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# Federal Register

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**RESERVATIONS:** 202–523–4538

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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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 537

**RIN 3206–AJ12**

### Repayment of Student Loans: Delay of Effective Date

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rulemaking; 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 Repayment of Student Loans, published in the **Federal Register** on January 11, 2001, [66 FR 2790]. That rule authorizes Federal agencies to repay federally insured student loans when necessary to recruit or retain highly qualified professional, technical, or administrative personnel. To the extent that 5 U.S.C. section 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). Alternately, 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. section 552(b)(B) and 553(d)(3) seeking public comment is impracticable, unnecessary and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department 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 action effective immediately upon publication.

**DATES:** The effective date of the Repayment of Student Loans, published in the **Federal Register** on January 11, 2001, at 66 FR 2790, is delayed for 60 days, from February 12, 2001, to a new effective date of April 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Mahoney, Personnel Staffing Specialist, Office of Personnel Management, Theodore Roosevelt Building, 1900 E St. NW., Washington, DC 20415 (202) 606–0830 (FAX 202–606–0390).

U.S. Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01–3104 Filed 2–6–01; 8:45 am]

**BILLING CODE 6325–38–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 308

**RIN 3064–AB41**

### Program Fraud

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The Board of Directors of the Federal Deposit Insurance Corporation is implementing the Program Fraud Civil Remedies Act (PFCRA) of 1986 by means of a regulation. The final rule establishes administrative procedures to impose statutorily authorized civil penalties against any person who makes, submits, or presents a false, fictitious, or fraudulent statement or claim (in the amount of $150,000 or less for property, services, or money) to the FDIC in connection with FDIC employment matters, FDIC contracting activities, and the FDIC Asset Purchaser Certification Program. The scope of the final rule is expressly limited to exclude programs and activities of the FDIC (other than as set forth in the preceding sentence) that are related to FDIC regulatory, supervision, enforcement, insurance, receivership and liquidation matters.

**EFFECTIVE DATE:** March 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Linda Rego, Counsel, Corporate Affairs Section, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429, (202) 898–7048.

**SUPPLEMENTARY INFORMATION:**

#### I. The Proposed Rule

On August 29, 2000, the FDIC Board of Directors issued for public comment a proposed rule that would amend 12 CFR part 308 by adding a new subpart T implementing PFCRA, 65 FR 52352. The FDIC did not receive any comment letters regarding the proposed rule. As a result, the final regulation mirrors the proposed rule and no substantive changes have been made in the regulation.

#### II. Background

In October 1986, Congress enacted PFCRA [1] to establish a new administrative procedure as a remedy against those who knowingly make small dollar false claims for up to and including $150,000 or false statements to certain entities of the federal government. The statute requires the affected entities to adopt regulations that establish procedures to recover penalties and assessments against persons who file false claims or statements subject to PFCRA. The FDIC is subject to the requirements of the PFCRA pursuant to the Resolution Trust Corporation Completion Act (Pub. L. 103–204, 107 Stat. 2369), enacted December 20, 1993.

The FDIC is required by the PFCRA to promulgate the necessary rules and regulations to implement its provisions. To facilitate the implementation process and to promote uniformity in the government, an interagency task force was established by the President's Council on Integrity and Efficiency to develop model regulations for implementation of the PFCRA. The FDIC is adopting the model regulations set forth by the Council's taskforce with certain substantive changes necessary

[1] The Program Fraud Civil Remedies Act was originally enacted as subtitle VI(B) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, 100 Stat. 1874) and is codified at 31 U.S.C. 3801 *et seq.*

due to the FDIC's status as an independent regulatory agency. Further, certain revisions have been made in order for the FDIC to comply with the requirement of section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, title VII, 113 Stat. 1472 (Nov. 12, 1999), codified at 12 U.S.C. 4809, for all regulations issued by the FDIC after January 1, 2000 to be written in ''plain language.''

The final rule applies to anyone who, with knowledge or reason to know, submits a false, fictitious, or fraudulent statement or claim in the amount of $150,000 or less for property, services, or money to the FDIC in connection with FDIC employment matters, contracting activities and the FDIC Asset Purchaser Certification Program.

The FDIC's implementation of the PFCRA is based on Congress's underlying purpose in enacting the PFCRA, which was to provide federal agencies with an administrative remedy for ''small dollar fraud'' cases for which there is no other remedy because the cases are too small for the United States Department of Justice (DOJ) to prosecute. Absent DOJ's prosecution, individuals who commit small dollar frauds against the government would profit from their wrongdoing because most agencies lack independent litigating authority. PFCRA was designed to remedy that problem.

The FDIC is different from most agencies because, pursuant to 12 U.S.C. 1819(a) Fourth, the FDIC has independent litigating authority and may pursue legal remedies through its own attorneys. The FDIC is particularly independent from representation by the DOJ when it is enforcing statutes governing financial institutions and in its receivership/liquidation activities.

Moreover, the FDIC has special administrative remedies available to it for the imposition of civil money penalties in cases relating to the FDIC's supervision and regulation of financial institutions. With respect to deposit insurance, since insurance coverage for financial institutions and deposit insurance payments to depositors are not federal benefit programs or federal payments for other purposes, PFCRA should not be applied. Furthermore, if fraud were ever to occur concerning the FDIC paying off a depositor of a failed financial institution, the FDIC would rely upon its independent litigating authority to bring an action in federal court to recover the precise amount of the insurance payment. A civil penalty procedure would not be particularly useful. For these reasons, FDIC's implementation of the PFCRA only to FDIC employment matters, FDIC contracting activities and the FDIC Asset Purchaser Certification Program recognizes Congress's intent that PFCRA provide administrative remedies for cases where the FDIC may have no other viable monetary remedy. The scope of the final rule is also limited to clearly exclude claims and statements pertaining to deposit insurance.

The PFCRA provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review. In accordance with these requirements, the FDIC's final rule provides that the Inspector General (IG) or a designee will act as the Investigating Official; the General Counsel or a designee will serve as the Reviewing Official; an administrative law judge provided by the Office of Financial Institution Adjudication will be the Presiding Officer; and the Board of Directors of the FDIC will act as Authority Head on appeals.

Under the final rule, allegations of false claims and statements made to the FDIC in connection with FDIC employment matters and contracting activities, including asset sale contracting activities, will be investigated by the FDIC IG or designee. In cases where the IG concludes that a PFCRA action may be warranted, the IG will submit a report containing the IG's findings and conclusions to the Reviewing Official (the General Counsel or designee) for an evaluation of whether there is adequate evidence to believe that the person named in the report is liable under PFCRA. Upon an affirmative finding of adequate evidence, the Reviewing Official will send written notice to DOJ of the FDIC's desire to seek administrative remedies. Upon DOJ's approval for the FDIC to proceed with an administrative action, a complaint may be issued by the reviewing official and the case referred to an Administrative Law Judge (ALJ) for a formal hearing on the record in accordance with the procedures established in this final rule. The ALJ will issue an initial decision. An alleged wrongdoer may appeal an adverse decision issued by the ALJ to the Board, and then to federal district court.

In addition to providing procedures for dealing with the filing of false claims or statements, § 308.502(c) of the final rule provides procedures for assessing civil penalties against those doing business with the FDIC who intentionally fail to file declarations and/or certifications required by law. The provision carries out the statutory mandate of the so-called ''Byrd Amendment'' [2] (31 U.S.C. 1352) that the failure to file a declaration and/or certification concerning lobbying activities which is required by that statute is punishable using procedures adopted pursuant to the PFCRA. The same is true for any affirmative false statements concerning lobbying activities.

The procedures are established by adding a new subpart to 12 CFR part 308, subpart T. The procedures set forth in subpart T apply only to proceedings under PFCRA or 31 U.S.C. 1352. Further, a technical amendment is adopted to make it clear that the Uniform Rules and subpart B of the Local Rules under part 308 do not apply to proceedings initiated under subpart T.

### III. Debt Collection Improvement Act of 1996

The Debt Collection Improvement Act of 1996 provides for the FDIC adjusting civil money penalties every four years in accordance with a formula based on the rate of inflation, which is set forth in section 5 of 28 U.S.C. 2461, note. The final rule includes paragraph (d) to 12 CFR 308.530, determining the amount of penalties and assessments. The paragraph states that civil money penalties that may be assessed for PFCRA violations under the subpart are subject to adjustment on a four-year basis to account for inflation and cross-references 12 CFR 308.132(c)(3)(xv), which sets forth the current amount of the civil money penalty that may be assessed. The amount of civil money penalties that the FDIC may access for PFCRA violations has been adjusted for inflation in 12 CFR 308.132(c)(3)(xv) from the statutory amount of $5,000 per claim or statement to an amount that is currently $5,500. A conforming technical amendment to 12 CFR 308.132(c)(3)(xv) is adopted, which changes the phrase ''$5,500 per day'' to correctly state ''$5,500 per claim or statement.''

[2] The Byrd Amendment prohibits recipients of federal contracts, grants, loans, or cooperative agreements from using funds appropriated by any act for lobbying of agency officials or employees and members of Congress in connection with the making, awarding, extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement. The Byrd Amendment also provides for certain disclosures, declarations and/or certifications concerning lobbying activities, in connection with federal contracts, grants, or loans, whether or not appropriated funds are used. These requirements apply to all persons who request or receive a federal contract, grant, or cooperative agreement valued at $100,000 or greater, and persons who request or receive a loan of at least $150,000.

### IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The FDIC has reached this conclusion because the rule imposes no compliance or regulatory requirements but applies only when the FDIC determines that a false claim has been knowingly filed and pursues a PFCRA action to recover penalties and assessments.

### V. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

### VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998). No assessment or certification to the OMB and Congress is required.

### VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a ''major rule'' as defined by SBREFA.

For the reasons set forth in the preamble, the FDIC amends part 308 of title 12 of chapter III of the Code of Federal Regulations as follows:

### Lists of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Hearing procedure, Investigations, Lawyers, Penalties, State nonmember banks.

## PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1817, 1818, 1820, 1828, 1829, 1829b, 1831o, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 3809, 5321; 42 U.S.C. 4012a; sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–358.

2. Revise § 308.101(b) to read as follows:

**§ 308.101 Scope of Local Rules.**

* * * * *

(b) Except as otherwise specifically provided, the Uniform Rules and subpart B of the Local Rules shall not apply to subparts D through T of the Local Rules.

* * * * *

3. Revise § 308.132(c)(3)(xv) to read as follows:

**§ 308.132 Assessment of penalties.**

* * * * *

(c) * * *

(3) * * *

(xv) Civil money penalties assessed for false claims and statements pursuant to the Program Fraud Civil Remedies Act. Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than $5,500 per claim or statement may be assessed for violations involving false claims and statements.

* * * * *

4. Add new subpart T to read as follows:

### Subpart T—Program Fraud Civil Remedies and Procedures

Sec.

308.500 Basis, purpose, and scope.
308.501 Definitions.
308.502 Basis for civil penalties and assessments.
308.503 Investigations.
308.504 Review by the reviewing official.
308.505 Prerequisites for issuing a complaint.
308.506 Complaint.
308.507 Service of complaint.
308.508 Answer.
308.509 Default upon failure to file an answer.
308.510 Referral of complaint and answer to the ALJ.
308.511 Notice of hearing.
308.512 Parties to the hearing.
308.513 Separation of functions.
308.514 Ex parte contacts.
308.515 Disqualification of reviewing official or ALJ.
308.516 Rights of parties.
308.517 Authority of the ALJ.
308.518 Prehearing conferences.
308.519 Disclosure of documents.
308.520 Discovery.
308.521 Exchange of witness lists, statements, and exhibits.
308.522 Subpoenas for attendance at hearing.
308.523 Protective order.
308.524 Witness fees.
308.525 Form, filing, and service of papers.
308.526 Computation of time.
308.527 Motions.
308.528 Sanctions.
308.529 The hearing and burden of proof.
308.530 Determining the amount of penalties and assessments.
308.531 Location of hearing.
308.532 Witnesses.
308.533 Evidence.
308.534 The record.
308.535 Post-hearing briefs.
308.536 Initial decision.
308.537 Reconsideration of initial decision.
308.538 Appeal to the Board of Directors.
308.539 Stays ordered by the Department of Justice.
308.540 Stay pending appeal.
308.541 Judicial review.
308.542 Collection of civil penalties and assessments.
308.543 Right to administrative offset.
308.544 Deposit in Treasury of United States.
308.545 Compromise or settlement.
308.546 Limitations.

### Subpart T—Program Fraud Civil Remedies and Procedures

**§ 308.500 Basis, purpose, and scope.**

(a) *Basis.* This subpart implements the Program Fraud Civil Remedies Act, Pub. L. 99-509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812, (PFCRA) and made applicable to the Federal Deposit Insurance Corporation (FDIC) by section 23 of the Resolution Trust Corporation Completion Act (Pub. L. 103–204, 107 Stat. 2369). 31 U.S.C. 3809 of the statute requires each Authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This subpart:

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present or cause to be made, submitted, or presented false, fictitious, or fraudulent claims or written statements to the FDIC or to its agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

(c) *Scope.* This subpart applies only to persons who make, submit, or present or cause to be made, submitted, or presented false, fictitious, or fraudulent claims or written statements to the FDIC or to its agents acting on behalf of the

FDIC in connection with FDIC employment matters, FDIC contracting activities, and the FDIC Asset Purchaser Certification Program. It does not apply to false claims or statements made in connection with programs (other than as set forth in the preceding sentence) related to the FDIC's regulatory, supervision, enforcement, insurance, receivership or liquidation responsibilities. The FDIC is restricting the scope of applicability of this subpart because other civil and administrative remedies are adequate to redress fraud in the areas not covered.

**§ 308.501 Definitions.**

For purposes of this subpart:

(a) *Administrative Law Judge (ALJ)* means the presiding officer appointed by the Office of Financial Institution Adjudication pursuant to 12 U.S.C. 1818 note and 5 U.S.C. 3105.

(b) *Authority* means the Federal Deposit Insurance Corporation (FDIC).

(c) *Authority head* or *Board* means the Board of Directors of the FDIC, which is herein designated by the Chairman of the FDIC to serve as head of the FDIC for PFCRA matters.

(d) *Benefit* means, in the context of ''statement'' as defined in 31 U.S.C. 3801(a)(9), any financial assistance received from the FDIC that amounts to $150,000 or less. The term does not include the FDIC's deposit insurance program.

(e) *Claim* means any request, demand, or submission:

(1) Made to the FDIC for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the FDIC or to a party to a contract with the FDIC;

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services;

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the FDIC that has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) *Complaint* means the administrative complaint served by the reviewing official on the defendant under § 308.506 of this subpart.

(g) *Corporation* means the Federal Deposit Insurance Corporation.

(h) *Defendant* means any person alleged in a complaint under § 308.506 of this subpart to be liable for a civil penalty or assessment under § 308.502 of this subpart.

(i) *Government* means the United States Government.

(j) *Individual* means a natural person.

(k) *Initial decision* means the written decision of the ALJ required by § 308.509 or § 308.536 of this subpart, and includes a revised initial decision issued following a remand or a motion for consideration.

(l) *Investigating official* means the Inspector General of the FDIC, or an officer or employee of the Inspector General designated by the Inspector General. The investigating official must serve in a position that has a rate of basic pay under the pay scale utilized by the FDIC that is equal to or greater than 120 percent of the minimum rate of basic pay for grade 15 under the federal government's General Schedule.

(m) *Knows or has reason to know*, means that a person, with respect to a claim or statement:

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(n) *Makes*, wherever it appears, includes the terms ''presents'', ''submits'', and ''causes to be made, presented, or submitted.'' As the context requires, ''making'' or ''made'' likewise includes the corresponding forms of such terms.

(o) *Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(p) *Representative* means an attorney, who is a member in good standing of the bar of any state, territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, and designated by a party in writing.

(q) *Reviewing official* means the General Counsel of the FDIC or his designee who is:

(1) Not subject to supervision by, or required to report to, the investigating official;

(2) Not employed in the organizational unit of the FDIC in which the investigating official is employed; and

(3) Serving in a position that has a rate of basic pay under the pay scale utilized by the FDIC that is equal to or greater than 120 percent of the minimum rate of basic pay for grade 15 under the federal government's General Schedule.

(r) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for):

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit received, directly or indirectly, from the FDIC, or any state, political subdivision of a state, or other party, if the United States government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the government will reimburse such state, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

**§ 308.502 Basis for civil penalties and assessments.**

(a) *Claims.* (1) A person who makes a false, fictitious, or fraudulent claim to the FDIC is subject to a civil penalty of up to $5,000 per claim. A claim is false, fictitious, or fraudulent if the person making the claim knows, or has reason to know, that:

(i) The claim is false, fictitious, or fraudulent; or

(ii) The claim includes, or is supported by, a written statement that asserts a material fact which is false, fictitious or fraudulent; or

(iii) The claim includes, or is supported by, a written statement that:

(A) Omits a material fact; and

(B) Is false, fictitious, or fraudulent as a result of that omission; and

(C) Is a statement in which the person making the statement has a duty to include the material fact; or

(iv) The claim seeks payment for providing property or services that the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim will be considered made to the FDIC, recipient, or party when the claim is actually made to an agent, fiscal intermediary, or other entity, including any state or political subdivision thereof, acting for or on behalf of the FDIC, recipient, or party.

(4) Each claim for property, services, or money that constitutes any one of the elements in paragraph (a)(1) of this section is subject to a civil penalty regardless of whether the property, services, or money is actually delivered or paid.

(5) If the FDIC has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section will also be subject to an assessment of not more than twice the amount of such claim (or portion of the claim) that is determined to constitute a false, fictitious, or fraudulent claim under paragraph (a)(1) of this section. The assessment will be in lieu of damages sustained by the FDIC because of the claims.

(6) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(c)(3)(xv) of this part.

(7) The penalty specified in paragraph (a)(1) of this section is in addition to any other remedy allowable by law.

(b) *Statements.* (1) A person who submits to the FDIC a false, fictitious or fraudulent statement is subject to a civil penalty of up to $5,000 per statement. A statement is false, fictitious or fraudulent if the person submitting the statement to the FDIC knows, or has reason to know, that:

(i) The statement asserts a material fact which is false, fictitious, or fraudulent; or

(ii) The statement omits a material fact that the person making the statement has a duty to include in the statement; and

(iii) The statement contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement will be considered made to the FDIC when the statement is actually made to an agent, fiscal intermediary, or other entity, including any state or political subdivision thereof, acting for or on behalf of the FDIC.

(4) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(c)(3)(xv) of this part.

(5) The penalty specified in paragraph (a)(1) of this section is in addition to any other remedy allowable by law.

(c) *Failure to file declaration/certification.* Where, as a prerequisite to conducting business with the FDIC, a person is required by law to file one or more declarations and/or certifications, and the person intentionally fails to file such declaration/certification, the person will be subject to the civil penalties as prescribed by this subpart.

(d) *Intent.* No proof of specific intent to defraud is required to establish liability under this section.

(e) *Liability.* (1) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held jointly and severally liable for a civil penalty under this section.

(2) In any case in which it is determined that more than one person is liable for making a claim under this section on which the FDIC has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

### § 308.503 Investigations.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted:

(1) The subpoena will identify the person to whom it is addressed and the authority under which the subpoena is issued and will identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena will be required to provide the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available, and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the PFCRA may be warranted, the investigating official will submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section will preclude or limit an investigating official's discretion to refer allegations directly to the United States Department of Justice (DOJ) for suit under the False Claims Act (31 U.S.C. 3729 *et seq.*) or other civil relief, or to preclude or limit the investigating official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

### § 308.504 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 308.503(b) of this subpart, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 308.502 of this subpart, the reviewing official will transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 308.506 of this subpart.

(b) Such notice will include:

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 308.502 of this subpart;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known, or upon an absence of any information indicating that the person may be unable to pay such amount.

### § 308.505 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 308.506 of this subpart only if:

(1) The DOJ approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 308.502(a) of this subpart with respect to a claim (or a group of related claims submitted at the same time as defined in paragraph (b) of this section) the reviewing official determines that the amount of money or the value of property or services demanded or requested does not exceed $150,000.

(b) For the purposes of this section, a group of related claims submitted at the same time will include only those

claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section will be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

**§ 308.506 Complaint.**

(a) On or after the date the DOJ approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 308.507 of this subpart.

(b) The complaint will state:

(1) The allegations of liability against the defendant, including the statutory basis for liability, or identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer and to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 308.509 of this subpart.

(c) At the same time the reviewing official serves the complaint, he or she will provide the defendant with a copy of this subpart.

**§ 308.507 Service of complaint.**

(a) Service of a complaint will be made by certified or registered mail or by delivery in any manner authorized by rule 4(c) of the Federal Rules of Civil Procedure (28 U.S.C. App.). Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

**§ 308.508 Answer.**

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer will be deemed to be a request for hearing.

(b) In the answer, the defendant:

(1) Must admit or deny each of the allegations of liability made in the complaint;

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided:

(1) The defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section.

(2) The reviewing official will file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 308.510 of this subpart.

(3) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

**§ 308.509 Default upon failure to file an answer.**

(a) If the defendant does not file an answer within the time prescribed in § 308.508(a) of this subpart, the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ will promptly serve on defendant in the manner prescribed in § 308.507 of this subpart, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ will assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 308.502 of this subpart, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision will become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision will be stayed pending the ALJ's decision on the motion.

(f) If, in the motion to reopen under paragraph (e) of this section, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ will withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and will grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion to reopen under paragraph (e) of this section is not subject to reconsideration under § 308.537 of this subpart.

