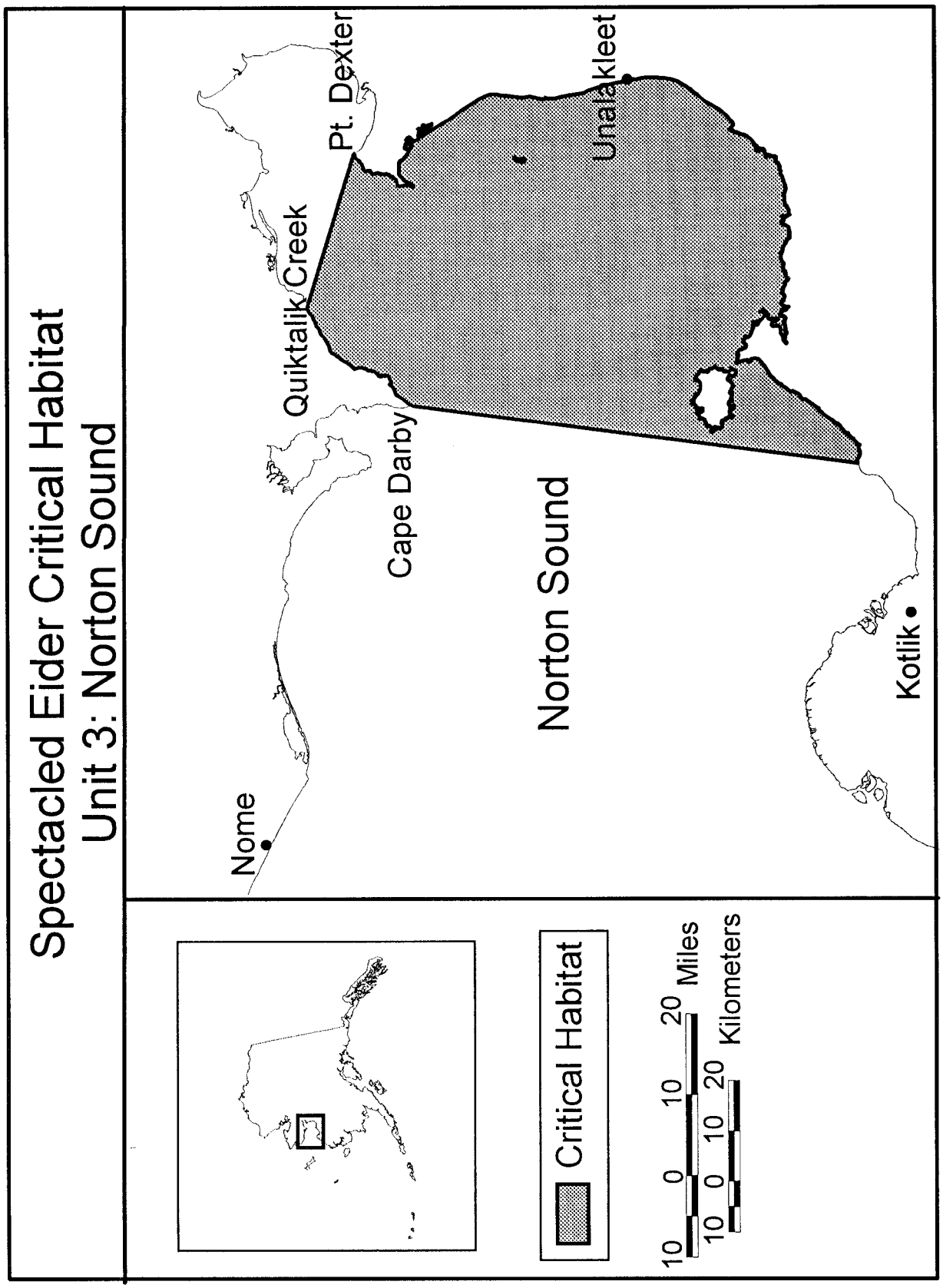

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Unit 3. Norton Sound Unit

The area bound by the following description: From Cape Darby (64°19′00″ N x 162°47′00″ W) south along the line of longitude 162°47′00″ W to the opposite shore of Norton Sound (63°12′51″ N x 162°47′00″ W), thence along the mean low tide line of the Alaska coast north and east to Point Dexter (64°32′00″ N x 161°23′00″ W), thence along the great circle route to the southern bank of the mouth of Quiktalik Creek (64°36′00″ N x 162°18′00″ W), and from that point along the mean low tide line of the Alaska coast south and west to Cape Darby (64°19′00″ N x 162°47′00″ W). The lands of Stuart Island are excluded from Unit 3.