(h) The decision denying the motion to reopen under paragraph (e) of this section may be appealed by the defendant to the Board by filing a notice of appeal with the Board within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal will stay the initial decision until the Board decides the issue.

(i) If the defendant files a timely notice of appeal with the Board, the ALJ will forward the record of the proceeding to the Board.

(j) The Board will decide whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Board decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Board will remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Board decides that the defendant's failure to file a timely answer is not excused, the Board will reinstate the initial decision of the ALJ, which will become final and binding upon the parties 30 days after the Board issues such decision.

**§ 308.510 Referral of complaint and answer to the ALJ.**

Upon receipt of an answer, the reviewing official will file the complaint and answer with the ALJ. The reviewing official will include the name, address, and telephone number of a representative of the Corporation.

**§ 308.511 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ will promptly serve a notice of hearing upon the defendant in the manner prescribed by § 308.507 of this subpart. At the same time, the ALJ will send a copy of such notice to the representative of the Corporation.

(b) The notice will include:

(1) The tentative time, date, and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Corporation and of the defendant, if any; and

(6) Other matters as the ALJ deems appropriate.

**§ 308.512 Parties to the hearing.**

(a) The parties to the hearing will be the defendant and the Corporation.

(b) Pursuant to the False Claims Act (31 U.S.C. 3730(c)(5)), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

**§ 308.513 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the FDIC who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Board, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ will not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the FDIC will be an attorney employed in the FDIC's Legal Division; however, the representative of the FDIC may not participate or advise in the review of the initial decision by the Board.

**§ 308.514 Ex parte contacts.**

No party or person (except employees of the ALJ's office) will communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 308.515 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. An affidavit alleging conflict of interest or other reason for disqualification must accompany the motion.

(c) Such motion and affidavit must be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections will be deemed waived.

(d) Such affidavit must state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. The representative of record must certify that the affidavit is made in good faith and this certification must accompany the affidavit.

(e) Upon the filing of such a motion and affidavit, the ALJ will proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case will be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Board may determine the matter only as part of the Board's review of the initial decision upon appeal, if any.

**§ 308.516 Rights of parties.**

Except as otherwise limited by this subpart, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law which will be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law.

**§ 308.517 Authority of the ALJ.**

(a) The ALJ will conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(12) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(13) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this subpart.

(c) The ALJ does not have the authority to make any determinations regarding the validity of federal statutes or regulations or of directives, rules, resolutions, policies, orders or other such general pronouncements issued by the Corporation.

**§ 308.518 Prehearing conferences.**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ will schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleading, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses (subject to the objection of other parties) to waive appearance at an oral hearing and to submit only documentary evidence and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time, date, and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

**§ 308.519 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 308.503(b) of this subpart are based, unless such documents are subject to a privilege under federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 308.504 of this subpart is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 308.508 of this subpart.

**§ 308.520 Discovery.**

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admission of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 308.521 and 308.522 of this subpart, the term *documents* includes information, documents, reports, answers, records, accounts, papers, and other data or documentary evidence. Nothing contained in this subpart will be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ will regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ and a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition, must accompany such motions.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 308.523 of this subpart.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 308.523 of this subpart.

(e) *Dispositions.* (1) If a motion for deposition is granted, the ALJ will issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena will specify the time, date, and place at which the deposition will be held.

(2) The party seeking to depose must serve the subpoena in the manner prescribed in § 308.507 of this subpart.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within 10 days of service.

(4) The party seeking to depose must provide for the taking of a verbatim transcript of the deposition, and must make the transcript available to all other parties for inspection and copying.

(f) Each party must bear its own costs of discovery.

**§ 308.521 Exchange of witness lists, statements, and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties must exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 308.532(b) of this subpart. At the time such documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, must provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided in paragraph (a) of this section unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

**§ 308.522 Subpoenas for attendance at hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena must file a written request not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request must specify any documents to be produced and must designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena must specify the time, date, and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena must serve it in the manner prescribed in § 308.507 of this subpart. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service or on or before the time specified in the

subpoena for compliance if it is less than 10 days after service.

**§ 308.523 Protective order.**

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery will not be conducted;

(2) That the discovery will be conducted only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery will be conducted only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed or otherwise kept confidential;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

**§ 308.524 Witness fees.**

The party requesting a subpoena must pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage must accompany the subpoena when served, except that when a subpoena is issued on behalf of the FDIC, a check for witness fees and mileage need not accompany the subpoena.

**§ 308.525 Form, filing, and service of papers.**

(a) *Form.* (1) Documents filed with the ALJ must include an original and two copies.

(2) Every pleading and paper filed in the proceeding must contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.,* motion to quash subpoena).

(3) Every pleading and paper must be signed by, and must contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed by certified or registered mail. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ must, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 308.507 of this subpart must be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service must be made upon such representative in lieu of the actual party. The ALJ may authorize facsimile transmission as an acceptable form of service.

(c) *Proof of service.* A certificate by the individual serving the document by personal delivery or by mail, setting forth the manner of service, will be proof of service.

**§ 308.526 Computation of time.**

(a) In computing any period of time under this subpart or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the federal government will be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

**§ 308.527 Motions.**

(a) Any application to the ALJ for an order or ruling must be by motion. Motions must state the relief sought, the authority relied upon, and the facts alleged, and must be filed with the ALJ and served on all other parties. Motions may include, without limitation, motions for summary judgment.

(b) Except for motions made during a prehearing conference or at the hearing, all motions must be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or any other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ will make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

**§ 308.528 Sanctions.**

(a) The ALJ may sanction a person, including any party or representative for:

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to, those listed in paragraphs (c), (d), and (e) of this section, must reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the related pleading or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this subpart commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief, or

other document which is not filed in a timely fashion.

**§ 308.529 The hearing and burden of proof.**

(a) The ALJ will conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 308.502 of this subpart, and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The FDIC must prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

**§ 308.530 Determining the amount of penalties and assessments.**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Board, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Board in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statement) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in a similar transaction;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a state, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section will be construed to limit the ALJ or the Board from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

(d) Civil money penalties that are assessed pursuant to this subpart are subject to adjustment on a four-year basis to account for inflation as required by section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (codified at 28 U.S.C. 2461, note) (*see also* 12 CFR 308.132(c)(3)(xv)).

**§ 308.531 Location of hearing.**

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement at issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party will have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing will be held at the place and at the time ordered by the ALJ.

**§ 308.532 Witnesses.**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing will be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. The party offering a written statement must provide all other parties with a copy of the written statement along with the last known address of the witness. Sufficient time must be allowed for other parties to subpoena the witness for cross-examination at the hearing. Prior written statements and deposition transcripts of witnesses identified to testify at the hearing must be exchanged as provided in § 308.521(a) of this subpart.

(c) The ALJ will exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ will permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination will be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ will order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Corporation engaged in assisting the representative for the Corporation.

**§ 308.533 Evidence.**

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this subpart, the ALJ will not be bound by the Federal Rules of Evidence (28 U.S.C. App.). However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ will exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under federal law.

(f) Evidence concerning offers of compromise or settlement will be inadmissible to the extent provided in rule 408 of the Federal Rules of Evidence.

(g) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record must be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 308.523 of this subpart.

**§ 308.534 The record.**

(a) The hearing will be recorded by audio or videotape and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Board.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 308.523 of this subpart.

**§ 308.535 Post-hearing briefs.**

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ will fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

**§ 308.536 Initial decision.**

(a) The ALJ will issue an initial decision based only on the record, which will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact will include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions of such claims or statements, violate § 308.502 of this subpart; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 308.530 of this subpart.

(c) The ALJ will promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ will at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Board. If the ALJ fails to meet the deadline contained in this paragraph, he or she will notify the parties of the reason for the delay and will set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Board, or a motion for reconsideration of the initial decision is timely filed, the initial decision will constitute the final decision of the Board and will be final and binding on the parties 30 days after it is issued by the ALJ.

**§ 308.537 Reconsideration of initial decision.**

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service is made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of proof to the contrary.

(b) Every motion for reconsideration must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Responses to the motions will be allowed only upon order of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision will constitute the final decision of the FDIC and will be final and binding on all parties 30 days after the ALJ denies the motion, unless the final decision is timely appealed to the Board in accordance with § 308.538 of this subpart.

(g) If the ALJ issues a revised initial decision, that decision will constitute the final decision of the FDIC and will be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Board in accordance with § 308.538 of this subpart.

**§ 308.538 Appeal to the Board of Directors.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Board by filing a notice of appeal with the Board in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 308.537 of this subpart has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Board may extend the initial 30-day period for an additional 30 days if the defendant files with the Board a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Board, the ALJ will forward the record of the proceeding to the Board.

(d) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Corporation may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Board.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Board will not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Board that additional

evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Board will remand the matter to the ALJ for consideration of such additional evidence.

(j) The Board may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The Board will promptly serve each party to the appeal with a copy of the decision of the Board and a statement describing the right of any person determined to be liable for a penalty or an assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this subpart and within 60 days after the date on which the Board serves the defendant with a copy of the Board's decision, a determination that a defendant is liable under § 308.502 of this subpart is final and is not subject to judicial review.

**§ 308.539 Stays ordered by the Department of Justice.**

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Board a written finding that continuation of the administrative process described in this subpart with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Board will stay the process immediately. The Board may order the process resumed only upon receipt of the written authorization of the Attorney General.

**§ 308.540 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Board.

(b) No administrative stay is available following a final decision of the Board.

**§ 308.541 Judicial review.**

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Board imposing penalties or assessments under this subpart and specifies the procedures for such review.

**§ 308.542 Collection of civil penalties and assessments.**

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this subpart and specify the procedures for such actions.

**§ 308.543 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 308.541 or § 308.542 of this subpart, or any amount agreed upon in a compromise or settlement under § 308.545 of this subpart, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of federal taxes, then or later owing by the United States to the defendant.

**§ 308.544 Deposit in Treasury of United States.**

All amounts collected pursuant to this subpart will be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 308.545 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this subpart at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Board has exclusive authority to compromise or settle a case under this subpart any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 308.541 of this subpart or during the pendency of any action to collect penalties and assessments under § 308.542 of this subpart.

(d) The Attorney General has exclusive authority to compromise or settle a case under this subpart during the pendency of any review under § 308.541 of this subpart or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Board, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Board, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 308.546 Limitations.**

(a) The notice of hearing with respect to a claim or statement will be served in the manner specified in § 308.507 of this subpart within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of notice under § 308.509(b) of this subpart will be deemed a notice of a hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

By order of the Board of Directors.

Dated at Washington, DC, this 19th day of January, 2001.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 01–3168 Filed 2–6–01; 8:45 am]

BILLING CODE 6714–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Parts 655 and 940

**[FHWA Docket No. FHWA–99–5899]**

**RIN 2125–AE65**

## Intelligent Transportation System Architecture and Standards: Delay of Effective Date

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**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 Intelligent Transportation System Architecture and Standards, published in the **Federal Register** on January 8, 2001, 66 FR 1446. The rule concerns Intelligent Transportation System (ITS) projects carried out using funds made available from the Highway Trust Fund. This rule requires regions which have implemented ITS or are planning ITS implementations to develop a regional ITS architecture, based on the National ITS Architecture, to guide their implementation.

**EFFECTIVE DATE:** The effective date of the Intelligent Transportation System Architecture and Standards rule, published in the **Federal Register** on January 8, 2001, at 66 FR 1446, is delayed for 60 days, from February 7, 2001, to a new effective date of April 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mr. Robert Rupert, Office of Travel Management (HOTM–1), (202) 366–2194 and Mr.

Michael Freitas, (202) 366–9292, ITS Joint Program Office (HOIT–1). For legal information: Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–32), (202) 366–1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the FHWA's implementation of this rule 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. section 553(b)(B) and 553 (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of the 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 action effective immediately upon publication.

Issued on: January 31, 2001.

**Anthony R. Kane,**

*Executive Director.*

[FR Doc. 01–3206 Filed 2–2–01; 4:50 pm]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**RIN 0720–AA57**

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Methodology for Coverage of Phase II and Phase III Clinical Trials Sponsored by the National Institutes of Health

**AGENCY:** Department of Defense.

**ACTION:** Final rule; withdrawal.

**SUMMARY:** The Department of Defense published a final rule on Methodology for Coverage of Phase II and Phase III Clinical Trials Sponsored by the National Institutes of Health. This rule should not have been published in accordance with the Regulatory Review Plan, therefore, this document is published to withdraw the rule.

**DATES:** The rule published on Wednesday, January 31, 2001 at 66 FR 8365 is withdrawn as of February 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Patricia Collins, 703–681–0039

Dated: January 30, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison, Department of Defense.*

[FR Doc. 01–3034 Filed 2–6–01; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD01–01–008]**

### Drawbridge Operation Regulations: Harlem River, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Macombs Dam Bridge, at mile 3.2, across the Harlem River at New York City, New York. This deviation allows the bridge owner to keep the bridge in the closed position from February 1, 2001 through April 1, 2001. This action is necessary to facilitate maintenance at the bridge.

**DATES:** This deviation is effective from February 1, 2001 through April 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

**SUPPLEMENTARY INFORMATION:** The Macombs Dam Bridge, at mile 3.2, across the Harlem River, has a vertical clearance of 27 feet at mean high water, and 32 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.789(c).

The bridge owner, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate the necessary structural maintenance at the bridge. This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from February 1, 2001 through April 1, 2001.

Thirty days notice to the Coast Guard for approval of this maintenance repair was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay.

Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 25, 2001.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 01–3109 Filed 2–6–01; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD07–01–003]**

**RIN 2115–AE47**

### Drawbridge Operation Regulations: Hillsborough River, Tampa, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the operation of the Platt and Brorein Street Drawbridges across the Hillsborough River in Tampa, Florida. This temporary rule allows the Platt and Brorein Street Drawbridges to remain closed from 8 a.m. to 1 p.m. on Saturday, February 24, 2001. This action is necessary to facilitate the running of the Bank of America Gasparilla Distance Classic foot race.

**DATES:** This rule is effective from 8 a.m. to 1 p.m. on February 24, 2001.

**ADDRESSES:** Material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–01–003] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Seventh Coast Guard District, Bridge Section, at (305) 415–6743.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable because there was not sufficient time remaining after we were notified of the event to publish an NPRM. Further, publishing an NPRM is not necessary because of the minimal impact this temporary rule will have on bridge operations in an area of limited marine traffic.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

The Platt and Brorein Street Drawbridges, miles 0.0 and 0.16 respectively, across the Hillsborough River, have vertical clearances of 15.6 feet at mean high water and a horizontal clearance of 80 feet between fenders. The existing operating regulations in 33 CFR 117.291(a) require the bridge to open on signal after two hours notice.

The City of Tampa Department of Public Works requested that the Platt and Brorein Street Drawbridge operations be temporarily changed to allow the running of the Bank of America Gasparilla Distance Classic foot race. This temporary change to the drawbridge operating regulations will allow the drawbridge to remain closed from 8 a.m. to 1 p.m., Saturday, February 24, 2001.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040: February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Hillsborough River under the Brorein or Platt Street Drawbridges on February 24, 2001.

This temporary rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for five hours in an area of limited marine traffic, and the event will be highly publicized.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m. until 1 p.m., on February 24, 2001, in § 117.291, temporarily suspend paragraph (a) and

add a new temporary paragraph (c) to read as follows:

**§ 117.291 Hillsborough River.**

* * * * *

(c) (1) The draws of the bridges at *Platt Street, mile 0.0, and Brorein Street, mile 0.16, may remain closed* to navigation.

(2) The draws of the bridges at Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, shall open on signal if at least two hours notice is given; except that, the draws shall open on signal as soon as possible after a request by a public vessel of the United States, a vessel owned or operated by the State, county or local government and used for public safety purposes, or a vessel in distress.

Dated: January 25, 2001.

**T.W. Allen,**

*Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 01–3108 Filed 2–6–01; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–00–193]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations: Kennebec River, ME

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations for the Carlton (U.S. 1) highway-railroad bridge, at mile 14.0, across the Kennebec River between Bath and Woolwich, Maine. This rule will remove unnecessary operating restrictions from the regulations and provide relief to the bridge owner from the requirement to crew the bridge during periods when there have been few requests to open the bridge.

**DATES:** This rule is effective March 9, 2001.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–193) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On October 6, 2000, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Kennebec River, Maine, in the **Federal Register** (65 FR 59780). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

### Background and Purpose

The Carlton (U.S. 1) highway-railroad bridge, at mile 14.0, across the Kennebec River has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.525. Vehicular traffic no longer travels over the Carlton Bridge because a new fixed highway bridge has been constructed upstream. The bridge will continue to operate as a railroad bridge only.

The bridge owner, Maine Department of Transportation (MDOT), asked the Coast Guard to remove the unnecessary restrictions from the regulations and to add several time periods during which the bridge will open on an on call basis. The bridge presently is allowed to remain closed to navigation from 6 a.m. to 7:30 a.m. and from 3:15 p.m. to 5:30 p.m., Monday through Friday, excluding holidays. These closed periods were added to the regulations to prevent vehicular traffic congestion in Bath during the shift changes at the Bath Iron Works. These closed periods are no longer necessary and will be removed by this rule.

The bridge owner has also requested relief from crewing the bridge from 5 p.m. to 8 a.m., daily, and all day on Saturdays and Sundays from October 1 through May 14. The bridge opening log data submitted by MDOT indicates a relatively low number of requests to open the bridge during the time periods and the bridge owner has requested that the bridge operate on an on call basis. The greater amount of bridge openings in 1999, are attributed to construction vessel traffic during the building of the new highway bridge upstream from the Carlton Bridge.

BRIDGE OPENINGS BETWEEN 5 P.M. AND 8 A.M.

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1997 | 0 | 0 | 0 | 0 | 9 | 6 | 7 | 13 | 5 | 12 | 0 | 0 |
| 1998 | 0 | 2 | 1 | 2 | 1 | 6 | 4 | 6 | 3 | 10 | 7 | 6 |
| 1999 | 2 | 7 | 2 | 4 | 21 | 24 | 36 | 5 | 10 | 20 | 29 | 12 |
| 2000 | 0 | 0 | 4 | 0 | 12 | | | | | | | |

BRIDGE OPENINGS SATURDAYS/SUNDAYS OCTOBER 1 THROUGH MAY 14

| | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May |
|---|---|---|---|---|---|---|---|---|
| 1997 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| 1998 | 10 | 7 | 3 | 0 | 2 | 0 | 0 | 0 |
| 1999 | 11 | 13 | 4 | 1 | 5 | 2 | 2 | 1 |
| 2000 | | | | 0 | 0 | 3 | 0 | 0 |

The Coast Guard believes that operating the Carlton Bridge on an advance notice basis from 5 p.m. to 8 a.m., daily, and all day on Saturdays and Sundays, from October 1 through May 14, is reasonable and will still meet the needs of navigation. This conclusion is based upon the low number of opening requests received over the past several years and the fact that the bridge will still open on signal after the advance notice is given.

**Discussion of Comments and Changes**

The Coast Guard received no comments and no changes will be made to this rule.

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.525(a) is revised to read as follows:

**§ 117.525 Kennebec River.**

(a) The draw of the Carlton Bridge, mile 14.0, between Bath and Woolwich shall operate as follows:

(1) From May 15 through September 30 the draw shall open on signal; except that, from 5 p.m. to 8 a.m., the draw shall open on signal if a two-hour notice is given by calling the number posted at the bridge.

(2) From October 1 through May 14 the draw shall open on signal; except that, from 5 p.m. to 8 a.m., the draw shall open on signal after a twenty-four hours notice is given and from 8 a.m. to 5 p.m., on Saturday and Sunday, after an eight-hour notice is given by calling the number posted at the bridge.

* * * * *

Dated: January 25, 2001.

**G.N. Naccara,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 01–3107 Filed 2–6–01; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 35 and 735

**[FRL–694, 2–7]**

**RIN: 2030–AA55**

### Environmental Program Grants—State, Interstate, and Local Government Agencies: Delay of Effective Date

**AGENCY:** Environmental Protection Agency.

**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 Environmental Program Grants-State, Interstate, and Local Government Agencies, published in the **Federal Register** on January 9, 2001, 66 FR 1725. This regulation updates, clarifies, and streamlines requirements governing environmental program grants and establishes requirements for the Performance Partnership Grant (PPG) program.

**DATES:** The effective date of the Environmental Program Grants State, Interstate, and Local Government Agencies, amending 40 CFR parts 35 and 735, published in the **Federal Register** on January 9, 2001, at 66 FR 1725, is delayed for 60 days, from February 8, 2001, to a new effective date of April 9, 2001. This regulation applies to new grants awarded after April 9, 2001, and it may be applied to currently active PPGs, if agreed to in writing by the Regional Administrator and the recipient.

**FOR FURTHER INFORMATION CONTACT:** W. Scott McMoran, Grants Administration Division (3903R), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Telephone: (202) 564–5376, *McMoran.Scott@epa.gov*.

**SUPPLEMENTARY INFORMATION:** 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. This action involves matters relating to grants and under 5 U.S.C. 553(a)(2) is thus exempt from the notice and comment requirements of the Administrative Procedure Act.

Dated: January 29, 2001.

**David J. O'Connor,**

*Acting Assistant Administrator, Office of Administration and Resources Management.*

[FR Doc. 01–3180 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[TX–105–1–7404; FRL–6935–3]**

## Approval and Promulgation of Air Quality State Implementation Plans; Texas; Approval of Clean Fuel Fleet Substitution Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final rulemaking action to approve the State of Texas' Clean Fuel Fleet (CFF) substitute plan, incorporating it into the State Implementation Plan (SIP) under the Federal Clean Air Act (CAA). The State's CFF Substitute Plan is addressed in the SIP revision submitted on August 27 1998, and supplemented with additional technical information in a letter to the EPA dated November 17, 2000, by the State of Texas for the purpose of establishing a substitute CFF program.

**DATES:** This direct final rule takes effect on April 9, 2001 without further notice, unless EPA receives adverse or critical comments by March 9, 2001. If EPA does receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD) are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

**FOR FURTHER INFORMATION CONTACT:** Steven Pratt, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–2140, E–Mail Address: pratt.steven@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' means EPA. This section is organized as follows:

1. What action Is the EPA Taking Today?
2. What is the background?
3. What did the State submit?
4. How is Texas meeting the Clean Fuel Fleets Requirements?
5. Why is EPA approving the Texas Clean Fuel Fleets Substitute Plan SIP revision?
6. How Does Clean Fuel Fleets Affect Air Quality in Texas?
7. What is the Process for EPA's Approval of this SIP Revision?

### 1. What Action Is the EPA Taking Today?

The EPA is approving Texas' CFF Substitute Plan submitted on August 27 1998, as supplemented with additional technical information in a letter to the EPA dated November 17, 2000, into the Texas SIP as meeting the requirements of Section 182(c)(4) of the CAA. A detailed rationale for this direct final approval is set forth in the accompanying Technical Support Document (TSD) available from the U.S. EPA Region 6 office.

### 2. What Is the Background?

On November 15, 1990, Congress enacted amendments to the 1997 Clean Air Act; Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The Federal Clean Fuel Fleet (CFF) program is contained under part C, entitled, ''Clean Fuel Vehicles,'' of Title II of the Clean Air Act, as amended November 15, 1990. Part C was added to the CAA to establish two programs: a clean-fuel vehicle pilot program in the State of California (the California Pilot Test Program) and the Federal CFF program in certain ozone and carbon monoxide (CO) nonattainment areas. Section 182(c)(4) of the CAA, 42 U.S.C. 7511a, allows States to opt-out of the Federal CFF program by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emissions reductions in ozone producing and toxic air emissions as the Federal CFF program. The EPA may approve such a revision ''only if it consists exclusively of provisions other than those required under this Chapter for the area.''

The State of Texas chose to opt-out of the Federal CFF program in a committal SIP revision submitted to EPA on November 15, 1992. In July 1994, Texas submitted the State's opt-out program in a SIP revision to EPA and adopted rules to implement the Texas CFF program. The Texas Clean Fuel Fleet SIP was revised based upon State legislation changes and resubmitted to EPA on August 6, 1996. On June 20, 1997, the supporting legislation for the August 6, 1996, submittal was modified and, as a result, the legislative authority in the submittal was no longer in effect. On October 17, 1997, we proposed disapproval of the Texas Clean Fuel Fleet SIP due to changes in the State law that altered the current SIP submittal, and because the State had not made a convincing and compelling equivalency determination with the Federal CFF program.

### 3. What Did the State Submit?

The State submitted a further SIP revision to Chapter 114 and the State's plan for implementing a substitute program to opt out of the Federal CFF program on August 27, 1998. The revision was adopted after reasonable public notice and public hearing as required by sections 110(a)(2) and 110(l) of the CAA and 40 CFR 51.102(f). In the August 27, 1998, submittal, Texas also withdrew the August 6, 1996, CFF SIP revision. On October 1, 1998, we determined the SIP revision met completeness criteria. The State supplemented the SIP with additional technical information in a letter to the EPA dated November 17, 2000. This additional technical information clarified how the State would make up the shortfall for nitrogen oxide ( $NO_X$) and volatile organic compound (VOC) emissions between the State's present (August 27, 1998) CFF program and the Federal CFF program.

A more detailed discussion of the Texas Clean Fleet program elements and control strategy can be found in the TSD.

### 4. How Is Texas Meeting the Clean Fuel Fleets Requirements?

Texas has decided to opt out of the Federal CFF program. Texas' CFF substitute plan relies on a State fleet program—the Texas Clean Fleet (TCF) program—supplemented with additional VOC and $NO_X$ emission controls.

The TCF program is a clean fleet program that will be implemented in all serious, severe and extreme nonattainment areas in Texas. It is similar to the Federal CFF program, but with a number of significant differences that, but for the supplemental controls, result in an emissions reduction shortfall as compared to the Federal CFF program. Key differences include later dates for scheduled low emission vehicles (LEV) purchases, number and type of vehicles allowed in a clean fleet, exclusions from fleet requirements, and the emissions credit program. Modeling of the Federal CFF program and the TCF program was performed using a spreadsheet model developed by the TNRCC's Mobile Source Section. The

EPA has reviewed and is accepting the model (refer to the TSD for model details). The spreadsheet model estimates the number of low emission vehicles and conventional vehicles in each program and extrapolates the amount of emission reductions generated by each program through the number of LEV's purchased. The estimated shortfalls for the TCF program for the 1998–2007 ten-year period for ozone-producing chemicals are 947.9 total tons (0.38 tons per day (tpd)) for VOC and 848.2 total tons (0.34 tpd) for $NO_X$.

Additional emission controls are used to make up this shortfall between the TCF and the Federal CFF programs. These controls, which are beyond those required by the CAA, are discussed in the following paragraphs.

The State identified additional VOC emission reductions from VOC controls on fugitive emissions and VOC transfer operations totaling 493.9; 19; and 22.4 tpd for Houston-Galveston (HG), El Paso, and Dallas-Fort Worth (DFW) non-attainment areas, respectively. For the ten year 1998–2007 period this amounts to 123,475; 5,600; and 4,750 total tons for the HG, El Paso, and DFW areas, respectively. These emission reductions are achieved through the State requirements codified in 30 TAC Sections 115.352–115.359, regarding Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas, and the State requirements codified in 30 TAC Section 115.211(a)(1), regarding Volatile Organic Compound Transfer Operations at Gasoline Terminals. 62 FR 27964 (May 22, 1997). These reductions more than offset the shortfalls for VOCs.

The State also identified excess $NO_X$ emission reductions resulting from State mandated reduction requirements placed on electric generating facilities (EGFs) by the 76th Texas Legislature in Senate Bill 7 for the HG and DFW areas. 65 FR 64914 (October 31, 2000). These reductions, combined with other State mandated reductions as detailed in the DFW, Beaumont/Port Arthur (BPA), and HG areas SIPs, all in excess of those required by the CAA, provide for a 184 tpd reduction in the HG area, and a 129 tpd reduction in the DFW area. As El Paso has a $NO_X$ waiver in place, the combined VOC and $NO_X$ shortfall can be made up with VOC offsets alone.

The emission reductions for Texas' implementation of a substitute plan greatly exceed the reductions that would have been achieved with the Federal CFF program. Therefore, the State's substitute plan will meet the Federal CFF requirement for VOC and $NO_X$ emissions reductions. Details on the calculations for the TCF emission reductions, shortfalls and control measures used to make up the shortfalls, can be found in the TSD for this rulemaking.

**5. Why Is EPA Approving the Texas Clean Fuel Fleets Substitute Plan SIP Revision?**

EPA is approving Texas' Clean Fuel Fleets Substitute Plan SIP revision because the State has successfully demonstrated that it will achieve long term reductions in emissions of ozone producing and toxic air pollutants equivalent to those that would have been achieved by the Federal CFF program. We agree with the State's emission reduction calculations and the modeling it used. Further information on Texas' Clean Fuel Fleets Substitute Plan SIP revision and EPA's evaluation of the SIP revision can be found in the TSD for this rulemaking Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

**6. How Does Clean Fuel Fleets Affect Air Quality in Texas?**

EPA's approval of Texas' CFF Substitute Plan will have a positive benefit on air quality in Texas. The Texas CFF substitute plan achieves equivalent or better long term reductions in emissions of ozone producing and toxic air pollutants than the Federal CFF program in the DFW, El Paso, and HG ozone nonattainment areas.

**7. What Is the Process for EPA's Approval of This SIP Revision?**

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is also publishing a separate document that will serve as the proposal to approve this SIP revision should we receive relevant adverse. This action will be effective April 9, 2001 without further notice unless we receive relevant adverse comments by March 9, 2001.

If EPA does receive adverse comments, we will withdraw the direct final rule and publish a document stating that the rule will not take effect. We will then respond to all public comments received in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. If you are interested in commenting on this action, you should do so at this time. If no such comments are received, you should know that this rule will be effective on April 9, 2001 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**Administrative Requirements**

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

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: January 4, 2001.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

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

## PART 52—[AMENDED]

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

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

## Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended by revising all of Chapter 114 (Reg 4)—Control of Air Pollution From Motor Vehicles, to read as follows:

**§ 52.2270 Identification of plan.**

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

| State citation | Title/subject | State approval/submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * | * | * | * * | * |
| **Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles** | | | | |
| **Subchapter A—Definitions** | | | | |
| Section 114.1 | Definitions | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.3 | Low Emission Vehicle Fleet Definitions. | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| **Subchapter E—Low Emission Vehicle Fleet Requirements** | | | | |
| Section 114.150 | Requirements for Mass Transit Authorities. | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.151 | Requirements for Local Governments and Private Federal entities. | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.153 | Exceptions | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.154 | Exceptions for Certain Mass Transit Authorities. | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.155 | Reporting | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.156 | Recordkeeping | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.157 | Low Emission Vehicle Fleet Program Compliance Credits. | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| **Subchapter F—Vehicle Retirement and Mobile Emission Reduction Credits** | | | | |
| **Division 1: Mobile Emission Reduction Credits** | | | | |
| Section 114.201 | Mobile Emission Reduction Credit Program. | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |
| Section 114.202 | Texas Mobile Emission Reduction Credit Fund. | 07/29/1998 | [*2/7/01 and Federal Register cite*]. | |

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

| State citation | Title/subject | State approval/submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Subchapter G—Transportation Planning** | | | | |
| Section 114.260 ..... | Transportation Conformity ..... | 12/10/98 | 7/8/99, 64 FR 36794 ..... | 1. No action is taken on the portions of 30 TAC 114.260 that contain 40 CFR 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). 2. TNRCC order (Docket No. 98–0418 RUL) November 23, 1998. |

[FR Doc. 01–1824 Filed 2–6–01; 8:45 am]
BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR PART 52

**[IL198–1a; FRL–6935–4]**

## Approval and Promulgation of Implementation Plans; Illinois

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The USEPA is approving a negative declaration submitted by the State of Illinois which indicates there is no need for regulations covering the industrial cleaning solvents category in the Chicago ozone nonattainment area. The Chicago ozone nonattainment area includes Cook County, DuPage County, Aux Sable and Goose Lake Townships in Grundy County, Kane County, Oswego Township in Kendall County, Lake County, McHenry County and Will County. The State's negative declaration regarding industrial cleaning solvents category sources was submitted to USEPA in a letter dated December 23, 1999.

**DATES:** This rule is effective on April 9, 2001, unless USEPA receives adverse written comments by March 9, 2001. If adverse comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the negative declarations are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, Chicago, Illinois 60604,(312) 886–6036.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'', ''us'', or ''our'' is used we mean USEPA.

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### I. What Is the Background for This Action?

Under the Clean Air Act (Act), as amended in 1977, ozone nonattainment areas were required to adopt emission controls reflective of reasonably available control technology (RACT) for sources of volatile organic compound (VOC) emissions. USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG are called non-CTG sources. USEPA determined that an area's State Implementation Plan (SIP) approved attainment date established which RACT rules the area needed to adopt and implement. In those areas where the State sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, RACT was required for all CTG sources and for all major (100 tons per year or more of VOC emissions under the pre-amended Act) non-CTG sources. Illinois sought and received such an extension for the Chicago area.

Section 182(b)(2) of the Act as amended in 1990 requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT ''catch-up'' requirements.

Section 183 of the amended Act requires USEPA to issue CTGs for 13 source categories by November 15, 1993. CTGs were published by this date for the following source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation, aerospace manufacturing coating operations, shipbuilding and ship repair coating operations, and wood furniture coating operations; however, the CTGs for the remaining source categories have not been completed. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in the CTG document.

The USEPA created a control guideline document as Appendix E to the *General Preamble for the*

*Implementation of Title I of the Clean Air Act Amendments of 1990* (57 FR 18070–18077, April 28, 1992). In Appendix E, USEPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs USEPA expected to issue to meet the requirement in section 183. Appendix E states that if USEPA fails to issue a CTG by November 15, 1993 (which it did for 9 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

## II. Negative Declarations and Their Justification

The USEPA does not require States to develop plans or regulations to control emissions from sources which are not present in the nonattainment area. If it is thought that this might be the case, the State carefully examines its emissions inventory before initiating the planning and regulation development process. If a careful examination of the emissions inventory finds no sources for a particular source category, then the State prepares and submits to USEPA a negative declaration stating that there are no sources in the nonattainment area for that source category in lieu of submitting a control strategy.

## III. USEPA Review of the Negative Declarations

On December 23, 1999, Illinois submitted a negative declaration for major sources of industrial cleaning solvents VOC emissions in the Chicago ozone nonattainment area. In making this determination, the Illinois EPA conducted a search of its 1996 Chicago ozone precursor emission inventory for any source that would have the potential to emit at least 25 tons per year (TPY) of VOC emissions from industrial cleaning solvents. Illinois' search consisted of sources with source code classifications (SCCs) that may be used for cleaning solvents or key words related to industrial cleaning solvents appearing in their descriptions. From these, Illinois EPA calculated potential emissions and found that five sources had the potential to emit over 25 TPY. These were investigated more thoroughly using permit information. From this investigation, Illinois EPA found that none of the five sources would need to be subject to an industrial cleaning solvents rule either because emissions were limited by a federally enforceable permit or because the source was not a type of operation that would fall into the scope of the Industrial Cleaning Solvent Alternative Control Technique, for example, a vapor degreaser that is already covered by existing Illinois regulations. Further, Illinois' rules for the Chicago ozone nonattainment area already contain provisions for the regulation of cleaning solvents used in cold cleaning/degreasing, conveyorized degreasing, vapor degreasing, cleaning solutions on lithographic printing lines and cleaning solvents for wood furniture coating operations. It should be noted that any industrial cleaning solvent operation in the Chicago ozone nonattainment area that has maximum theoretical emissions of 100 TPY or greater, and is not otherwise regulated by Title 35 of the Illinois Administrative Code, Part 218 Organic Material Emission Standards and Limitations for the Chicago Area (35 Ill. Adm. Code, Part 218) would be regulated under Illinois' generic rules category which is codified under 35 Ill. Adm. Code Part 218, Subpart TT. Based on Illinois EPA's review of the 1996 Chicago ozone precursor emission inventory and the ongoing review of staff engineers of facilities in the Chicago ozone nonattainment area, there are no facilities would be subject to the industrial cleaning solvents RACT category. Therefore, RACT regulations for industrial cleaning solvents are not needed for the Chicago ozone nonattainment area.

USEPA has examined the State's negative declaration regarding the lack of need for regulations controlling emissions from industrial cleaning solvents sources located in the Chicago ozone nonattainment area. USEPA agrees there are no industrial cleaning solvents sources in the Chicago ozone nonattainment area which would require the adoption of rules to control this source category.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State Plan should adverse written comments be filed.

This action will be effective without further notice unless USEPA receives relevant adverse written comment by March 9, 2001. Should USEPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 9, 2001.

## VI. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

### *B. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *C. Executive Order 13084*

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective April 9, 2001 unless EPA receives adverse written comments by March 9, 2001.

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons,

Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 8, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (z) to read as follows:

**§ 52.726 Control strategy: Ozone.**

* * * * *

(z) Negative declaration—Industrial cleaning solvents category. On December 23, 1999, the State of Illinois certified to the satisfaction of the United States Environmental Protection Agency that no major sources categorized as part of the industrial cleaning solvents category are located in the Chicago ozone nonattainment area. The Chicago ozone nonattainment area includes Cook County, DuPage County, Aux Sable and Goose Lake Townships in Grundy County, Kane County, Oswego Township in Kendall County, Lake County, McHenry County and Will County.

[FR Doc. 01–1822 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[DE043–1030a; FRL–6941–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to New Source Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to convert its conditional approval of Delaware's revised New Source Review (NSR) regulations to a full approval and to incorporate those revised regulations into the Delaware State Implementation Plan (SIP). Delaware submitted the revised regulations as a SIP revision to satisfy conditions imposed by EPA in its conditional approval of the NSR program published in the **Federal Register** on April 3, 1998. EPA is converting its conditional approval to a full approval as Delaware's revised regulations satisfy those conditions. This action is being taken in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on April 9, 2001 without further notice, unless EPA receives adverse written comment by March 9, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to Makeba Morris, Chief, Permits and Technology Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 30, 1999, the Delaware Department of Natural Resources and Environmental Control submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amended New Source Review (NSR) regulations found in Delaware Regulation 25, Requirements for Preconstruction Review. Regulation 25, sections 1 and 2, affect major new or modified stationary sources in nonattainment areas. The SIP Revision was submitted to meet the requirements imposed by EPA in its conditional approval of Delaware's NSR program published on April 3, 1998 (64 FR 16433–16535). The conditional approval required that certain deficiencies be corrected and clarifications made to Delaware's NSR program. Delaware's April 30, 1999 submittal satisfies the requirements of the April 3, 1998 conditional approval. This rulemaking will convert the conditional approval of Delaware's NSR program to a full approval and incorporate Delaware's revised NSR regulations into the Delaware SIP.

### Summary of SIP Revision

The SIP submission includes revisions to the Delaware Regulations Governing the Control of Air Pollution, Regulation 25—REQUIREMENTS FOR PRECONSTRUCTION REVIEW. Brief descriptions of the deficiencies noted in EPA's April 3, 1998 conditional approval and how they have been corrected or resolved are provided below:

1. *Deficiency:* EPA stated that Delaware's regulations did not provide special modification procedures found in the Clean Air Act (CAA) Section 182(c)(7). Under federal regulations, a source that makes a single modification at a unit which is greater than 100 tons per year can choose to make an 130% emission decrease at the same source (rather than off site). The source can then choose to follow different procedures for determining control technology requirements.

*Clarification:* Upon further review and discussion with Delaware, EPA determined that the Delaware regulations are not deficient in this regard. Delaware has retained the ''dual definition'' of major stationary source. As this definition of stationary source is both the source and the individual unit, the special rule for modifications would be less stringent than the existing Delaware regulations.

2. *Deficiency:* EPA stated that public participation procedures must be consistent with Federal regulations (as found in 40 CFR 51.161). The Delaware regulations did not specify that the public participation procedures found in another section of the Delaware regulations must be used in issuing nonattainment NSR permits.

*Correction:* New provisions have been added to the Delaware regulations at Delaware Regulation 25.2.4.D.2. The revised regulation requires the appropriate 30 day public comment period for nonattainment area NSR permits.

3. *Deficiency:* EPA stated that Delaware regulations did not contain a provision consistent with federal regulations (40 CFR 51.165 (a)(3)(ii)(A)). This federal requirement states that where a regulatory emission limitation (referred to as the allowable rate) is higher than is physically possible at a particular source (referred to as the potential of the source), credit for any emission reductions (emission offsets)

will be given only for reductions below the potential of the source.

*Correction:* Provision 25–2.5 B has been added to Delaware law. The Delaware regulation is now consistent with the federal regulation and ensures that emission credit is not given for emissions which a source would not have the potential to emit.

4. *Deficiency:* EPA stated that Delaware's regulations did not have necessary safeguards for granting emission offset credit for fuel switching, as found in federal regulations at 40 CFR 51.165 (a)(3)(ii)(B). If a source has the ability to revert to a more polluting fuel, a federally enforceable requirement to maintain lower emission levels is necessary.

*Correction:* The needed restrictive language has been added to Delaware Regulations at 25–2.4C.2 and 2.5 A. The Delaware regulations ensure that all emission reductions happen before emission credit can be used elsewhere. They further require that emission reductions be federally enforceable such that a source which chooses to switch fuels and generate emission credits must have an enforceable permit or agreement to restrict emissions.

5. *Deficiency:* EPA stated that Delaware's regulations did not include appropriate safeguards for granting emission reduction credits. Specifically, requirements that all emission offset reductions are federally enforceable, restrictions on granting emission offset credits for sources which previously shut down or curtailed production, and prohibition from granting emission offset credits for emission reductions required by other requirements of the Clean Air Act.

*Correction:* New provisions have been added to Delaware Regulation 25–2.5 (paragraphs A, C, D and E) and 2.4. These new provisions ensure that all offset credits meet federal requirements.

6. *Deficiency:* EPA stated that Delaware regulations did not restrict where offsetting emission reductions occurred. Federal regulations require that emission offsets are used only in areas which have been classified as the same or higher nonattainment classification.

*Correction:* The Delaware Regulations were revised to add 25–2.5E. This provision requires that emission offsets must be generated in an area with the same or higher air quality classification.

EPA is publishing this rule to convert its conditional approval of Delaware's NSR program to a full approval without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on April 9, 2001 without further notice unless EPA receives adverse comment by March 9, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action converting its conditional approval of Delaware's NSR program to to a full approval. Any parties interested in commenting must do so at this time.