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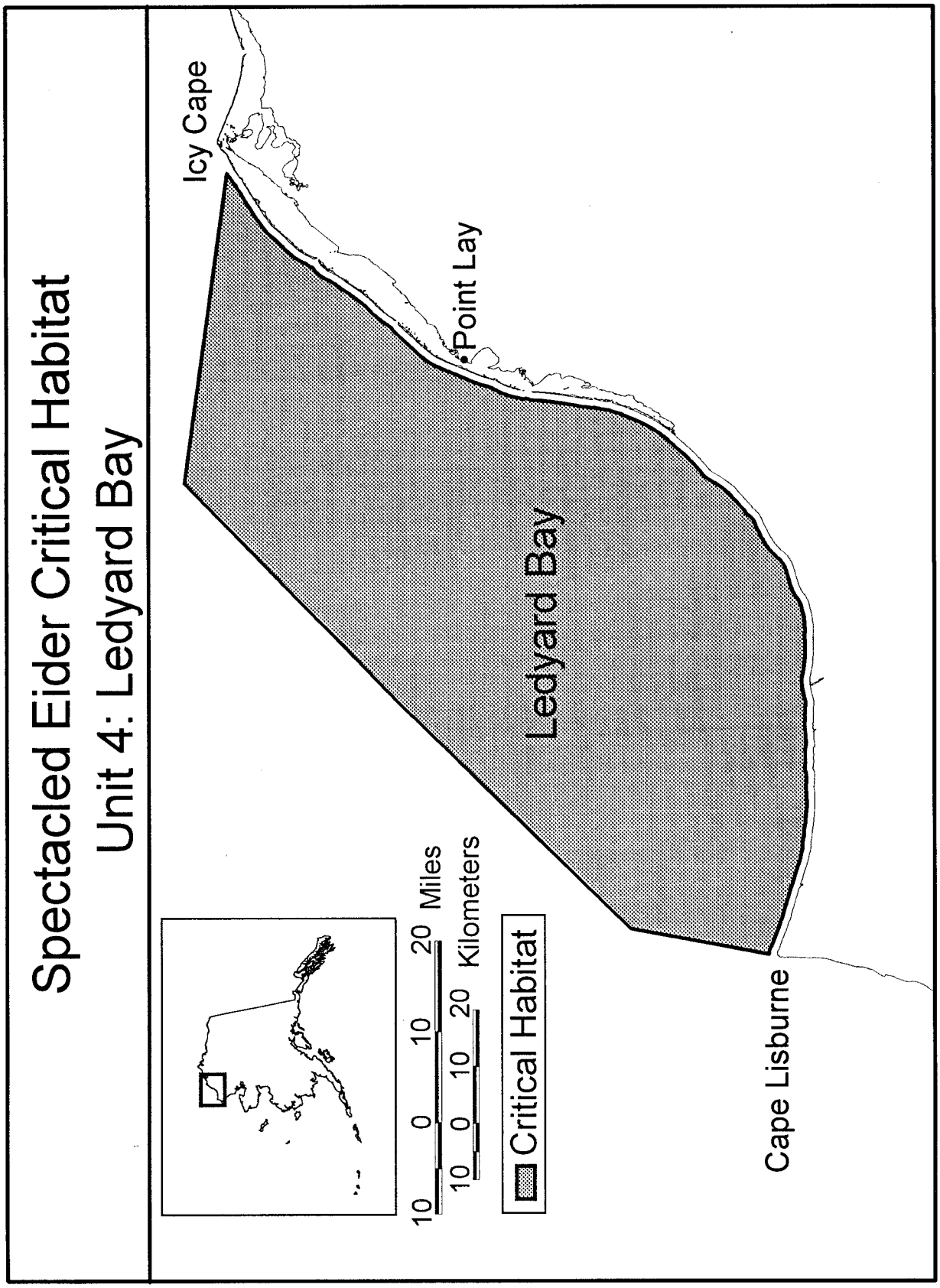

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Unit 4. Ledyard Bay Unit

The area bound by the following description: from the point 1 nm true north of Cape Lisburne (68°54′00″ N x 166°13′00″ W), remaining 1.0 nm offshore of the mean low tide line (maintaining a 1.0 nm buffer from the mean low tide line) of the Alaska coast north and east to 70°20′00″ N x 161°56′11″ W (1 nm offshore of Icy Cape); thence west along the line of latitude 70°20′00″ N to the point 70°20′00″ N x 164°00′00″ W; thence along a great circle route to 69°12′00″ N x 166°13′00″ W; thence due south to the point of origin1 nm true north of Cape Lisburne (68°54′00″ N x 166°13′00″ W).