## II. Final Action

EPA is taking direct final action to convert its conditional approval of Delaware's revised New Source Review (NSR) regulations to a full approval and to incorporate those regulations into the Delaware State Implementation Plan (SIP). These regulations define the requirements for the nonattainment New Source Review program in Delaware. This action will also remove the conditional approval provision found at 40 CFR 52.424(c).

## III. Administrative Requirements

### *A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

### *B. Submission to Congress and the Comptroller General*

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

''major rule'' as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action converting EPA's conditional approval of revisions to the Delaware SIP for NSR to a full approval must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Nitrogen dioxide, VOCs, Ozone.

Dated: January 17, 2001.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart I—Delaware**

2. In § 52.420, the table in paragraph (c) is amended by revising entries 1 and 2 under Regulation 25 to read as follows:

**§ 52.420 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

| State citation | Title/subject | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| **Regulation 25 Requirements for preconstruction review.** | | | | |
| Section 1 ..... | General provisions ..... | 1/1/93 (as revised 5/11/99). | [2/7/01 and FR cite] | Excluding § 1.2, 1.6, 1.9(L), 1.9(M), 1.9(N), 1.9(O) which relate to Prevention of Significant Deterioration. |
| Section 2 ..... | Emission offset provisions. | 1/1/93 (as revised 5/11/99). | [2/7/01 and FR cite]. | |
| * | * | * | * | * |

3. In § 52.424, paragraph (c) is removed and reserved.

[FR Doc. 01–3158 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 721

**[OPPTS–50638A; FRL–6769–7]**

**RIN 2070–AB27**

## Significant New Uses of Certain Chemical Substances; 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 (66 FR 7701), this action temporarily delays for 60 days the effective date of the rule entitled ''Significant New Uses of Certain Chemical Substances; Direct Final Rule,'' published in the **Federal Register** on December 26, 2000 (65 FR 81386) (FRL–6592–8). That rule concerns EPA's promulgation of significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 40 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA.

**DATES:** The new effective date of the Significant New Uses of Certain Chemical Substances; Direct Final Rule, amending 40 CFR part 721 published in the **Federal Register** on December 26, 2000 at 65 FR 81386 (FRL–6592–8), from February 26, 2001, to a new effective date of April 27, 2001.

**FOR FURTHER INFORMATION CONTACT:** James Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1857; e-mail address: alwood.jim@epa.gov.

**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). 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 1, 2001.

**David Kling,**

*Acting Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 01–3181 Filed 2–6–01 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 95

**[WT Docket No. 98–169; FCC 00–411]**

### Regulatory Flexibility in the 218–219 MHz Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission denies seven petitions for reconsideration and affirms the *218–219 MHz Order* which modified the regulations governing the licensing of the 218–219 MHz Service (formerly known as the Interactive Video and Data Service (''IVDS'')) to maximize the efficient and effective use of the band. The petitions fall into four general categories. The first category includes requests to change the options available under the 218–219 MHz service, restructuring plan. The second category includes requests to expand the definition of entities eligible to participate in the 218–219 MHz service, restructuring plan. The third category consists of miscellaneous requests relating to the 218–218 MHz Service restructuring plan. The fourth category consists of requests to expand the remedial bidding credit to all current and former licensees. Additionally, the item makes several technical modifications to conform the rules to the *218–219 MHz Order.*

**DATES:** Effective April 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Andrea Kelly, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Second Order on Reconsideration of the Report and Order and Memorandum Opinion and Order (*Order*) in WT Docket No. 98–169, adopted on November 22, 2000, and released on December 13, 2000. The complete text of the *Order* 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 from 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 *Order* is also available on the Internet at the Commission's web site: *http://www.fcc.gov/wtb/documents.html.*

## I. Introduction

1. On September 10, 1999, the Federal Communications Commission (''Commission'') issued the *218–219 MHz Order,* which modified the regulations governing the licensing of the 218–219 MHz Service (formerly known as the Interactive Video and Data Service (''IVDS'')) to maximize the efficient and effective use of the band. *See* 64 FR 59656 (November 3, 1999). The *218–219 MHz Order*, among other things, modified service and technical rules for the band and extended the license term from five to ten years, eliminated the three- and five-year construction benchmarks, and adopted a ''substantial service'' analysis to be assessed at the expiration of the 218–219 MHz license term as a condition of renewal. The Commission also adopted a restructuring plan for existing licensees that had participated in the installment payment program and that: (i) Were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rules (''Eligible Licensees''). Those licensees that had paid in full are not eligible to participate in the restructuring plan as they no longer owe a debt to the Commission and no public policy goal would be served by allowing them to participate. Pursuant to the restructuring plan, Eligible Licensees must make elections on a per license basis, choosing among three options: (i) Reamortization and Resumption of Payments; (ii) Amnesty; or (iii) Prepayment (Prepayment-Retain or Prepayment-Return). If an Eligible Licensee elects Reamortization and Resumption of Payments the licensee retains one or more of its licenses and remains in the installment payment plan. The loan will be ''reamortized'' over the remaining term of the license. If an Eligible Licensee elects Amnesty its license is returned to the Commission in exchange for debt forgiveness of the outstanding principal balance and all interest payments due thereon. The Commission retains the down payment. If an Eligible Licensee elects Prepayment it may return or retain as many licenses as it wishes. The Prepayment option applies to all of the licenses held by a licensee and cannot be combined with Amnesty or Reamortization/Resumption.

2. ''Ineligible Entities'' are those entities that made first and second down payments and: (i) Made some installment payments, but were not current in their installment payments as of March 16, 1998, and did not have a grace period request on file in conformance with the former installment payment rules; or (ii) never made any installment payments and did not have a timely filed grace period request on file, in conformance with the former rules. *See* 47 CFR 95.816 (d)(3) (1994). Ineligible Entities are not eligible to make elections, but will be granted debt forgiveness for any outstanding balances owed and have previously paid installment payments refunded.

3. On November 24, 1999, on our own motion, we adopted the *218–219 MHz Reconsideration Order,* 64 FR 72956 (December 29, 1999), which modified our *218–219 MHz Order.* We eliminated the provision allowing an Eligible Licensee electing the Amnesty option to obtain a credit for seventy percent of its down payment and forego, for a period of two years from the start date of the next auction of the 218–219 MHz Service, eligibility to reacquire the surrendered licenses through either auction or any secondary market transaction.

4. In response to the rulings in the *218–219 MHz Order,* we received seven petitions for reconsideration, one opposition to the petitions, and no replies. We note that we did not receive any petitions for reconsideration in response to our *sua sponte 218–219 MHz Reconsideration Order.* After considering the arguments raised in the filings, we affirm the *218–219 MHz Order*, as modified by *the 218–219 MHz Reconsideration Order*, in its entirety. Additionally, we respond to certain requests for clarification contained in the filings and we make technical modifications to the rules.

## II. Executive Summary

5. The following is a synopsis of the major actions we adopt. In this *Second Order on Reconsideration of the Report and Order and Memorandum Opinion and Order,* we:

(i) Affirm that the restructuring plan is limited to existing licensees that: (i) Were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rules;

(ii) Decline to expand the options offered in the restructuring plan to include disaggregation;

(iii) Decline to expand the options offered in the restructuring plan to include the return of the down payment;

(iv) Affirm that the twenty-five percent bidding credit granted to all winning small business bidders in the 1994 auction of this service will not be extended to all winning bidders in the 1994 auction of this service; and

(v) Affirm that the new part 1 rules regarding installment payments will apply to licensees in this service.

**III. Background**

6. The 218–219 MHz Service is a short distance communications service that allows one-and two-way communications for both common carrier and private operations on a fixed or mobile basis. *See* 47 CFR 95.803(a), 95.807(a). The *1992 Allocation Report and Order*, 57 FR 8272 (March 9, 1992), established the 218–219 MHz Service with a 500 kilohertz frequency segment for two licenses in each of the 734 cellular-defined service areas.

7. We issued 218–219 MHz Service licenses by both random selection (lottery) and competitive bidding (auction). In the Omnibus Budget Reconciliation Act of 1993 (*1993 Budget Act*), Congress authorized the Commission to award licenses for spectrum-based services by auction. We subsequently determined that 218–219 MHz Service licenses should be awarded by competitive bidding and adopted rules and procedures for this licensing structure. Using these procedures, we held the first auction in the 218–219 MHz Service on July 28 and 29, 1994 (Auction No. 2). On January 18, 1995, February 28, 1995, and May 17, 1995, the Commission conditionally granted licenses to the winning bidders, subject to the bidder satisfying the terms of the auction rules, including down payment requirements.

8. Under the Commission's competitive bidding rules in effect at the time of Auction No. 2, winning bidders that qualified as small businesses were allowed to pay twenty percent of their net bid(s) as a down payment and the remaining eighty percent in installments over the five-year term of the license(s), with interest-only payments for the first two years, and interest and principal payments amortized over the remaining three years. *See* 47 CFR 95.816(d)(3). The first interest-only payment, due March 31, 1995, was deferred to June 30, 1995, pursuant to administrative action by the Office of Managing Director. Subsequently, the Wireless Telecommunications Bureau (Bureau) further stayed the date for making the initial interest-only payments pending Commission resolution of licensees' substantive requests related to the payment requirements. The Commission lifted the stay effective January 5, 1996, on which date licensees were required to make the interest-only payments back-due from March 31, 1995 and June 30, 1995. Although the interest-only payments due September 30, 1995 and December 31, 1995 remained uncollected, we denied requests to set back the installment payment date and the first principal and interest payments were due on March 31, 1997.

9. The Commission, in the *1995 IVDS Omnibus Order*, and the Bureau in the *IVDS Grace Period PN*, 60 FR 39656 (August 3, 1995), cautioned licensees that, in accordance with § 1.2110(e)(4)(ii) of our rules, if they individually required financial assistance, they should request a three- or six-month grace period during the first ninety days following any missed installment payments. The Bureau further cautioned licensees that if a licensee failed to make timely payments, absent the filing of a grace period request, the license would be in default. The Commission's rules in effect at that time provided that any licensee whose installment payment was more than ninety days past due was in default, unless the licensee properly filed a grace period request. Under the Commission's rules, licensees with properly filed grace period requests would not be held in default during the pendency of their requests and the interest accruing would be amortized by adding it to the other interest payments over the remaining term of the license. Upon expiration of any grace period without successful resumption of payment, or upon default with no such request submitted, the license would cancel automatically. The Commission amended the installment payment rules in 1998 to provide for two automatic grace periods of ninety days, subject to late fees. The 1998 amendment of the installment payment rules did not affect pending grace period requests filed by 218–219 MHz Service licensees.

10. We have previously noted that deployment of the 218–219 MHz Service has not been successful despite previous steps we had taken to promote development of the 218–219 MHz Service. Moreover, those licensees actually deploying services are providing service different than that originally envisioned when the service was established. To promote full utilization of the service, we issued the 1998 *218–219 MHz Flex NPRM* that proposed changes to the 218–219 MHz Service licensing and technical rules. *See* 63 FR 54073 (October 8, 1998). The *218–219 MHz Flex NPRM* also suspended, for the pendency of this rulemaking, the late payment fee and automatic cancellation provisions of § 1.2110(f)(4) of our rules for licensees that were current in installment payments as of March 16, 1998; stayed decisions on grace period requests properly filed under the part 1 rules previously in effect; and proposed payment restructuring options. In the *218–219 MHz Order*, we substantially adopted our proposals.

11. Additionally, in the *218–219 MHz Order*, we eliminated the minority- and women-owned business credits previously provided in Auction No. 2. At that same time, to harmonize our treatment of licensees in this service with the treatment of licensees in other services, we granted a bidding credit (Remedial Bidding Credit) to all winning bidders that met the small business qualifications for Auction No. 2.

12. In the *218–219 MHz Order*, we determined that it would serve the public interest to provide a variety of relief mechanisms to assist current 218–219 MHz Service licensees that were experiencing difficulties in meeting their financial obligations under the installment payment plan. We stated our belief that the mechanisms adopted afforded relief to current licensees while at the same time preserving the integrity of the auction process. We also recognized that for licensees whose licenses had cancelled, enforcement of the payment obligations would be unduly harsh in light of the totality of the circumstances. Thus, we recommended that those entities whose licenses had cancelled should receive debt forgiveness for their outstanding principal balance and accrued interest owed. We continue to believe that the approach adopted in the *218–219 MHz Order* best serves the public interest. Thus, we affirm the *218–219 MHz Order*, as modified by the *218–219 MHz Reconsideration Order*. We discuss the particular issues raised by the petitioners, clarify certain points in the *218–219 MHz Order*, and make technical modifications to the rules.

**IV. Discussion**

13. The petitioners have made a number of requests that fall into four general categories. The first category includes requests to change the options available under the restructuring plan. The second category includes requests to expand the definition of entities eligible to participate in the restructuring program. The third

category consists of miscellaneous requests relating to the restructuring plan. The fourth category consists of requests to expand the remedial bidding credit to all current and former licensees.

*A. Options Available in the Restructuring Plan*

i. Disaggregation

14. *Background.* As noted, the restructuring plan offers Eligible Licensees three options: (i) Reamortization and Resumption of Payments; (ii) Amnesty; or (iii) Prepayment (Prepayment-Retain or Prepayment-Return). Disaggregation was not proposed or adopted as a restructuring option.

15. Originally, disaggregation was not allowed in this service. However, in the *218–219 MHz Flex Order,* 63 FR 54073 (October 8, 1998), we proposed allowing spectrum aggregation, disaggregation, and partitioning as part of our overall effort to maximize the efficient and effective use of the 218–219 MHz frequency band. In doing so, we recognized that we have already adopted, and proposed adopting, disaggregation, and partitioning for a number of services. The proposal in the *218–219 MHz Flex Order* to allow spectrum aggregation—in which a licensee could hold both 500 kHz block licenses in a 218–219 MHz Service market—received widespread support. Few commenters addressed disaggregation specifically. Those commenters that supported disaggregation did so based upon the general principle that regulatory parity with other wireless services would benefit licensees. However, one commenter believed that disaggregation would be impractical for such a small amount of spectrum, and another suggested that smaller amounts of spectrum would lower entry barriers for small businesses, but did not discuss what applications, if any, could be supported in the disaggregated spectrum.

16. In adopting partitioning and disaggregation in the 218–219 MHz Service, we concluded that the benefits identified in the *Partitioning Report and Order,* 62 FR 696 (January 6, 1997), which we had extended to other wireless services, would likewise benefit the 218–219 MHz Service. In doing so, we noted that partitioning the geographic area of a license might provide sufficient flexibility to allow entry into the market by entities that lack sufficient resources to participate in the original auction.

17. *Discussion.* Under Celtronix's proposal, an Eligible Licensee would elect to retain a portion of the spectrum for a given market and return the remainder to the Commission. This procedure, Celtronix suggests, would encourage parties to use spectrum more efficiently and speed service to unserved and underserved areas. Celtronix says it could provide service on 250 kHz—one half the bandwidth it is currently licensed to use, and notes that 220 MHz SMR frequencies are licensed in blocks smaller than 500 kHz.

18. Although Celtronix's filings at an earlier stage of the proceeding supported a change in the rules to allow disaggregation, it first proposed disaggregation as a restructuring option in its petition for reconsideration. No other commenters or petitioners requested disaggregation as a restructuring option and, as noted above, several actually claimed that the existing 500 kHz blocks are insufficiently small for licensees to develop innovative services that will allow them to compete in the marketplace or to provide optimal interference protection.

19. We believe that we have provided ample flexibility in the restructuring options offered. We recognize these options may not suit every licensee's particular business plan. We decline to modify the restructuring options without a substantial record demonstrating a broad-based need or desire for such a change. Based on the minimal record—as well as the outright skepticism of some commenters that channel blocks smaller than 500 kHz are practical for innovative uses—we are doubtful that service will be developed in the portion of a channel block that would remain after a licensee elects disaggregation as a restructuring option. However, if, in the private marketplace, a licensee (such as Celtronix) and a third party can identify 218–219 MHz Service applications for which disaggregated spectrum is practical, our rules allow and we would encourage such a transaction because it would promote the rapid development of an entire 500 kHz channel block.

20. Finally, we distinguish the 218–219 MHz spectrum from the 220 MHz SMR frequencies identified by Celtronix. Although Celtronix is correct in pointing out that 220 MHz SMR frequencies are licensed in blocks smaller than 500 kHz, 218–219 MHz Service licensees, unlike 220 MHz Service licensees, have TV Channel 13 protection requirements. Because disaggregated spectrum would provide a licensee with more limited interference protection options, we are even less confident that the marketplace would support the auction of disaggregated spectrum blocks in the 218–219 MHz Service. Accordingly, we decline to adopt Celtronix's proposal.

ii. Refunds of Down Payments

21. *Background.* The *218–219 MHz Order* allows for refunds of payments in three instances. First, Eligible Licensees that elect Amnesty will receive a refund of installment payments. Second, Ineligible Entities will receive a refund of installment payments. Third, Eligible Licensees that elect Prepayment, depending upon the number of licenses they return, might be entitled to a refund of excess installment payments. In the *218–219 MHz Order,* we specifically declined to provide for the refunds of down payments. Two petitioners, Celtronix and Houston, request that we refund down payments. Specifically, Celtronix requests that we refund the down payments of those Eligible Licensees electing Amnesty. Houston alternatively suggests that we provide a credit equal to the down payments that may be used in future auctions.

In essence, both petitioners are requesting that the Commission completely unwind the transaction and provide a full refund.

22. *Discussion.* We decline to adopt the proposal to refund down payments as part of the restructuring plan as it would place the Eligible Licensees electing Amnesty in virtually the same position they would have occupied had the auction never taken place. In support of its proposal, Celtronix argues that it is inconsistent to allow Eligible Licensees that elect Prepayment-Return to get an 85 percent credit on the down payments for the returned license, when Eligible Licensees that elect Amnesty are not provided with a full refund on the down payments. Houston supports its proposal by alleging that investors in the service ''were victimized by slick promoters.''

23. Providing a refund of down payments to those electing the Amnesty option, without an adequate counterbalancing public interest benefit, would undermine the integrity of the auction process by relieving participants of even the most basic obligation of their participation. Such an approach would not only be unfair to the other participants in the original auction, but it would encourage speculation in future auctions. In the *218–219 MHz Order,* we considered and rejected a request to return a portion of the down payment. Our decision to allow licensees that elect Prepayment-Return to get an 85 percent credit on the down

payment is justified by the public interest benefit of speeding service to the public. Presumably, only a licensees that reasonably believes it has access to adequate sources of capital and a viable business plan will elect Prepayment-Return. Presumably, these licensees will provide service to the public earlier then licensees from a subsequent auction. Thus, this option speeds service to the public. However, no such public interest benefit would accrue from providing a full refund to Eligible Licensees electing Amnesty. While we are sympathetic to Houston's allegations regarding ''slick promoters,'' we note that the Commission's present restructuring plan offers significant relief and that the Commission is not responsible for the actions of third parties. Accordingly, as the public interest is not served by giving licensees a complete refund, we reject petitioners' request.

*B. Entities Eligible to Participate in the Restructuring Plan*

i. Definition of Eligible Licensees

24. *Background.* As noted, the *218–219 MHz Order* adopted, among other things, a restructuring plan for existing licensees that participated in the installment payment plan and that: (i) were current in installment payments as of March 16, 1998; (ii) were less than ninety days delinquent on the last payment due before March 16, 1998; or (iii) had properly filed grace period requests under the former installment payment rules (''Eligible Licensees''). Other relief has been extended to Ineligible Entities.

25. *Discussion.* One petitioner, Vista, requests that we modify the definition of Eligible Licensees. In support of its request, Vista argues that it is inequitable to allow licensees that had made no installment payments, but had filed a timely grace period request to retain their license, while refusing to permit licensees that made ''substantial payments'' to retain their licenses. Vista also argues that the payment instructions provided by the Commission were conflicting, thus justifying a licensee's failure to make payments on its license or justifying a licensees failure to timely file a grace period request. Thus, Vista requests that the standard be modified so that the definition of Eligible Licensees also includes those licensees that have made ''substantial payments'' as of September 7, 1999, the date that the *218–219 MHz Order* was adopted. In the alternative, Vista requests that former licensees be able to make a retroactive payment sufficient to be deemed ''current as of March 16, 1998.'' As explained, we reject these arguments and conclude that the approach we have adopted in the *218–219 MHz Order* is equitable and is consistent with the treatment afforded licensees in other services. Accordingly, we decline to change the definition of Eligible Licensees.

26. In the *218–219 MHz Order,* the Commission attempted to balance the need to maintain the integrity of the auction system with the desire to assist licensees that might be experiencing financial difficulties. In doing so, we recognized the unique factual history of the 218–219 MHz Service. At the same time, we looked to the treatment afforded licensees in other services. Our decision to allow licensees that were current in installment payments (*i.e.* less than 90 days delinquent) as of March 16, 1998 to retain their licenses recognized that these licensees complied with our rules and attempted to fulfill their obligations to the Commission. Similarly, our decision to allow licensees that had timely filed grace period requests to retain their licenses stems from the licensees' ability to recognize their obligation to the Commission and take appropriate steps under our rules to request relief from their obligations in a timely manner. Allowing licensees that had timely filed grace period requests to retain their licenses is also consistent with the treatment afforded licensees in other services under the *Part 1 Third Report and Order. See* 63 FR 770 (January 7, 1998).

27. The test proposed by Vista is inherently subjective and would be unfair to licensees in other services. Administering such a subjective test would be difficult and would invite challenge on the basis of being arbitrary. Further, allowing licensees that failed to abide by the Commission's rules, but had made ''substantial payments'' to retain their licenses is inconsistent with the Commission's requirement that a licensee make full and timely payments. From such a rule current licensees, in this or other services, might conclude that no consequences would flow from failure to make full and timely payment. Accordingly, we decline to adopt the ''substantial payments'' test advocated by Vista.