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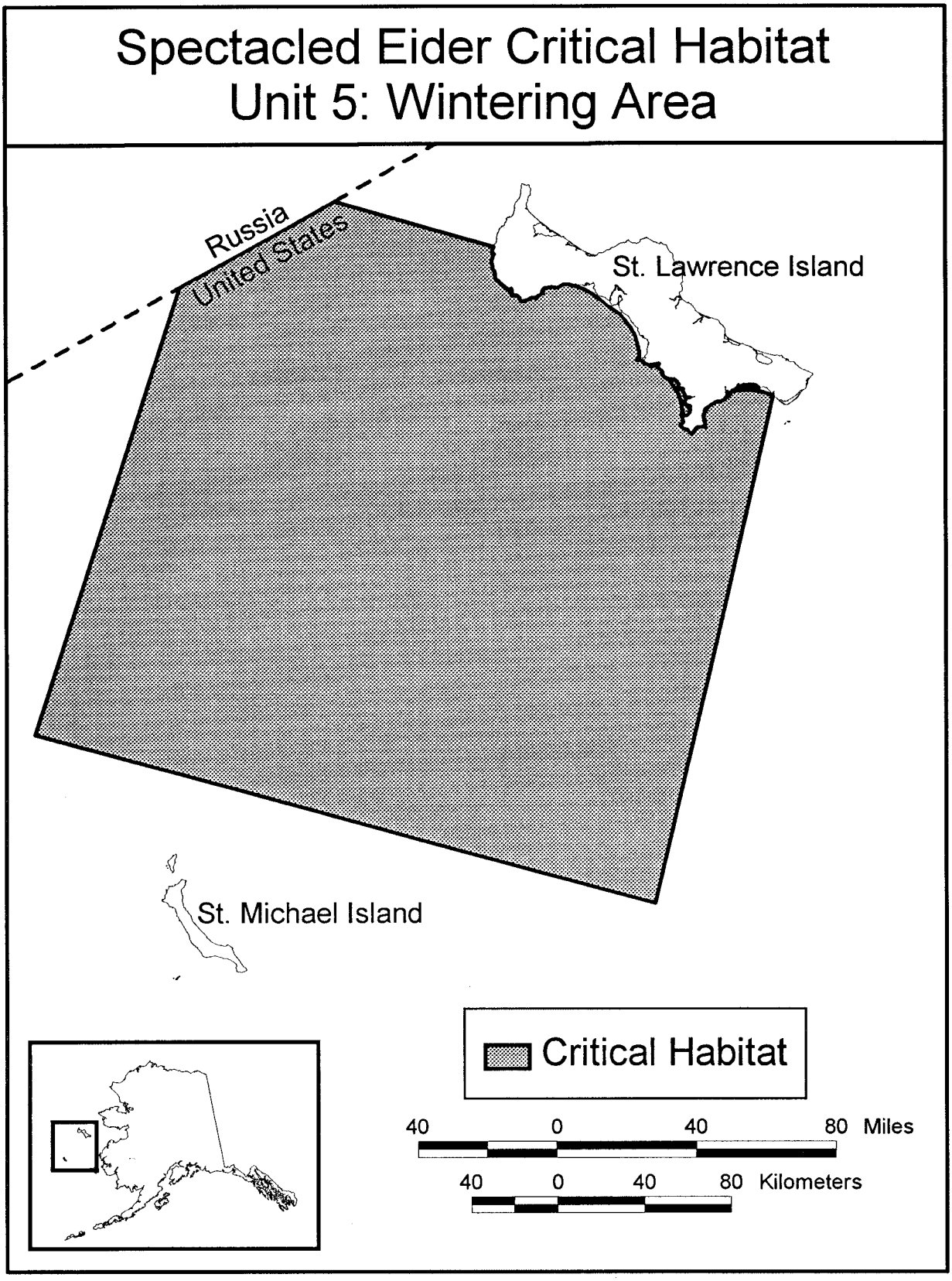

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Unit 5. Wintering Area Unit

The area bound by the following description: from 61°00′00″ N x 174°30′00″ W east along that latitude to 61°00′00″ N x 169°00′00″ W, north along 169°00′00″ W longitude to the south shore of St. Lawrence Island (at 63°10′18″ N x 169°00′00″ W; thence west and north along the mean low tide line of the south shore of St. Lawrence Island to 63°30′00″ N x 171°50′13″ W, west to the U.S.-Russia border at 63°30′00″ N x 173°22′45″ N, southwest along the U.S.-Russia Border to 62°58′10″ N x 174°30′00″ W, south along 174°30′00″ W to 61°00′00″ N x 174°30′00″ W.