28. Additionally, we also reject Vista's argument that myriad factors created substantial confusion and uncertainty about licensees' payment obligations. Although the date for the initial payment was postponed for a period of time, even the most favorable reading of the Commission's orders and letters to licensees would not lead a licensee to believe that it was excused from its obligation to make payments, or that it did not need to file a grace period request if it determined that it could not make timely payments. To the extent there was any confusion as to the precise date a particular payment was due, the Commission took that into account by defining Eligible Licensees as existing licensees that had participated in the installment payment program and ''were current in installment payments as of March 16, 1998.'' Thus, Vista has failed to provide a reasonable explanation of a licensees' failure to either make payments or file a timely grace period request.

29. Finally, we decline to adopt Vista's request that licensees be able to make retroactive payments sufficient to be deemed ''current as of March 16, 1998.'' Vista's suggestion would undermine the Commission's rules that timely and full payment are a condition of retaining the license. In light of the ample notice provided licensees regarding the payment rules, 47 CFR 1.2110(e)(4)(ii)(1994), and the generous provisions for Ineligible Entities provided in the *218–219 MHz Order,* Vista's suggestion at this late date that it be allowed to make retroactive payments is unsupportable. Thus, we reject Vista's proposal to allow former licensees to make retroactive payments.

ii. Paid in Full Licensees Are Not Eligible to Participate in the Restructuring Plan

30. *Background.* The restructuring options in the *218–219 MHz Order* are limited to those entities that met the small business qualifications of the auction, availed themselves of the installment payment plan, and have not paid in full. Two petitioners, Hughes and Hot Topics, have requested that all licensees be allowed to turn in a license and receive a refund.

31. *Discussion.* We decline to adopt the petitioners' request as no public policy interest would be served by allowing all licensees to return their licenses and receive a refund. In support of its proposal, Hughes argues that the Commission has insufficient evidence before it to conclude that installment payment licensees were experiencing financial difficulties, and that alternatively, some licensees may have simply chosen to walk away from their financial responsibilities. Thus, Hughes concludes that the Commission's action is arbitrary. In the *218–219 MHz Order,* we have previously rejected Hughes arguments. Hot Topics contends that as the technology for the service never developed, a refund to all licensees is appropriate.

32. For licensees utilizing installment payments, we offered a combination of debt restructuring for those entities that wish to retain their licenses and debt forgiveness to a limited number of current and former licensees. The relief is similar to that offered in the *C Block Restructuring Orders,* 63 FR 17111 (April 8, 1998), where the Commission chose to offer limited relief to licensees participating in the installment payment program, but not to those that paid in full. The restructuring plan fulfills the public policy goal of ensuring that the entity best qualified to provide service holds the license, and allows the market to determine the highest use for the license. However, where a licensee has paid in full for the license, nothing would prohibit the licensee from selling the license on the open market. Neither Hughes nor Hot Topics has established that a public policy goal would be fulfilled by unwinding the auction. By contrast, we risk considerable harm in adopting the proposal as it might create the false expectation in bidders in future auctions in this, or other services, that the Commission would compensate a licensee for any perceived loss in the value of its license. The Commission does not ensure the success of a service or the value of a license in the secondary market. Although, in a secondary market transaction, the licensee might receive less than the amount paid for the license, no public policy concerns would be raised by such a loss. As mandated by section 309(j) of the Communications Act, the Commission established a competitive bidding process that ensures that licenses are awarded to those that value them most highly as indicated by submitting the highest bid. To grant petitioners' request would encourage bidders to engage in insincere bidding with the expectation that the Commission would ensure against market difficulties encountered after license award.

33. Finally, contrary to Hughes's suggestion, the Commission has considered evidence of the unique financial difficulties experienced by the 218–219 MHz Service licensees participating in the installment payment plan. For example, to our knowledge at least two licensees have filed for bankruptcy. Additionally, in the comments filed by the licensees in response to the *218–219 MHz Flex Order,* and in the various grace period requests received by the Commission, licensees alleged that they have encountered financial difficulties particularly in raising capital. Accordingly, for the reasons discussed above, we decline to allow licenses that have paid in full to participate in the restructuring plan.

*C. Miscellaneous Requests Relating to the Restructuring Plan*

i. Grace Periods

34. In the *Part 1 Third Report and Order,* we modified the installment payment grace period and late payment fee provisions of our Rules as applied to all licensees participating in an installment payment plan at that time. One petitioner, Celtronix, proposes to exempt 218–219 MHz Service licensees from the modified installment payment grace period and late payment fee provisions of the new part 1 rules. Celtronix's petition in this proceeding offers the same argument that it previously offered in its petition for reconsideration of the *Part 1 Third Report and Order.* Specifically, Celtronix argues that applying these rules to 218–219 MHz Service licensees constitutes impermissible retroactive rulemaking. We rejected this argument in the *Order on Reconsideration of the Part 1 Third Report and Order, See* 65 FR 52323 (August 29, 2000), and concluded that our new part 1 rules do not violate the prohibitions on retroactivity under the Administrative Procedure Act (''APA''). We see no reason to revist this issue in this proceeding

ii. Notes and Security Agreements

35. *Background.* In the *218–219 MHz NPRM, See* 63 FR 52215 (September 30, 1998), we indicated that ''[e]very licensee electing to continue making installment payments would be required to execute appropriate loan documents, that may include a note and security agreement, as a condition of reamortization of its installment payment plan under the revised ten-year term, pursuant to § 1.2110(f)(3) of the Commission's rules.'' In the *218–219 MHz Order,* we indicated that Eligible Licensees electing resumption ''may be required to execute loan documents.'' The *Implementation Procedures PN,* 65 FR 35633 (June 5, 2000), in turn, indicated that those Eligible Licensees electing Reamortization/Resumption would be ''required to execute loan documents in the form of an Installment Payment Acknowledgement.'' In general, the acknowledgement contains a restatement of the amount of the debt owed, the payment terms under the *218–219 MHz Order,* and references other Commission rules and regulations related to the payment of installment debt. The *Implementation Procedures PN* also notes that ''licensees may also be required to execute a Uniform Commercial Code financing statement (UCC–1).'' The *Implementation Procedures PN* further informs Eligible Licensees that failure to fully and timely execute and deliver the requisite loan document(s) as of ten business days from receipt will result in the automatic cancellation of the license.

36. *Discussion.* One petitioner, In-Sync, argues that requiring loan documents, specifically notes and security agreements, is unnecessary and would constitute a retroactive rulemaking. We reject this argument. As discussed in the *Implementation Procedures PN,* the Bureau has determined not to require notes and security agreements, but will require the execution of other loan documents that evidence that the licensee understands and agrees to the restructured financing terms. Those licensees that do not wish to execute the required documents may elect Amnesty or elect Prepayment.

37. The APA's definition of ''rule'' provides that a rule ''means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedures, or practice requirements of an agency * * *'' By definition, a rule has legal consequences only for the future. Thus, absent explicit statutory authority to the contrary, the APA precludes an agency from issuing rules that alter the past legal consequences of past actions. The requirement that Eligible Licensees execute loan documents does not violate this proscription. We have not gone back to past transactions and imposed penalties for conduct that was previously allowed. Rather, we are establishing prospective procedures to allow licensees to continue to meet their previously established payment obligation to the Commission. The mere fact that these rules deal with past transactions does not constitute unlawful retroactive rulemaking under the APA. Further, the Bureau's decision to require the execution of loan documents by Eligible Licensees that elect Reamortization and Resumption of Payments is based upon the reasonable concern that the Government's interests are adequately protected in the event of default. Accordingly, we agree with the approach adopted by the Bureau and reject petitioner's request.

iii. Interest Calculation

38. *Background.* In the *218–219 MHz Flex Order,* the Commission suspended the automatic cancellation rules. The effect of this was not to suspend the obligation of licensees to make

payments; rather it merely suspended the consequences of failing to make payment. As the underlying debt remained, a licensee was still permitted to make payments. In fact, some licensees have continued to make payments during the suspension period. However, licensees that failed to make payments did not face automatic cancellation.

39. *Discussion.* Two petitioners, In-Sync and Celtronix, argue that interest should not have continued to accrue during the suspension period. In-Sync argues that as the *218–219 MHz Flex Order* suspended the obligation to make the payments as of March 1998, interest should have not have continued to accrue during the period since March 1998. Additionally, both In-Sync and Celtronix argue that the *218–219 MHz Order* is unclear and, accordingly, interest should not be calculated for the suspension period. Specifically, Celtronix points to the fact that in the *218–219 MHz Order* the Commission stated that it will capitalize all ''accrued and unpaid'' interest into the principal amount as of the election date. However, in § 95.816(c) of our rules, we stated that ''all unpaid interest'' from the grant date through the election date will be capitalized into the principal. From this, Celtronix concludes that we did not intend interest to accrue. Both petitioners are mistaken. As the underlying debt remained, the interest continued to accrue. The fact that the Commission relieved the licensees of one consequence of failing to make timely payments does not mean that the Commission intended to also relieve the licensees of all the consequences of failing to make payments. Further, given the sums involved, for at least some licensees, it would require approval by the Department of Justice to forgive the interest incurred during the suspension period. We note that the licensees had the use of the licenses during this period of time. As the petitioners have failed to provide any basis to forgive the interest, the Commission is not inclined to request debt forgiveness on this issue. Accordingly, petitioners' request is rejected.

*D. Remedial Bidding Credit*

40. *Background.* Pursuant to statutory mandate, our auction rules have included provisions to encourage participation by minority- and women-owned entities, small businesses, and rural telephone companies. *See* 47 CFR 1.2110, 95.816(d)(3). Thus, when the auction for what is now the 218–219 MHz Service was conducted on July 28 and 29, 1994, (Auction No. 2), part 95 of the Commission's rules included provisions that allowed small businesses to pay eighty percent of their winning bids in installments. *See* 47 CFR 95.816(d)(3). Businesses owned by minority- and/or women-owned entities were also entitled to a twenty-five percent bidding credit that could be applied to one of the two licenses available in each market. *See* 47 CFR 95.816(d)(1). Bidders that were both small businesses and minority- and/or women-owned entities received bidding credits and were allowed to participate in the installment plan.

41. At the time our rules were adopted for Auction No. 2, the standard of review applied to federal programs designed to enhance opportunities for racial minorities and women was an ''intermediate scrutiny standard.'' In June 1995, almost a year after the conclusion of Auction No. 2, the U.S. Supreme Court decided *Adarand Constructors* v. *Pena,* holding that racial classifications are subject to ''strict scrutiny'' and will be found unconstitutional unless ''narrowly tailored'' and in furtherance of ''compelling governmental interests.'' The following term, the Court decided in *United States* v. *Virginia,* that to successfully defend a gender based program, the government must demonstrate an ''exceedingly persuasive justification'' for the program. As explained in the *218–219 MHz Order,* after Auction No. 2, Graceba and others raised constitutional questions concerning the bidding credits used in the 218–219 MHz service. In addition, the Commission, in the *Competitive Bidding Sixth Report and Order,* 60 FR 37786 (July 21, 1995) and the *Competitive Bidding Sixth Memorandum Opinion and Order,* 61 FR 49066 (September 18, 1996), questioned whether the record was sufficiently developed to support the race and gender-based provisions of the C block competitive bidding rules and the competitive bidding rules of other services under a strict scrutiny standard. In order to avoid delay of two scheduled auctions, the Commission decided to eliminate the race and gender based provisions for those auctions and instead employ a similar provision for small businesses. However, in light of the Commission's statutory mandate, the Commission commenced a series of studies to examine the minority and female ownership of telecommunications and electronic media facilities in the Unites States. Despite these efforts, in establishing rules for auctions in other services, we have continued to note that the record remains insufficient to support any racial or gender based provision under the standard established by the Supreme Court in *Adarand and VMI.*

42. In the *218–219 MHz Order,* consistent with the modifications made to the rules governing the auction of licenses in other services, we eliminated the minority- and women-owned business bidding credit previously afforded licensees in the first 218–219 MHz auction. Thus, all minority- and women-owned businesses lost the bidding credit they had previously received in the original auction in the 218–219 MHz Service conducted in 1994. At the same time, recognizing that we have provided bidding credits in other services to small businesses, we determined to grant a twenty-five percent bidding credit to the accounts of every winning bidder in the 1994 auction ''that met the small business qualifications for that auction.''

43. *Discussion.* A few petitioners have requested that the 25 percent credit granted to small business be applied to the accounts of all winning bidders regardless of whether they met the small business qualifications for the auction. One petitioner, Ad Hoc Coalition, argues that the provision of the remedial bidding credit, although facially neutral, was impermissibly motivated by a desire to assist women and minority businesses and is thus constitutionally flawed under *Hunt* v. *Cromartie.* Another petitioner, Hughes, argues that the Commission's response to the constitutional issue is inequitable as ''all bidders in the auction suffered from the inflated prices of the licenses caused by the bidding credits.'' Hughes concludes that ''all winning bidders, whether they paid in full or not should be afforded a remedy.'' For the reasons discussed, we reject these arguments and decline to expand the remedial bidding credit to all winning bidders in Auction No. 2.

44. The arguments of Hughes and Ad Hoc Coalition are based upon the assumption that we accorded bidding credits to all small businesses as a direct remedy for race and gender discrimination. That is incorrect. In order to address the questions raised concerning the constitutionality of race- and gender-based bidding credits, we eliminated those credits. This was the extent of the ''remedy'' provided for Graceba's concerns. However, as this issue was not raised until after the auction closed, we determined that it would be disruptive and unfair not to provide some form of bidding credit in this service, as licensees had crafted business plans in reliance upon the credit. Therefore, consistent with our practice in subsequent auctions, we

choose to afford all small businesses an after the fact bidding credit. Thus, in effect, we leveled the bidding credit benefit upward. In doing so, we minimized the potential for disruption to entities that had previously qualified for the credit, we equalized the regulatory treatment between the 218–219 MHz Service and the many other services in which we have extended bidding credits to all small businesses, and we fulfilled our statutory mandate of encouraging participation of entrepreneurs, rural telephone companies, and businesses owned by members of minority groups and women. The credit accorded small businesses thus solved a multi-faceted and complex set of regulatory issues. Those issues are not presented with respect to larger businesses such as Hughes and those represented by the Coalition, for Congress has not directed us to take special steps to ensure the participation of large companies. We, therefore, have no obligation to extend to such companies the same approach we have adopted toward smaller businesses.

45. The remedial bidding credit affords 218–219 MHz Service licensees treatment similar to that afforded licensees in other services. Because the credit is not based on racial or gender classifications, it is not subject to a strict scrutiny analysis. Instead, our policy operates in a neutral manner and does not subject anyone to unequal treatment on the basis of race or gender. It therefore should be evaluated on the more deferential rational basis review.

46. Under rational basis review, government action is permissible unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes the government's actions are deemed irrational. In areas of social and economic policy, a classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

47. As we have stated previously with respect to small business credits, the remedial bidding credit for small businesses furthers Congress's objective of disseminating licenses among a wide variety of applicants. That reasonable objective is the basis for our decision to grant small business credits whether prospectively or retroactively as in this instance. Thus, the Commission's decision to grant remedial bidding credits to small businesses is entirely permissible. The fact that the pool of licensees eligible for the credit includes all the licensees that had previously been afforded the minority- and women-owned bidding credit is immaterial to the lawfulness of our approach. Indeed, that correspondence is not surprising because women and minority businesses are frequently, although not exclusively, small businesses. Accordingly, we reject Ad Hoc Coalition's argument that the bidding credits were impermissibly motivated.

48. With respect to Hughes comments that the existence of bidding credits inflated the prices paid by licensees, such a contention is wholly speculative. Hughes has failed to provide any evidence indicative of inflation in the bidding due to the existence of bidding credits, nor has it provided an analysis that would distinguish such inflation in the bidding price due to bidding credits from other factors. Further, as explained, the elimination of the race- and gender-based bidding credits was the ''remedy'' provided for any alleged constitutional concerns. Even had Hughes provided an evidentiary basis, we would decline to offer the relief requested. Thus, as Hughes' comment is purely speculative, we dismiss it as such.

*D. Technical Modifications to the Rules*

49. On our own motion, we make several technical modifications to conform our rules to the *218–219 MHz Order.* Among these changes, we correct the cross-reference to § 95.815(a) contained in § 95.861 of our rules to specify the interference plan discussed in the text of the *218–219 MHz Order,* clarify that CTSs provide fixed service, and specify that the general part 1 transfer and assignment procedures apply to all 218–219 MHz Service licensees, regardless of how they obtained their license. Although § 1.902 of the rules makes these transfer and assignment procedures broadly applicable to all the Wireless Radio Services, we conclude that the inclusion of a specific cross-reference to § 1.948 of the rules in part 95 will aid 218–219 MHz service licensees in meeting their obligations under our general part 1 rules. We also remove the individual licensing requirements for CTSs that may have an environmental effect or require obstruction marking and lighting, because we already collect this information elsewhere in our rules.

## V. Ordering Clauses

50. Accordingly, it is ordered that, pursuant to the authority granted in § 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), the petitions for reconsideration filed in response to the *218–219 MHz Order* are denied.

51. It is further ordered, that pursuant to that authority granted in sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j), the technical modifications to the Commission's rules, as described herein, are hereby adopted. These modifications shall become effective April 9, 2001.

### List of Subjects in 47 CFR Parts 2 and 95

Communications equipment.

Federal Communications Commission.

**Shirley S. Suggs,**

*Chief, Publications Group.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 95 as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

**Authority:** 47 U.S.C. 154, 302, 303, 307, 336, and 337, unless otherwise noted.

2. In § 2.106, under the heading ''United States (US) Footnotes, revise Footnote US317 to read as follows:

**§ 2.106 Table of Frequency Allocations.**

* * * * *

US317 The band 218.0–219.0 MHz is allocated on a primary basis to 218–219 MHz Service operations.

* * * * *

## PART 95—PERSONAL RADIO SERVICES

3. The authority citation for part 95 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

4. Section 95.803 is revised to read as follows:

**§ 95.803 218–219MHz Service description.**

(a) The 218–219 MHz Service is authorized for system licensees to provide communication service to subscribers in a specific service area.

(b) The components of each 218–219 MHz Service system are its administrative apparatus, its response transmitter units (RTUs), and one or more cell transmitter stations (CTSs). RTUs may be used in any location

within the service area. CTSs provide service from a fixed point, and certain CTSs must be individually licensed as part of a 218–219 MHz Service system. See § 95.811.

(c) Each 218–219 MHz Service system service area is one of the cellular system service areas as defined by the Commission, unless modified pursuant to § 95.823.

3. Section 95.807 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(4) to read as follows:

**§ 95.807 Requesting regulatory status.**

(a) Authorizations for systems in the 218–219 MHz Service will be granted to provide services on a common carrier basis or a private (non-common carrier and/or private internal-use) basis.

(1) *Initial applications.* An applicant will specify on FCC Form 601 if it is requesting authorizations to provide services on a common carrier, non-common carrier or private internal-use basis, of a combination thereof.

* * * * *

(4) *Pre-existing licenses.* Licenses granted before April 9, 2001. are authorized to provide services on a private (non-common carrier) basis. Licensees may modify this initial status pursuant to paragraph (a)(3) of this section.

* * * * *

4. Section 95.811 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

**§ 95.811 License requirements.**

* * * * *

(b) Each CTS where the antenna does not exceed 6.1 meters (20 feet) above ground or an existing structure (other than an antenna structure) and is outside the vicinity of certain receiving locations (see § 1.924 of this chapter) is authorized under the 218–219 MHz System license. All other CTS must be individually licensed.

* * * * *

(e) Each CTS (regardless of whether it is individually licensed) and each RTU must be in compliance with the Commission's environmental rules (see part 1, subpart I of this chapter) and the Commission's rules pertaining to the construction, marking and lighting of antenna structures (see part 17 of this chapter).

5. Section 95.812 is amended by revising paragraph (a) to read as follows:

**§ 95.812 License term.**

(a) The term of each 218–219 MHz service system license is ten years from the date of original grant or renewal.

* * * * *

6. § 95.816 is amended by revising the last sentence in paragraph (b), paragraphs (c)(3) and (c)(5) to read as follows:

**§ 95.816 Competitive bidding procedures.**

* * * * *

(b) * * * The interest rate will equal the rate for five-year U.S. Treasury obligations at the grant date.

(C) * * *

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (c)(1) or (c)(2) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

* * * * *

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (c)(1) of this section (or each of which individually satisfies the definition in paragraph (c)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

* * * * *

7. Section 95.819 is revised to read as follows:

**§ 95.819 License transferability.**

(a) A 218–219 MHz Service system license, together with all of its component CTS licenses, may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in § 1.948 of this chapter. For licenses acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), designated entities must comply with §§ 1.2110 and 1.2111 of this chapter (see § 1.948(a)(3) of this chapter).

(b) If the transfer, assignment, sale, or gift of a license is approved, the new licensee is held to the construction requirements set forth in § 95.833.

8. Section 95.861 is amended by revising paragraph (c) to read as follows:

**§ 95.861 Interference.**

* * * * *

(c) A 218–219 MHz Service licensee must provide a copy of the plan required by § 95.815 (a) of this part to every TV Channel 13 station whose Grade B predicted contour overlaps the licensed service area for the 218–219 MHz Service system. The 218–219 MHz Service licensee must send the plan to the TV Channel 13 licensee(s) within 10 days from the date the 218–219 MHz Service submits the plan to the Commission, and the 218–219 MHz Service licensee must send updates to this plan to the TV Channel 13 licensee(s) within 10 days from the date that such updates are filed with the Commission pursuant to § 95.815.

* * * * *

[FR Doc. 01–3051 Filed 2–6–01; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AG28**

## Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Zayante Band-Winged Grasshopper

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*) under the Endangered Species Act of 1973, as amended (Act). The designation includes an approximately 4,224 hectare (10,560 acre) area in Santa Cruz County, California, which includes all areas known to be occupied by the Zayante band-winged grasshopper. Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the Zayante band-winged grasshopper are those habitat components that are essential for the primary physical and biological needs of the species. These needs include food, water, sunlight, air, minerals and other nutritional or physiological needs; cover or shelter; sites for breeding and reproduction and dispersal; protection from disturbance; and habitat that is representative of the historic geographical, and ecological distribution of the Zayante band-winged grasshopper.

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. As required by section

4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

**DATES:** This rule becomes effective on March 9, 2001.

**ADDRESSES:** You may inspect the complete file for this rule at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93001, by appointment during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, at the above address; telephone 805/644–1766, facsimile 805/644–3958.

**SUPPLEMENTARY INFORMATION:**

## Background

The Zayante band-winged grasshopper (*Trimerotropis infantilis*), Order Orthoptera and Family Acrididae, was first described from near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California, in 1984 (Rentz and Weissman 1984). The body and forewings of the Zayante band-winged grasshopper are pale gray to light brown with dark cross-bands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue, and the eyes have bands around them. Males range in length from 13.7 to 17.2 millimeters (mm) (0.54 to 0.68 inches (in.)); females are larger, ranging in length from 19.7 to 21.6 mm (0.78 to 0.85 in.) (Otte 1984; Rentz and Weissman 1984). The Zayante band-winged grasshopper is most similar in appearance to *T. occulans* and *T. koebelei*; neither of these species is known from the Santa Cruz Mountains (Otte 1984, Rentz and Weissman 1984). *Trimerotropis thalassica* and *T. pallidipennis pallidipennis* have been observed in the vicinity of Zayante band-winged grasshopper, but are morphologically distinct from it and appear to prefer different microhabitats (Rentz and Weissman 1984; Arnold 1999a, b).

The flight season for adult Zayante band-winged grasshopper extends from late May through October with peak activity during July and August (White, *in litt.* 1993; Morgan, *in litt.* 1994; Arnold 1999a, b). Specimens have been observed as late as November 4 (Arnold 1999a). When flushed, individuals generally fly 1 to 2 meters (m) (3 to 7 feet (ft)), producing a buzzing sound while in flight (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground, and are conspicuous in flight because of the color of the hind wings and the buzzing sound made by the wings (Borror *et al.* 1976). No additional information on the life cycle of this species is available.

The Zayante band-winged grasshopper is known only from Santa Cruz County, California. The species was described in 1984 from specimens collected in 1977 on sparsely vegetated sandy soil above the Olympia Sand Quarry. Between 1989 and 1994, Zayante band-winged grasshoppers were found at 10 of 39 sites sampled during two independent surveys near the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley, California (Hovore 1996, USFWS 1998).

Little is known of the historical distribution of the species. A review of museum specimens yielded Zayante band-winged grasshoppers from ''Santa Cruz Mountains, no date'', ''Alma, 1928'', ''Felton, 1959'', and ''Santa Cruz, 1941'' (Rentz and Weissman 1984). No subsequent collections have been recorded that substantiate the existence of a population in the vicinity of Alma. Furthermore, the town of Alma is currently beneath a reservoir, and the cited specimens cannot be located in the listed depository for verification (D. Weissman, California Academy of Sciences, pers. comm. 1994, 2000). Therefore, because no specific descriptions of location or habitat accompanied these historic specimens, they were not considered in our assessment of the current range and status of the species.

The Zayante band-winged grasshopper occurs in association with the Zayante soil series (USDA Soil Conservation Service 1980). The Zayante soils in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley are dominated by maritime coast range *Pinus ponderosa* (ponderosa pine) forest and northern maritime chaparral (Griffin 1964, Holland 1986). The distributions of these two plant communities overlap to form a complex and intergrading mosaic of communities variously referred to as ponderosa sand parkland, ponderosa pine sand hills, and *Arctostaphylos silvicola* (silver-leafed manzanita) mixed chaparral. These communities are collectively referred to as ''Zayante sand hills habitat'' and harbor a diversity of rare and endemic plant species (Thomas 1961, Griffin 1964, Morgan 1983). A unique habitat within the Zayante sand hills is sand parkland, characterized by sparsely vegetated, sandstone-dominated ridges, and saddles that support scattered ponderosa pines and a wide array of annual and perennial herbs and grasses.

The role of landscape-level processes, including hydrology, seed dispersal, succession, fire, and other disturbances, in forming Zayante sand hills habitats is poorly understood. Historically, the Zayante sand hills included a continually changing pattern of habitat patches, each with specific disturbance histories, sizes, and species compositions. At any one time, patches of all possible stages of succession would be present (Lee 1994). Populations of the Zayante band-winged grasshopper evolved within this dynamic landscape and most likely are adapted to disturbance and change.

The habitat of the Zayante band-winged grasshopper was originally described as ''sandy substrate sparsely covered with *Lotus* and grasses at the base of pines'' (Rentz and Weissman 1984). All of the locations where grasshoppers were found during surveys completed between 1989 and 1994 were on Zayante soils. The habitat at these sites was consistently described as a sparsely vegetated sandy substrate or sand parkland (White, *in litt.* 1993; Morgan, *in litt.* 1994). In 1997, at the time of the listing of this species, all of its known locations occurred within 7 discrete areas of sand parkland habitat as characterized by Lee (1994). These areas of sand parkland totaled 78 ha (193 ac). Recent studies indicated that the Zayante band-winged grasshopper occurs primarily in early successional sand parkland with widely scattered tree and shrub cover, extensive areas of bare or sparsely vegetated ground, loose sand, and relatively flat relief (Hovore 1996; Arnold 1999a, b). However, Zayante band-winged grasshoppers have also recently been observed in areas with a well-developed ground cover and in areas with sparse chaparral mixed with patches of grasses and forbs (Hovore 1996; Arnold 1999a, b), indicating that Zayante band-winged grasshoppers are not restricted solely to sand parkland. As a result of this new information, the amount of area that provides potential habitat for the species has not been quantified at this time.

The primary threat to the Zayante band-winged grasshopper is loss of habitat. Historically, approximately 2,533 ha (6,265 ac) of Zayante sand hills habitat occurred in Santa Cruz County. Over 40 percent of the Zayante sand hills habitat, and 60 percent of the sand parkland within that habitat, is estimated to have been lost or altered due to human activities. These activities include—sand mining, urban development, recreational activities,

and agriculture (Marangio and Morgan 1987; Lee 1994; R. Morgan, pers. comm. 1992). Approximately 200 to 240 hectares (ha) (500 to 600 acres (ac)) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac), largely because of identification and inclusion of additional, lower-quality sand parkland (Lee 1994).

The disruption of natural landscape-level processes may also be resulting in shifts in plant communities, which has reduced the extent and quality of habitat available for the Zayante band-winged grasshopper (USFWS 1998). For example, active suppression of fire has resulted in the encroachment of mixed evergreen forest into ponderosa pine forest (Marangio 1985). Increased shading from the mixed evergreen forest appears to restrict the use of areas by the Zayante band-winged grasshopper and results in lower population numbers (Sculley, USFWS, pers. observation 1999). Historically, fires would have burned in this area and resulted in areas with more exposure to sunlight. Seed dispersal mechanisms may be disrupted as a result of urbanization of the Zayante sandhills. Residential development may disrupt wind pollination events and isolate or extirpate metapopulations of insect pollinators. In addition, nonnative plant species, including *Cystisus striatus* (Portuguese broom) and *Carpobrotus chilensis* (sea fig), are out-competing native species and encroaching on sites occupied by the Zayante band-winged grasshopper (Rigney 1999). Pesticides and over-collection are also recognized as potential threats to the Zayante band-winged grasshopper (USFWS 1998).

**Previous Federal Action**

On July 16, 1992, Dr. David Weissman, of the California Academy of Sciences, petitioned us to list the Zayante band-winged grasshopper as an endangered species. During our status review of the Zayante band-winged grasshopper, we examined the available literature and data on the species' life history, ecology, locality records, and range. Sources of information on the status of and threats to the Zayante band-winged grasshopper include reports supplied by proponents of the listing, plans supplied by reviewing agencies for development projects, and published and unpublished data from scientists with expertise on the species and its habitat needs.

On May 10, 1994, we published a proposed rule in the **Federal Register** (59 FR 24112) to list the Zayante band-winged grasshopper and two other insect species as endangered. The proposed rule constituted the final finding for the petitioned actions for the Zayante band-winged grasshopper in accordance with section 4(b)(3)(B)(ii) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Publication of the proposed rule opened a 60-day public comment period through July 11, 1994, to allow submission of new and additional information on the species and written comments from the public. We held a public hearing on July 18, 1994, in Santa Cruz, California, that included presentations of oral testimony and written comments. We published a notice on September 1, 1994 (59 FR 45254), reopening the public comment period through October 31, 1994, to allow submission of additional comments and information concerning the proposed rule.

Using information received during the cited public comment periods, we published a final rule on January 24, 1997 (62 FR 3616), determining the Zayante band-winged grasshopper and Mount Hermon June beetle (*Polyphylla barbata*), both occurring within the Zayante sand hills habitat, to be endangered species. At the time of listing, we concluded that designation of critical habitat for the Zayante band-winged grasshopper was not prudent. On September 30, 1997, we made a draft recovery plan for the Zayante band-winged grasshopper, Mount Hermon June beetle, and three plants (*Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), *Erysimum teretifolium* (Ben Lomond wallflower), and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower)) available for public comment (62 FR 51126). We published the final recovery plan in September 1998.

At the time of listing, we concluded that designation of critical habitat for the Zayante band-winged grasshopper was not prudent because such designation would not benefit the species since all known populations of the species occur on non-Federal lands where Federal involvement in land-use activities would not generally occur. Since this time, we have determined that designating critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas are also identified in the recovery plan as the focus of our recovery efforts for the Zayante band-winged grasshopper.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District Court of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior, for failure to designate critical habitat for seven species—the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper, the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife*, CIV 99–1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit according to a settlement agreement entered into by the parties. Consistent with the settlement agreement, we proposed critical habitat for the Zayante band-winged grasshopper (65 FR 41917) on July 7, 2000.

The comment period for this proposal closed on September 5, 2000. On December 6, 2000, we published a notice (65 FR 76207) announcing the reopening of the comment period on the draft proposal to designate critical habitat for the Zayante band-winged grasshopper and a notice of availability of the draft economic analysis on the proposed determination. The comment period was opened for an additional 15 days, closing on December 21, 2000.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat 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 consultation on Federal actions that are likely to result in the destruction or adverse modification of 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 would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of 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)).

Section 4 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.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. 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 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service 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, unpublished materials (*i.e.*, gray literature), and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, 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.

**Methods**

In determining areas that are essential to conserve the Zayante band-winged grasshopper, we included data from research and surveys published in peer-reviewed articles and unpublished reports, data submitted by biologists holding section 10(a)(1)(A) recovery permits, data from monitoring reports required for incidental take permits under section 10(a)(1)(B) of the Act, soil maps, and the recovery criteria outlined in the recovery plan (USFWS 1998). The area we are designating as critical habitat currently provides those habitat components essential for the primary biological needs of the Zayante band-winged grasshopper, as defined by the primary constituent elements, and maintains ecosystem functions on which the grasshopper depends.

**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 designate 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 (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, and other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; protection from disturbance; and habitats that are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Zayante band-winged grasshopper are those physical and biological features that provide conditions that are essential for the primary biological

needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are—(a) the presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand (Arnold 1999a,b). Zayante sand hills habitat is often characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral as described by Marangio (1985) and Lee (1994). Plant species that may occur within the boundaries include, but are not limited to—*Pinus ponderosa* (ponderosa pine), *Arctostaphylos silvicola* (silver-leafed manzanita), *Ceonothus* sp. (California lilac), *Adenostoma* sp., *Eriodictyon* sp. (yerba santa), *Minuartia* sp. (sandwort), *Calyptridium umbellatum* (pussypaws), *Mimulus rattanii* (monkeyflower), *Lupinis bicolor* (miniature lupine), *Gilia tenuiflora* (gilia), *Lessingia filaginifolia* (California aster), *Eriogonum nudum* ssp. *decurrens* (Ben Lomond buckwheat), *Erysimum teretifolium* (Ben Lomond wallflower), and *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower) (Lee 1984, USFWS 1998, McGraw *in litt.* 1999). Of these plant species, *Erysimum teretifolium* (Ben Lomond wallflower) and *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower) are also federally listed as endangered and are addressed within the same recovery plan as the Zayante band-winged grasshopper and the Mount Hermon June beetle.

Areas where surveys for Zayante band-winged grasshopper have not been conducted, but are adjacent or contiguous with known occupied habitat, are also essential to the species. Not only is it likely that these areas contain grasshoppers, the areas are necessary because they—(1) provide and maintain the ecosystem functions, including, but not limited to, hydrologic processes, succession, seed dispersal, and natural disturbance regimes, necessary to support populations of the Zayante band-winged grasshopper; (2) provide a means of connecting occupied areas so that the deleterious effects of isolation are minimized; and (3) increase the area available to the species in case of localized, random catastrophic events, thus decreasing the potential for extirpation of populations.

**Criteria Used To Identify Critical Habitat**

In an effort to identify areas essential for the conservation of the species, we evaluated information on Zayante soils, plant communities associated with these soils, and the distribution, life history, and habitat requirements of the Zayante band-winged grasshopper. Using a geographic information system (GIS), maps of the Zayante soil series were generated. We determined that published maps of the Zayante soil series were imprecise for our needs and did not always account for gradients between soil types. Therefore, a 60-m (200-ft) zone was mapped around the soils to account for possible inaccuracies in the current maps. We arrived at a 60-m zone based on recommendations by the Natural Resources Conservation Service (NRCS), the agency familiar with the techniques used to map soils and the distribution of Zayante soils (R. Casale, NRCS, USDA, pers comm. 2000).

Next, the known locations of the Zayante band-winged grasshopper were overlaid on the map of Zayante soil series. Areas included within the boundaries of critical habitat are those Zayante soils determined to be occupied by the grasshopper in past surveys and Zayante soils that are contiguous and adjacent to these occupied areas. These contiguous or adjacent areas were included because they are unsurveyed and are likely to contain grasshoppers, they create patches large enough in size to maintain ecosystem functions, and they connect habitat patches into a larger area so that populations do not become isolated and localized random or catastrophic events do not cause smaller populations to be extirpated. Over time, as succession occurs and vegetation encroaches on areas currently inhabited by the Zayante band-winged grasshopper, populations may disperse into these adjacent patches of habitat.

We considered sites identified in the recovery plan as important for the recovery of the Zayante band-winged grasshopper. While recovery units were not specifically described, the recovery plan recommends protecting the 7 discrete areas of sand parkland (Lee 1994), containing the 10 sites then known to be occupied by the species, as one criterion for down-listing to threatened status. These seven areas were included within the boundaries of the designated critical habitat. Additional areas were also included that have the constituent elements for the species, because new information about the range, distribution, and habitat requirements of the Zayante band-winged grasshopper indicates that the species occupies areas that are outside of these seven discrete areas and that are not considered sand parkland. Furthermore, sand hills habitat adjacent and contiguous with these seven areas is essential to maintain landscape level processes, including succession and fire regimes as described in the Background section of this rule.

We determined that approximately 3,620 ha (8,700 ac) of Zayante soils are scattered throughout Santa Cruz County. The soils occur from west of the community of Bonny Doon east to Corralitos, and from the northern portion of Wilder Ranch State Park north to the communities of Boulder Creek, Lompico, and Zayante. Several patches are also located near and within the City of Scotts Valley. The largest cluster of these soils occurs between Highways 9 and 17, surrounding the communities of Scotts Valley, Zayante, Lompico, Ben Lomond, Felton, and Mount Hermon. Surveyors of the Zayante band-winged grasshopper have focused their efforts in this region, and, at present, all of the known locations of this species are from this region. Zayante soils located in the eastern portion of Santa Cruz County in the vicinity of Corralitos do not support vegetation characteristic of the Zayante sand hills habitat.

We excluded from the designated critical habitat areas that have not been surveyed for the Zayante band-winged grasshopper and that are not part of a continuous corridor of Zayante soils that include known localities of the grasshopper. Although these areas have been excluded, we recognize that they may still include habitat presently or historically occupied by the Zayante band-winged grasshopper. In addition, these unsurveyed areas may include habitat appropriate for introduction of Zayante band-winged grasshoppers in the future. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

We defined the boundaries for the designated critical habitat using township, range, and section numbers from the public land survey. Our minimum mapping unit was ¼-section equating to 65 ha (160 ac). We overlayed the public land survey on the Zayante soils to be designated as critical habitat as defined above. If a ¼-section of the public land survey included any of these Zayante soils, it was included within the boundaries of critical habitat. We designate approximately 4,230 ha (10,560 ac) of land as critical habitat for the Zayante band-winged grasshopper. Of this area, 1,600 ha (3,950 ac) are lands with Zayante soils. The remaining 2,630 ha (6,610 ac) of critical habitat are areas that were included due to

insufficient mapping detail (as described below).

The Zayante soils occur in a mosaic of island-like and finger-like assemblages interspersed with non-Zayante soils. The nature of these assemblages combined with our minimum mapping unit of 65 ha resulted in having to include 2,630 ha of non-Zayante soils within the boundaries of critical habitat. We have displayed the Zayante soils and boundaries of the critical habitat on the map at the end of this rule. We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other similar lands. Furthermore, we recognize that areas with non-Zayante soils do not contain the primary constituent elements. Federal actions limited to areas within the unit boundaries, that do not contain one or more of the primary constituent elements and do not support the processes necessary to maintain the required ecosystem functions would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

**Critical Habitat Designation**

The approximate area included in the critical habitat designation within Santa Cruz County by land ownership is shown in Table 1. Land designated as critical habitat is under private, local government, and State ownership, and is described within one unit. A brief description of this unit is presented below in Table 1.

TABLE 1.—APPROXIMATE AREA WITHIN SANTA CRUZ COUNTY ENCOMPASSING CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

| County | Federal land | Local/state land | Private land | Total* |
|---|---|---|---|---|
| Santa Cruz ..... | N/A ..... | 250 ha (610 ac) ..... | 3,980 ha (9,950 ac) ..... | 4,230 ha (10,560 ac) |

*Area estimates reflect critical habitat unit boundaries, not the extent of the primary constituent elements within the unit.

**Designated Critical Habitat Unit**

The Critical Habitat Unit (Unit) that is designated encompasses approximately 4,230 ha (10,560 ac) between Highways 9 and 17. Most of the lands designated as critical occur from the southeastern portion of Henry Cowell Redwoods State Park west to the City of Scotts Valley and north to the communities of Ben Lomond, Lompico, and Zayante. A small area designated as critical habitat is located east of Zayante in the vicinity of Weston Road.

Public lands that occur in this Unit include approximately 130 ha (310 ac) in Henry Cowell Redwoods State Park, owned and managed by the California Department of Parks and Recreation, and all of Quail Hollow Park (120 ha (300 ac)), jointly owned and managed by the County of Santa Cruz and the California Department of Fish and Game. Areas covered in the Revised Habitat Conservation Plan for Quail Hollow Quarry (Graniterock 1998) and the Habitat Conservation Plan for Hanson Aggregates' Felton Plant (Hanson Aggregates 1999) have been excluded from designation as critical habitat. See section ''Relationship to Habitat Conservation Plans'' for further discussion of these plans.

This unit is essential to the recovery of the species because it supports all of the populations that are currently known and all of the known suitable habitat for the Zayante band-winged grasshopper throughout its range. Given the habitat based threats to this species summarized above, we believe the area designated requires special management considerations or protection.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) 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, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act, 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 activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by

law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial 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 Zayante band-winged grasshopper 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 (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Zayante band-winged grasshopper is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Excavating, compacting, grading, or discing of soil, and vegetation removal;

(2) Grading, mining, or construction;

(3) Recreational activities that crush and remove vegetation or compact soils, including off-trail hiking, horse riding, and off-road motorized and non-motorized vehicular use;

(4) Activities that could lead to the introduction of exotic species into critical habitat; and

(5) Activities that cause erosion of soils.

Adverse modification or destruction of critical habitat could occur if these activities occur within the boundaries of critical habitat or outside the boundaries in a manner that indirectly affects 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 the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species. In those cases, it is highly unlikely that additional modification to the action would be required as a result of designating critical habitat. However, critical habitat may provide benefits toward recovery when designated in areas currently unoccupied by the species. Designation of critical habitat for the Zayante band-winged grasshopper is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. We believe that designation of critical habitat would have little effect on Federal agencies because no critical habitat occurs on Federal lands. Furthermore, the final economic analysis for the designation of critical habitat concludes that few if any federally funded or federally permitted actions are anticipated to take place in critical habitat.