* * * * *

Dated: January 10, 2001.

Kenneth L. Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–1342 Filed 2–5–01; 8:45 am]

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Tuesday, February 6, 2001

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

8501–8742.....1
8743–8884.....2
8885–9026.....5
9027–9186.....6

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
No. 2001-10 of January 17, 2001.....8501
No. 2001-11 of January 19, 2001.....8502
Proclamations:
7404.....9025

5 CFR

3101.....8505

7 CFR

246.....8885
271.....8885
272.....8886
273.....8886
278.....8885
770.....8886
1823.....8886
1902.....8886
1951.....8886
1956.....8886

8 CFR

212.....8743

9 CFR

2.....8743
3.....8744
93.....8887

10 CFR

430.....8744, 8745
431.....8745
490.....8746
719.....8746
830.....8746
1040.....8747
1042.....8747
1044.....8747
Proposed Rules:
72.....9055

12 CFR

30.....8616
208.....8616, 8748
211.....8616
225.....8616
263.....8616
308.....8616
364.....8616
568.....8616
570.....8616
1501.....8748

14 CFR

39.....8507, 8750, 8752, 8754, 8756, 8759, 9027, 9029, 9031
Proposed Rules:
71.....8772, 8773

16 CFR

2.....8721
801.....8680
802.....8680
803.....8680
Proposed Rules:
801.....8723
802.....8723

17 CFR

201.....8761
230.....8887, 9002
232.....8764
239.....9002
270.....8509, 9002
274.....9002
Proposed Rules:
228.....8732
229.....8732
240.....8732, 8912
249.....8732, 8912

19 CFR

10.....8765
12.....8765
19.....8765
103.....8765
111.....8765
112.....8765
143.....8765
146.....8765
178.....8765
191.....8765
Proposed Rules:
24.....8554
101.....8554

20 CFR

404.....8768

24 CFR

903.....8897

25 CFR

103.....8898
115.....8768
151.....8899

26 CFR

1.....9034
Proposed Rules:
1.....8614
31.....8614
35.....8614
36.....8614
40.....8614
301.....8614
601.....8614

27 CFR

170.....8768

Proposed Rules:
9.....8925

34 CFR

300.....8770
361.....8770
606.....8519

36 CFR

294.....8899

40 CFR

60.....9034
Proposed Rules:
438.....9058
1610.....8926

42 CFR

411.....8771
424.....8771

47 CFR

27.....9035
51.....8519, 9035
73 .....8520, 9036, 9037, 9038, 9039
79.....8521
90.....8899
Proposed Rules:
51.....8556, 9058
73 .....8557, 8558, 8559, 8560, 9061, 9062
100.....8774

48 CFR

931.....8746
970.....8746
Proposed Rules:
904.....8560
952.....8560
970.....8560

49 CFR

37.....9048
171.....8644
172.....8644
173.....8644
176.....8644

50 CFR

17 .....8530, 8650, 8850, 9146
635.....8903
648.....8904
697.....89806
Proposed Rules:
622.....8567
648.....8560

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 6, 2001

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Opacity continuous emission monitoring system equipment; published 8-10-00

Air quality implementation plans; approval and promulgation; various States:
- Alabama; published 12-8-00

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; published 12-8-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Telecommunications Act of 1996; implementation—
  - Deployment of wireline services offering advanced telecommunications capability; published 2-6-01
- Wireless telecommunications services—746-764 and 776-794 MHz bands; service rules; revision; published 2-6-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 1-22-01
- Bombardier; published 1-22-01
- Eurocopter Deutschland GmbH; published 1-2-01
- MD Helicopters, Inc.; published 1-22-01

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cranberries grown in—
- Massachusetts et al.; comments due by 2-12-01; published 1-12-01

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Rinderpest and foot-and-mouth disease; disease status change—
  - Uruguay; comments due by 2-12-01; published 12-13-00