This section serves in part as a general guide to clarify activities that may affect or destroy or adversely modify critical habitat. However, specific Federal actions will still need to be reviewed by the action agency. If the agency determines the activity may affect critical habitat, they will consult with us under section 7 of the Act. If it is determined that the activity is likely to adversely modify critical habitat, we will work with the agency to modify the activity to minimize negative impacts to critical habitat. We will work with the agencies and affected public early in the consultation process to avoid or minimize potential conflicts and, whenever possible, find a solution that protects listed species and their habitat while allowing the action to go forward in a manner consistent with its intended purpose.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503–231–2063, facsimile 503–231–6243).

**Exclusions Under Section 4(b)(2)**

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. For the following reasons, we believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them.

*(1) Benefits of Inclusion*

The benefits of including HCP lands in critical habitat are normally 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. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within

the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementation agreements. These HCPs and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP. Our experience is also that, 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.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

*(2) Benefits of Exclusion*

The benefits of excluding HCPs from being designated as critical habitat may be more significant. During two public comment periods on our critical habitat policy, we received several comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with the Service and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat, should critical habitat be designated within the HCP boundaries.

The benefits of excluding HCPs include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, may become regional conservation plans that are consistent with the recovery of covered species. Many of these plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under Section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in the range of the Zayante band-winged grasshopper on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

**Relationship to Habitat Conservation Plans**

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of Habitat Conservation Plans (HCPs) for such areas on non-Federal lands.

Two HCPs have been completed within the range of the Zayante band-winged grasshopper. Both HCPs are for sand mining operations and both provide take authorization for the Zayante band-winged grasshopper. The Revised Habitat Conservation Plan for the Quail Hollow Quarry owned and operated by Granite Rock Company provides for the permanent protection

and management of three conservation areas known to be occupied by the Zayante band-winged grasshopper and that total 26.3 ha (65.8 ac) in area (Graniterock 1998). The Habitat Conservation Plan for the Felton Plant owned and operated by Hanson Aggregates provides for the permanent protection and management of two habitat set-asides known to be occupied by the Zayante band-winged grasshopper and that total 8.5 ha (21.3 ac) in area (Hanson Aggregates 1999). In addition, both HCPs provide minimization measures to reduce the potential impacts of the sand-mining operations on the Zayante band-winged grasshopper.

All habitat for the Zayante band-winged grasshopper that is essential to the conservation of the species and is within the HCP planning areas is permanently protected in conservation areas and habitat set-asides. Habitat that is preserved in the HCP planning areas is already managed for the benefit of the grasshopper and other covered species under the terms of the plans and associated section 10(a)(1)(B) permits. The assurances afforded the Zayante band-winged grasshopper through the special management and protections in the implementation agreements of approved HCPs are believed to be sufficient to provide for the conservation of the grasshopper. Any additional benefit provided the grasshopper by designating these lands as critical habitat would be minimal at best. Therefore, we have determined that no additional private lands within the HCP planning areas warrant designation as critical habitat.

In contrast, the benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in the implementation agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including HCPs in critical habitat for the Zayante band-winged grasshopper include minor, if any, additional protection for the Zayante band-winged grasshopper. The benefits of excluding HCPs from being designated as critical habitat for the Zayante band-winged grasshopper include the preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of critical habitat. We find that the benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the species. We have already completed section 7 consultation on the impacts of these HCPs on the species. We have determined that they will not jeopardize the continued existence of the species, which means that they will not appreciably reduce likelihood of the survival and recovery of the species.

In the event that future HCPs covering the Zayante band-winged grasshopper are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the species by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Zayante band-winged grasshopper. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Zayante band-winged grasshopper and appropriate management for those lands. The minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If, an HCP that addresses the Zayante band-winged grasshopper as a covered species is ultimately approved, the Service will reassess the critical habitat boundaries in light of the HCP. The Service will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

**Summary of Comments and Recommendations**

In the proposed rule dated July 7, 2000 (65 FR 41917), we requested interested parties to submit factual reports or information that might contribute to development of a final rule. We contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties. We published a legal notice of the proposed rule in the Santa Cruz Sentinel on July 16, 2000, that invited general public comment. The 60-day comment period closed on September 5, 2000. On December 6, 2000, we published a notice (65 FR 76207) announcing the reopening of the comment period and the availability of the draft economic analysis on the proposed designation of critical habitat. Again, we contacted all interested parties and posted the draft economic analysis on our internet site. The comment period was opened for an additional 15 days, closing on December 21, 2000.

We requested that three entomologists (biologists who study insects) familiar with the species to peer review the proposed critical habitat designation. However, only two of the peer reviewers responded by the close of the comment periods. Both reviewers provided information about the biology of the species and commented on the areas proposed as critical habitat. Their comments are addressed in this section, and relevant information provided by the reviewers have been incorporated into the section titled ''Background.''

We received a total of 14 written comments during the public comment periods. Of those written comments, 3 supported critical habitat designation, 8 opposed the designation, and 1 was neutral. Two commenters wrote to request additional information, but provided no opinion or information regarding the proposed designation. Eleven of the written comments were received from private individuals; one was from an individual representing a local government. All comments received were reviewed for substantive issues and new data regarding the proposed critical habitat, the biology of the species, and the range and threats to the Zayante band-winged grasshopper. We address all comments received during the comment periods under the headings of specific issues. The summarized comments and our responses are as follows:

*Issue 1:* One commenter questioned how we could determine the number of insects living in the areas proposed for critical habitat without trespassing on private property.

*Our Response:* In determining areas that are essential to conserve the Zayante band-winged grasshopper, we included data from research and surveys published in peer-reviewed articles and unpublished reports, data submitted by

biologists holding section 10(a)(1)(A) recovery permits, data from monitoring reports required for incidental take permits under section 10(a)(1)(B) of the Act, soil maps, and the recovery criteria outlined in the recovery plan (USFWS 1998). To the best of our knowledge, the site-specific data used from these sources were collected with the permission of landowners.

*Issue 2:* One commenter identified topics with regards to the food plant requirements and dispersal capabilities of the Zayante band-winged grasshopper that need to be researched. The commenter recommended that the designation of critical habitat for the Zayante band-winged grasshopper proceed without this additional information, but noted that the adequacy and success of the designation could not be forecasted without this additional research being conducted.

*Our Response:* We recognize that important research questions need to be answered with regards to the life history of the Zayante band-winged grasshopper. We hope to secure funds to conduct such research in the future. However, section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 require that we base critical habitat determinations on the best scientific and commercial data available. We used all existing information on the biology, life history, habitat requirements, dispersal capabilities, and distribution of the Zayante band-winged grasshopper and other closely related species that were available at this time to designate critical habitat for this species.

*Issue 3:* One commenter noted that GIS technology is useful to compile distributional data; to determine boundaries of critical habitat; to update the designation of critical habitat in the future; and to use as an analytical tool to identify suitable habitat, buffers zones, and areas of connectivity.

*Our Response:* We recognize that GIS is a useful tool for conserving species, including the Zayante band-winged grasshopper, for the reasons identified by the commenter. We used GIS to identify areas that we are designating as critical habitat. We expect to rely on GIS in the future to assist us with conservation planning for the Zayante band-winged grasshopper.

*Issue 4:* One commenter asserted that an environmental impact statement on the proposed designation of critical habitat is required under the National Environmental Policy Act.

*Our Response:* An environmental assessment and/or an environmental impact statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice in the **Federal Register** outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

*Issue 5:* Several commenters expressed concern that proposed designation of critical habitat will limit development and impose economic hardship on private landowners and businesses.

*Our Response:* We are sensitive to the concerns of individuals concerning their property rights. The designation of critical habitat has no effect on non-Federal actions occurring on private land, even if the private land is within the boundaries of the designated critical habitat. However, the listing of the Zayante band-winged grasshopper as endangered does provide the species the protection afforded by the Act on both public and private lands. Critical habitat may affect activities by private landowners only if the activity involves Federal funding, a Federal permit, or other Federal actions. If such a Federal nexus exists, we will work with the landowner and appropriate Federal agency to attempt to develop a project that can be completed without jeopardizing the continued existence of the Zayante band-winged grasshopper or adversely modifying its critical habitat.

*Issue 6:* One commenter expressed concern that the City of Scotts Valley is located within the critical habitat area for the grasshopper and may face significant additional costs associated with section 7 consultations necessitated by the habitat designation. More specifically, the commenter stated that local governments, including the City of Scotts Valley, would be placed at a disadvantage in competing for Federal grant monies to fund redevelopment projects and road improvements to be used inside the critical habitat area because of the additional administrative burden this designation would place on the Federal agency involved.

*Our Response:* As stated in the economic analysis, we do not believe that designation of critical habitat for the Zayante band-winged grasshopper will lead to additional economic hardship on residents and businesses within the proposed critical habitat. Previously developed areas within the designated critical habitat are exempted from section 7 consultation requirements. As stated previously in this rule, areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas do not contain one or more of the primary constituent elements and so do not support the functions necessary to maintain the required ecosystem functions. Federal actions limited to these areas, therefore, are exempted from a section 7 consultations, unless they affect the species and/or the primary constituent elements in adjacent critical habitat. Furthermore, most Federal agencies are very experienced with the requirements of the Act. If Federal agencies are funding activities in the designated critical habitat area, they would already be involved in communication with the Service regarding the significant number of other listed species in the area and the potential effects of their activities on these species. The existence of critical habitat for the Zayante band-winged grasshopper in the same area would probably not increase significantly either the cost or complexity of any needed interaction with the Service.

*Issue 7:* One commenter stated that the Service should refine the boundaries of critical habitat by identifying areas of known habitat for the Zayante band-winged grasshopper. Without refining these areas, the commenter was concerned that the proposed designation is too broad and may negatively impact property values and private property rights within urban areas.

*Our Response:* Due to time constraints resulting from short deadlines that were court-mandated, we were unable to map critical habitat in sufficient detail in the proposed and final rules to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain habitat for the grasshopper. As previously stated, areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas do not contain one or more of the primary constituent elements and so do not support the functions necessary to maintain the required ecosystem functions. Federal actions limited to these areas, therefore, are exempted from a section 7 consultations, unless they affect the species and/or the primary constituent elements in adjacent critical habitat. We will provide technical assistance to Federal agencies to determine if the actions they permit, fund or carry out may affect the Zayante band-winged grasshopper or the primary constituent elements within areas designated as critical habitat.

**Summary of Changes from Proposed Designation**

This final rule to designate critical habitat for the Zayante band-winged grasshopper does not differ substantially from the previously published proposed rule.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We completed a draft economic analysis and made it available to the public for comment (65 FR 76207). We also completed a final economic analysis that incorporated public comment and information gathered since the draft analysis. The analysis found that few incremental costs due to the critical habitat designation are expected to occur above and beyond those associated with the listing of the Zayante band-winged grasshopper. We have determined that these economic impacts are minimal and do not warrant excluding any areas from the designation. The final economic analysis is available to the public at the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

**Required Determinations**

*1. 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 Zayante band-winged grasshopper was listed as an endangered species in 1997.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below).

TABLE 2.—IMPACTS OF ZAYANTE BAND-WINGED GRASSHOPPER LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially affected by species listing only [1] | Additional activities potentially affected by critical habitat designation [1] |
|---|---|---|
| Federal Activities Potentially Affected [2]. | None (there is no Federal land within the range of the species) ..... | None. |
| Private or other non-Federal Activities Potentially Affected [3]. | Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Zayante band-winged grasshopper habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, recreateional use) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat). | None. |

[1] These columns represent activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

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 Zayante band-winged grasshopper 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. The designation of areas outside the geographic range occupied by the species may have incremental impacts on what activities may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. However, our analysis did not identify any significant incremental effects. 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 Zayante band-winged grasshopper since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to have a significant economic impact. 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.

*2. 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 Zayante band-winged grasshopper is not expected to have a significant economic impact. As indicated on Table 1 (see Critical Habitat Designation section), we have designated property owned by State and local governments, and private property.

Within these areas, the types of Federal actions, Federally funded or

authorized activities that we have identified as potential concerns are:

(1) Excavating, compacting, grading, or discing of soil, and vegetation removal;

(2) grading, mining, or construction;

(3) recreational activities that crush and remove vegetation or compact soils, including off-trail hiking, horse riding, and off-road motorized and non-motorized vehicular use;

(4) activities that could lead to the introduction of exotic species into critical habitat; and

(5) activities that cause erosion of soils.

Some 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. As discussed above, these actions are largely required to comply with the protections of the Act, and the designation of critical habitat is not anticipated to have significant 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.

*3. 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.

*4. 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) We believe this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, 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.

*5. Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. This designation will not ''take'' private property and will not alter the value of private property. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Zayante band-winged grasshopper.

*6. Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This designation of critical habitat 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).

*7. Civil Justice Reform*

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

*8. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

*9. National Environmental Policy Act*

We have 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.

*10. Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2 and Executive Order 13175, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands that are essential for the conservation of the Zayante band-winged grasshopper because they do not support populations or suitable habitat. Therefore, we are not designating critical habitat for the Zayante band-winged grasshopper on Tribal lands.

**References Cited**

A complete list of all references cited in this final rule is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary author of this notice is Colleen Sculley, Ventura Fish and Wildlife Office (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 ''grasshopper, Zayante band-winged'' under ''INSECTS'' 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 | | | | | | |
| * | * | * | * | * | * | | * |
| INSECTS | | | | | | | |
| * | * | * | * | * | * | | * |
| Grasshopper, *Zayante Band-winged*. | ***Trimerotropis infantilis***. | U.S.A. (CA), ..... | NA ..... | E | 605 | 17.95(i) | NA |
| * | * | * | * | * | * | | * |

3. Amend § 17.95(i) by adding critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*), in the same alphabetical order as the species occurs in § 17.11(h).

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(i) * * *

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**ZAYANTE BAND-WINGED GRASSHOPPER (*Trimerotropis infantilis*)**

1. The unit of critical habitat is depicted for Santa Cruz County, California, on the map below.

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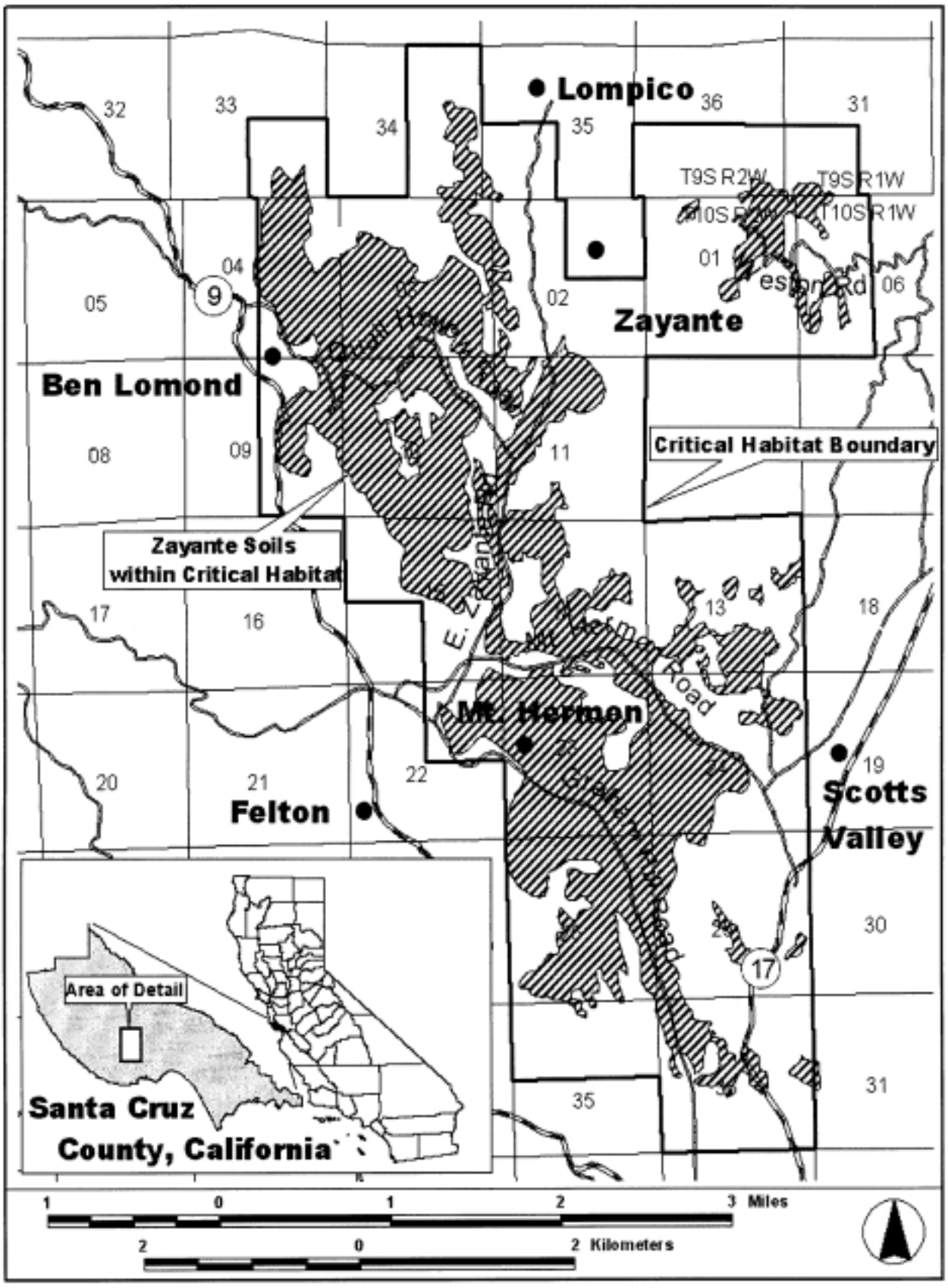


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2. Within this area, the primary constituent elements for the Zayante band-winged grasshopper are those physical and biological elements that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are—(a) the presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand. Zayante sand hills habitat is characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral. Plant species that may occur within the boundaries include, but are not limited to—ponderosa pine (*Pinus ponderosa*), silver-leafed manzanita (*Arctostaphylos silvicola*), California lilac (*Ceonothus* sp.), *Adenostoma* sp., yerba santa (*Eriodictyon* sp.), sandwort (*Minuartia* sp.), pussypaws (*Calyptridium umbellatum*), Ben Lomond spineflower (*Erysimum teretifolium*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinis bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum* ssp. *decurrens*), and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*).

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aquaducts, railroads, airports, paved areas, and similar features and structures.

Santa Cruz County, California. Boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Land Grants of Zayanta, San Augustin, La Carbonera, and Canada Del Rincon En El Rio San Lorenzo De Santa Cruz, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian. The following lands located within Santa Cruz County are being proposed for critical habitat: T.9 S., R.1 W., SE¼ sec. 31; T.9 S., R.2 W., SE¼ sec. 33, E½ sec. 34, SW¼ sec. 35, S½ sec. 3; T.10 S., R1 W., W½ sec. 6; T.10 S., R.2 W., sec. 1, S½ NW¼ sec. 2, sec. 3, W½ sec. 4, W½ sec. 9, sec. 10, sec. 11, sec. 13, sec. 14, N½ SE¼ sec. 15, NE¼ sec. 22, secs. 23–26, N½ sec. 35, sec. 36, excluding all lands covered under the Revised Habitat Conservation Plan for the Quail Hollow Quarry and the Habitat Conservation Plan for the Hanson Aggregates' Felton Plant.

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Dated: February 1, 2001.

**Joseph E. Doddridge,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01–3129 Filed 2–6–01; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AG27**

## Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Morro Shoulderband Snail (*Helminthoglypta walkeriana*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*) pursuant to the Endangered Species Act of 1973, as amended (Act). The Morro shoulderband snail is listed as endangered under the Act. A total of approximately 1,039 hectares (2,566 acres) fall within the boundaries of designated critical habitat. Critical habitat for the Morro shoulderband snail is located in San Luis Obispo County, California.

Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

**DATES:** This final rule is effective March 9, 2001.

**ADDRESSES:** The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, California 93003. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Diane Noda, Ventura Fish and Wildlife Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

**SUPPLEMENTARY INFORMATION:**

### Background

The Morro shoulderband snail was first described as *Helix walkeriana* by Hemphill (1911) based on collections made ''near Morro, California.'' He also described a subspecies, based on sculptural features of the shell, *Helix walkeriana*, *Helix* var. *morroensis*, that was collected ''near San Luis Obispo City'' (1985). The Morro shoulderband snail is also commonly known as the banded dune snail and belongs to the class Gastropoda and family Helminthoglyptidae.

The shell of the Morro shoulderband snail has 5–6 whorls. Its dimensions are 18 to 29 millimeters (mm) (0.7 to 1.1 inches (in.)) in diameter and 14 to 25 mm (0.6 to 1.0 in.) in height. The Morro shoulderband snail can be distinguished from the Big Sur shoulderband snail (*Helminthoglypta umbilicata*), another native snail in the same area, by its more globose (globe-shaped) shell shape and presence of incised (deeply cut) spiral grooves (Roth 1985). The Morro shoulderband snail has spiral striae (longitudinal ridges) as well as transverse striae giving it a ''checkerboard'' appearance. Further, there are raised papillae (bumps) at the intersections of some of the striae. The shell of the Big Sur shoulderband snail tends to be flatter and shinier, and rarely has spiral striae. It also has malleations (dents) and tends to be darker in color. The Morro shoulderband's spire is low-domed, and half or more of the umbilicus (the cavity in the center of the base of a spiral shell that is surrounded by the whorls) is covered by the apertural (small opening) lip (Roth 1985). The brown garden snail (*Helix aspersa*) also occurs in Los Osos with the Morro shoulderband snail and has a marbled pattern on its shell, whereas the Morro shoulderband snail has one narrow dark brown spiral band on the shoulder.