DEFENSE DEPARTMENT

Acquisition regulations:
- Ball and roller bearings and vessel propellers; domestic source restrictions; comments due by 2-12-01; published 12-13-00

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Open Access Same-Time Information System (OASIS) Phase II; comments due by 2-15-01; published 7-26-00

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Federal-State Joint Board on Universal Service—
  - Children's Internet Protection Act; implmentation; comments due by 2-15-01; published 1-31-01

FEDERAL RESERVE SYSTEM

Bank holding companies and change in bank control (Regulation Y):
- Financial data processing activities, change in conditions that govern conduct; and financial holding companies allowed to own data storage companies; comments due by 2-16-01; published 12-21-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Biological products:
- Blood and blood components—
  - Current good manufacturing practice; consignees and transfusion recipients notified of increased risk of HCV infection transmission ("lookback"); comments due by 2-14-01; published 11-16-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and State health care programs:
- Safe harbor provisions and special fraud alerts; intent to develop regulations; comments due by 2-12-01; published 12-14-00

INTERIOR DEPARTMENT

Land Management Bureau

Minerals management:
- Fee changes; comments due by 2-13-01; published 12-15-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Various plants from Maui and Kahoolawe, HI; comments due by 2-16-01; published 12-18-00
- Sacramento splittail; comments due by 2-12-01; published 1-12-01
- Western sage grouse (Washington population); status review; comments due by 2-16-01; published 1-9-01

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continential Shelf; oil, gas, and sulphur operations:
- Affected State; definition removed; comments due by 2-13-01; published 12-15-00

INTERIOR DEPARTMENT

National Park Service

Historic properties leasing regulations; comments due by 2-12-01; published 12-12-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Indiana; comments due by 2-12-01; published 1-11-01
- West Virginia; comments due by 2-12-01; published 1-12-01

OFFICE OF MANAGEMENT AND BUDGET

Management and Budget Office

Prompt Payment Act; implementation:
- Interest penalties under cost-reimbursement contract for services more than 30 days after receiving proper invoice; comments due by 2-13-01; published 12-15-00

SECURITIES AND EXCHANGE COMMISSION

Securities:
- Acquisition exemption during existence of an Underwriting or Selling Syndicate; comments due by 2-15-01; published 12-6-00

STATE DEPARTMENT

Consular services; fee schedule; comments due by 2-12-01; published 12-14-00

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
- New York Harbor et al., NY; safety zone; comments due by 2-12-01; published 12-13-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
- Reduced vertical separation minimum; comments due by 2-16-01; published 12-18-00

Airworthiness directives:
- Bell; comments due by 2-12-01; published 12-13-00
- Boeing; comments due by 2-12-01; published 12-29-00
- Cessna; comments due by 2-12-01; published 1-8-01
- Empresa Brasileira de Aeronautica S.A.; comments due by 2-12-01; published 1-16-01
- Fokker; comments due by 2-15-01; published 1-16-01
- Pratt & Whitney; comments due by 2-12-01; published 12-12-00
- Rolls-Royce Corp.; comments due by 2-12-01; published 12-12-00
- Rolls-Royce plc; comments due by 2-12-01; published 12-13-00
- Saab; comments due by 2-15-01; published 1-16-01

Standard provisions added and part revised; comments due by 2-12-01; published 1-12-01
Stemme GmbH & Co.; comments due by 2-15-01; published 1-10-01
Airworthiness standards:
Transport category airplanes—
Airplane operating limitations and content of airplace flight manuals; revisions; FAR/JAR harmonization actions; comments due by 2-16-01; published 12-18-00
Braking systems; harmonization with European standards; comments due by 2-16-01; published 12-18-00
Class E airspace; comments due by 2-12-01; published 12-28-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
Fuel system integrity; comments due by 2-12-01; published 12-15-00

TREASURY DEPARTMENT

Customs Service

Financial and accounting procedure:
Harbor Maintenance Fee refunds and other claims against Customs; time limitation; comments due by 2-13-01; published 12-15-00
Inspection, search, and seizure:
Civil asset forfeiture; comments due by 2-12-01; published 12-14-00

TREASURY DEPARTMENT

Foreign Assets Control Office

Russian Federation assets control regulations:
Highly enriched uranium; comments due by 2-12-01; published 1-12-01
Sudanese and Taliban (Afghanistan) sanctions regulations; reporting and procedures regulations; registration of nongovernmental organizations; comments due by 2-12-01; published 1-11-01

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the 106th Congress, Second Session has been completed and will resume when bills are enacted into public law during the next session of Congress.

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