The Morro shoulderband snail is found only in western San Luis Obispo County. At the time of its addition to the List of Endangered and Threatened Wildlife on December 15, 1994 (59 FR 64613), the Morro shoulderband snail was known to be distributed near Morro Bay. Its currently known range includes areas south of Morro Bay, west of Los Osos Creek and north of Hazard Canyon. Historically, the species has also been reported near the city of San Luis Obispo (type locality for ''*morroensis*'') and south of Cayucos (Roth 1985).

The Morro shoulderband snail occurs in coastal dune and scrub communities

and maritime chaparral. Through most of its range, the dominant shrub associated with the snail's habitat is mock heather (*Ericameria ericoides*). Other prominent shrub and succulent species are buckwheat (*Eriogonum parvifolium*), eriastrum (*Eriastrum densifolium*), chamisso lupine (*Lupinus chamissonis*), dudleya (*Dudleya* sp.), and in more inland locations, California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), and black sage (*Salvia mellifera*) (Roth 1985).

Away from the immediate coast, immature scrub in earlier successional stages may offer more favorable shelter sites than mature stands of coastal dune scrub. The immature shrubs provide canopy shelter for the snail, whereas the lower limbs of larger older shrubs may be too far off the ground to offer good shelter. In addition, mature stands produce twiggy litter that is low in food value (Roth 1985).

No studies or documented observations exist on the feeding behaviors of the Morro shoulderband snail. Hill (1974) suggested that the snail probably feeds on the fungal mycelia (webs or mats of non-reproductive fungal strands) growing on decaying plant litter. The Morro shoulderband snail is not a garden pest and is essentially harmless to gardens (Chambers 1997).

Sarcophagid flies (family of flies that rely on a host to complete its life-cycle) have been observed to parasitize the Morro shoulderband snail. Empty puparia (''cases'' left behind by adult flies emerging from pupae) were observed in empty snail shells by Hill (1974), Roth (1985), and Kim Touneh (Service, pers. comm. 1997). Hill (1974) and Roth (1985) suggested that mortality from infestations of larvae of this parasitic fly often occurs before the snails reach reproductive maturity. The flies may have a significant impact on the population of the snail (Roth 1985). Seasonal drought and/or heat may contribute to the snail's egg mortality (Roth 1985). Based on shell examination, Roth (1985) also suggested that rodents may prey on the snail.

The Morro shoulderband snail is threatened by destruction of its habitat due to increasing development and by degradation of its habitat due to invasion of nonnative plant species (e.g., veldt grass (*Ehrharta calycina*), structural changes to its habitat due to maturing of dune vegetation, and recreational use (e.g., heavy off-highway activity). In addition to the known threats, possible threats to the snail include competition for resources with the nonnative brown garden snail (although no assessment has been made of possible dietary overlap between the species); the small and isolated nature of the remaining populations; the use of pesticides (including snail and slug baits); and the introduction of nonnative predatory snails, such as *Oxycheilus* sp.

**Previous Federal Action**

We entered into a contract with the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails. A final report dated August 25, 1975, contained data indicating that several of the snails studied could be considered candidates for listing as threatened or endangered species. On April 28, 1976, we proposed endangered or threatened status for 32 land snails in the **Federal Register** (41 FR 17742). This proposal included the Morro shoulderband snail (under the common name ''banded dune snail'') as endangered. However, we withdrew the proposed rulemaking on December 10, 1979 (44 FR 70796), because of the 1978 amendments to the Act, which required the withdrawal of proposals over 2 years old.

In 1984, we undertook a status review of the snail, which ended in a report by Roth (1985). Based on that report, we included the Morro shoulderband snail as a category one species in the Animal Notices of Review of May 22, 1984 (49 FR 21664); January 6, 1989 (54 FR 554); and November 21, 1991 (56 FR 58820). A category one species is one on which we have sufficient information to support a listing.

On December 23, 1991, we published a proposed rule in the **Federal Register** (56 FR 66400) to list five plants and the Morro shoulderband snail as endangered. We reopened the comment period on June 8, 1992 (57 FR 24221). On December 15, 1994, we published a final rule adding the Morro shoulderband snail and four plants to the List of Endangered and Threatened Wildlife as endangered species (59 FR 64613). We published a final recovery plan in September 1998.

At the time of listing, we concluded that designation of critical habitat for the Morro shoulderband snail was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely result in an increased threat of vandalism or collection of the species. However, we have determined that instances of vandalism have not increased since the listing of the Morro shoulderband snail, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational, potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas were already identified in the recovery plan as the focus of our recovery efforts for the Morro shoulderband snail. Therefore, we conclude that the benefits of designating critical habitat on lands essential for the conservation of the Morro shoulderband snail will not increase incidences of vandalism above current levels for this species.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the Service for failure to designate critical habitat for seven species including the Morro shoulderband snail. On November 5, 1999, the district court dismissed the plaintiffs' lawsuit pursuant to a settlement agreement entered into by the parties. Under the settlement agreement, we agreed to submit a proposed determination of critical habitat for the Morro shoulderband snail by July 1, 2000, and to submit a final designation to the **Federal Register** by February 1, 2001.

The proposed rule to designate critical habitat for the Morro shoulderband snail was published in the **Federal Register** on July 12, 2000 (65 FR 42962). A total of approximately 1,039 hectares (ha) (2,566 acres (ac)) was proposed as critical habitat for the Morro shoulderband snail in San Luis Obispo County, California. The comment period was open until September 11, 2000. On November 21, 2000, we published a notice (65 FR 69896) announcing the reopening of the comment period and a notice of availability of the draft economic analysis on the proposed determination. The comment period was open an additional 16 days, until December 6, 2000. Publication of this final rule is consistent with the settlement agreement.

**Critical Habitat**

*Critical habitat is defined in section 3 of the Act as:* (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by

a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through 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 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 would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, habitat must first be ''essential to the conservation of 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 defined at 50 CFR 424.12(b)).

Section 4 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.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. 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), which 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 our decisions 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).

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, 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.

*Methods*

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Morro shoulderband snail. This information included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the recovery plan, regional Geographic Information System (GIS) vegetation coverages, and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

*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 consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and ecological distributions of a species.

The primary constituent elements of critical habitat for the Morro

shoulderband snail are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The areas we are proposing to designate as critical habitat provide these primary constituent elements, which are: sand or sandy soils needed for reproduction; a slope not greater than 10 percent to facilitate movement of individuals; and the presence of native coastal dune scrub vegetation. This vegetation is typically, but not exclusively, represented by mock heather, buckwheat, eriastrum, chamisso lupine, dudleya, and in more inland locations, California sagebrush, coyote brush, and black sage. Some of the habitat in the critical habitat units could be improved through habitat rehabilitation or improved management (e.g., removal of nonnative species).

*Criteria Used To Identify Critical Habitat*

In an effort to map areas that have the features essential to the conservation of the species, we used data on known Morro shoulderband snail locations and conservation planning areas that were identified in the final recovery plan (Service 1998) as essential for the recovery of the species. All of the critical habitat areas are occupied. Given the habitat-related threats to the species discussed above and in more detail in the final rule (59 FR 64613), we believe the areas we are designating as critical habitat may need special management considerations or protection.

In defining critical habitat boundaries, we made an effort to avoid developed areas such as towns and other similar lands, that are unlikely to contain primary constituent elements essential for Morro shoulderband snail conservation. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. The Morro shoulderband snail is known to occur on State, county, and private lands. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) for the Morro shoulderband snail under section 10(a)(1)(B) of the Act are not designated as critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

*Critical Habitat Designation*

The approximate area encompassing designated critical habitat by land ownership is shown in Table 1. Designated critical habitat includes Morro shoulderband snail habitat throughout the species' existing range in the United States (i.e., San Luis Obispo County, California). Lands designated are under private, State, and local ownership. The species is not known to occur or to have historically occurred on Federal lands. Lands designated as critical habitat have been divided into three Critical Habitat Units. All of the designated areas need special management, and the final recovery plan for the snail provides guidance on management of these areas for the snail. To recover, the snail needs habitat that is intact and relatively unfragmented by urban development, and that is secure from threats of non-native snail predation, pesticides, recreational use, and invasion of non-native plants. Special management needs include controlling non-native pest plants to maintain intact native habitat, restoring and maintaining connectivity among isolated populations to preserve genetic diversity, controlling pesticides in snail areas, controlling non-native predatory snails, and restoring native plant communities.

Brief descriptions of each unit, our reasons for designating it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries. Not all the areas within those broad boundaries, such as cities, towns, or other developments, will be considered critical habitat since these areas do not contain habitat considered essential to the survival of the Morro shoulderband snail.]

| County | Federal land | Local/State land | Private land | Total |
|---|---|---|---|---|
| San Luis Obispo | N/A | 790 ha (1,951 ac) | 249 ha (615 ac) | 1,039 ha (2,566 ac) |

Unit 1: Morro Spit and West Pecho

Unit 1 encompasses areas managed by Montaña de Oro State Park (Dunes Natural Preserve) and the City of Morro Bay (north end of spit), including the length of the spit and the foredune areas extending south toward Hazard Canyon. The unit provides dune scrub habitat for the populations of Morro shoulderband snail that live there. The spit's windward side and its north end are non-vegetated; patches of vegetation occur along its leeward side on Morro Bay. The West Pecho portion of this unit lies to the east of the Morro Spit Conservation Planning Area and is bounded on the east by Pecho Road and the community of Los Osos. It extends north to the Bay and south to Hazard Canyon. Elevations range from sea level on the Bay to about 75 meters (m) (250 feet (ft)) along its southeastern edge. Vegetation associations include coastal dune scrub, with coastal sage scrub closer to Hazard Canyon.

The California Department of Fish and Game owns an ecological reserve in this unit, which is managed cooperatively with adjoining State Park property. Privately-owned lands occur to the northeast in the community of Los Osos, but private lands are not included in this unit and are not reflected in the approximate area of the critical habitat designated. Approximately 676 ha (1,670 ac) occur on State land, and 65 ha (160 ac) occur on local government land.

The protection and recovery of this unit is essential to maintain the genetic diversity of the Morro shoulderband snail. It contains several significant, viable populations, and provided suitable habitat conditions are maintained through proper

management, this unit will provide for connectivity and dispersal between populations, thereby maintaining genetic diversity over the long-term.

Unit 2: South Los Osos

Unit 2 is bounded on the north and east by residential development in the community of Los Osos and agricultural fields. The area on the lower slopes of the Irish Hills, where the vegetation is composed of maritime chaparral, is considered essential to the conservation of the Morro shoulderband snail. We designated approximately 129 ha (320 ac) of this area as critical habitat. This area is currently privately owned. The California Department of Fish and Game is expected to acquire the 204 acre Morro Palisades property within this unit early in 2001.

This area contains a core population that can be expanded, and threats to the species reduced, with appropriate management. Special management considerations are necessary in this unit for the protection and recovery of this population, and these are not currently in place. If suitable habitat conditions are maintained through proper management, this unit will provide the ecological conditions for which this snail is found.

Unit 3: Northeast Los Osos

The Northeast Los Osos Critical Habitat Unit includes undeveloped areas between Los Osos Creek and Baywood Park and is divided by South Bay Boulevard. Its elevation range is from sea level to about 30 m (100 ft). Vegetation is dominated by variants of coastal sage and dune scrub, with scattered stands of manzanita (*Arctostaphylos* spp.) and coast live oak (*Quercus agrifolia*). The Morro shoulderband snail is known to occupy this unit. This unit includes the State- and county-owned Elfin Forest Preserve, portions of Morro Bay State Park, and privately owned lands. The Los Osos Center, Hord Residential, and MCI/Worldcom HCPs fall within the unit boundaries, but areas where incidental take of the Morro shoulderband snail has been authorized are not being designated for critical habitat. Approximately 49 ha (121 ac) of designated critical habitat in this unit occur on State land, and 119 ha (295 ac) occur on private land. The Bureau of Land Management is expected to acquire 5 acres of privately owned land within this unit early in 2001.

This unit supports the most northern intact habitat for the snail. The protection and recovery of this unit is essential to maintain the genetic variability of the species and the full range of ecological setting within which the snail is found. Special management considerations are necessary in this unit for the protection and recovery of this population, and these are not currently in place. The unit has favorable habitat conditions for the expansion and persistence of the core population, and with the reduction of threats through appropriate management, this area should support a larger Morro shoulderband snail population, hence contribute to the recovery of the species.

**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 are not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery. 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. In 50 CFR 402.01 ''jeopardize the continued existence'' (of a species) is defined as engaging in an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are nearly identical.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not 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 resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, and they have retained discretionary involvement in the action. 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 private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., from the Federal Highway Administration (FHA), Environmental Protection Agency (EPA), or Federal Emergency Management Agency (FEMA)), 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, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Activities that result in excavation, mechanized land clearing, or uncontrolled burning of coastal dune scrub vegetation; and

(2) Activities that could lead to the introduction of exotic species into occupied Morro shoulderband snail habitat.

Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Morro shoulderband snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned.

Designation of critical habitat in areas occupied by the Morro shoulderband snail is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. When critical habitat is designated in unoccupied areas, the designation could result in an increase in regulatory requirements on Federal agencies; however, all of the critical habitat designated for the Morro shoulderband snail is occupied.

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. The actions we consult on include, but are not limited to:

(1) Activities conducted by the Corps (e.g., ordinance removal);

(2) Road construction and maintenance funded by the FHA; and

(3) Exotic or invasive plant removal by pulling, shoveling, burning, or herbicide application by Federal agencies (e.g., EPA, FEMA, and the Service).

**Exclusions Under Section 4(b)(2)**

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. For the following reasons, we believe that in most instances the benefits of excluding lands with approved HCPs from critical habitat designations will outweigh the benefits of including them.

*(1) Benefits of Inclusion*

The benefits of including HCP lands in critical habitat are normally 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. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementation agreements. These HCPs and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification if critical habitat has not been designated, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and through the consultation on the HCP. Our experience is also that, 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.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

*(2) Benefits of Exclusion*

The benefits of excluding HCPs from being designated as critical habitat may be more significant. During two public comment periods on our critical habitat policy, we received several comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with the Service and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat, should critical habitat be designated within the HCP boundaries.

The benefits of excluding HCPs include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Many plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under Section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in the range of the Morro shoulderband snail on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

*Relationship to Habitat Conservation Plans*

Section 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. We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of HCPs for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Morro shoulderband snail, while directing development and habitat modification to nonessential areas of lower habitat value.

HCPs currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Morro shoulderband snail, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the snail. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Morro shoulderband snail, and appropriate management of those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the Morro shoulderband snail as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review. Several HCP efforts are now under way for listed species in areas within the range of the Morro shoulderband snail in areas we are designating as critical habitat. However, since these HCPs have not been completed, these areas are being designated as critical habitat.

Several HCPs have been completed within the range of the Morro shoulderband snail. The Los Osos Center HCP, Hord Residential HCP, and

MCI/Worldcom HCP contributed funds toward the purchase and perpetual management of several acres to serve as conservation sites for the Morro shoulderband snail. The snail habitat preserved in these existing HCP planning areas will be managed for the benefit of the snail, regardless of a critical habitat designation. The benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in the implementation agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including these HCPs in critical habitat for the Morro shoulderband snail include increased educational benefits and minor additional management protections and measures. The benefits of excluding HCPs from being designated as critical habitat for the Morro shoulderband snail include the additional conservation measures for the Morro shoulderband snail and other listed species, preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of critical habitat. The benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the species. We have already completed section 7 consultation on the impacts of these HCPs on the species. We have determined that they will not jeopardize the continued existence of the species, which means that they will not appreciably reduce likelihood of the survival and recovery of the species. Consequently, these lands have not been designated as critical habitat for the Morro shoulderband snail.

**Summary of Comments and Recommendations**

In the July 12, 2000, proposed rule (65 FR 42962), we requested that all interested parties submit comments on the specifics of the proposal, including information, policy, treatment of HCPs, and proposed critical habitat boundaries. On November 21, 2000, we published a notice of availability and request for comments on the draft economic analysis (65 FR 69896). Comments received from July 12, 2000, through December 6, 2000, were entered into the administrative record.

We contacted all appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties and invited them to comment. In addition, we published a newspaper notice in the San Luis Obispo Telegram Tribune on July 17, 2000, inviting public comment review and comment. We did not hold any public hearings on the proposed rule.

We requested three individuals familiar with the Morro shoulderband snail to peer review the proposed critical habitat designation. Two of the peer reviewers submitted comments on the proposed critical habitat designation, providing updated biological information, critical review, and editorial comments. We addressed their comments in the responses below, or incorporated them into other parts of this final rule.

We received a total of 12 written comments during the two comment periods. Of those written comments, five supported critical habitat designation, one opposed critical habitat designation, and six provided additional information but did not support or oppose critical habitat designation. One organization initially sent a letter requesting a public hearing, but later withdrew after we provided them the clarification they needed over the phone. In total, written comments were received from one State agency, one local government, and nine private organizations or individuals.

We reviewed all comments received for substantive issues and new data regarding critical habitat and the Morro shoulderband snail. We grouped comments of a similar nature relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary.

(1) *Comment:* One commenter expressed concerns about the present and future impact of the Morro Bay Power Plant (Power Plant) on the habitat of the Morro shoulderband snail. The commenter advised us to take into consideration any possible adverse effects from the Power Plant's air emissions to the Morro shoulderband snail and its habitat.

*Our Response:* We will explore any valid scientific information regarding the effect of air emissions from the Power Plant to the Morro shoulderband snail. This issue will also be addressed during our review of the draft and final Environmental Impact Report/ Statements for the proposed expansion of the Power Plant.

(2) *Comment:* Two commenters, on behalf of some major landowners, requested more information and clarification regarding the designation of three proposed units including the purpose of unit numbers. They also wanted to know what information we used to determine which areas to designate as critical habitat for the Morro shoulderband snail.

*Our Response:* We determined what areas to include as critical habitat by using such factors as physiological, behavioral, ecological, and evolutionary requirements that are essential to the conservation of the Morro shoulderband snail. More specifically, we used the primary constituent elements which include the following physical and biological features: sand or sandy soil needed for reproduction; a slope not greater than 10 percent to facilitate movement of individuals; and native coastal dune scrub vegetation. The areas we proposed to designate as critical habitat provide some or all of the primary constituent elements and were selected because they contain the best of the remaining habitat for the snail in an otherwise fragmented landscape. Restoration and maintenance of snail habitat in these areas will contribute to recovery by reducing fragmentation and isolation of populations, and providing a mosaic of suitable habitat for recovering populations. The unit numbers represent the area for reference purposes and were based on areas identified as essential in the final Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, September 26, 1998.

(3) *Comment:* One commenter requested we include all the critical habitat units as one unit of coastal dune ecosystem regardless of HCP boundaries or property ownerships so that when management of the critical habitat is planned, it can be managed as contiguous habitat as much as possible (except for ''islands of habitat'' within the urban part of Los Osos). Management plans should be united for the utmost protection resulting in the goal of recovery.

*Our Response:* We agree that a landscape approach to managing the larger coastal dune ecosystem would be ideal. However, this critical habitat designation can only encompass habitat essential for the conservation of the Morro shoulderband snail. It would not be appropriate to include in the designation other areas within the coastal zone ecosystem that do not provide the primary constituent element

essential to the conservation of the snail. We used the primary constituent elements discussed in the preceding response to define the areas we are designating as critical habitat, so that all the areas would provide some or all of these primary constituent elements.

(4) *Comment:* One commenter was concerned how our proposed critical habitat designation would affect the proposed Los Osos wastewater treatment facility and project. The wastewater project is the result of an order from the Regional Water Quality Control Board under the Clean Water Act, and the lead agency for the wastewater project is in a very difficult position of trying to implement the wastewater system within an area with limited properties available for siting the wastewater facilities in the community of Los Osos.

*Our Response:* At present time, the lead agency is proposing to develop a 4.5 ha (11 ac) wastewater treatment facility located at Tri-W inside the community of Los Osos. This area is not within any of the designated critical habitat units. We have conducted formal section 7 consultations with the lead agency and EPA on the proposed facility as a result of the listing of the snail. Because the area where the facility is to be built is outside designated critical habitat, future section 7 consultations associated with the project will not be affected by the designation of critical habitat.

(5) *Comment:* Three commenters who supported the proposed critical habitat designation disagreed with the concept of excluding areas covered by HCPs.

*Our Response:* Three HCPs have been completed within the Los Osos area for the Morro shoulderband snail. All of these lands are located inside Unit 3, but were excluded from the critical habitat designation because we determined that, for lands covered by an existing operative HCP and executed implementation agreement (IA) for the Morro shoulderband snail under section 10(a)(1)(B) of the Act, the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. Therefore such lands are not designated as critical habitat. All three areas will be managed for the benefit of the species under the terms of the individual HCPs; in addition, a majority of those three areas are currently managed by California State Parks since they are a signatory party in the final IA. We believe California State Parks will implement the conservation efforts according to the guidelines set forth in the HCPs.

(6) *Comment:* Two commenters encouraged the Service to map the critical habitat boundaries in more detail.

*Our Response:* We believe we have mapped critical habitat in sufficient detail to include those areas that were determined to be essential to the conservation of the Morro shoulderband snail. We recognize that not every parcel of land within designated critical habitat will contain all of the habitat components essential to Morro shoulderband snail conservation. We are required to describe critical habitat (50 CFR 424.12(c)) with specific limits using reference points and lines as found on standard topographic maps of the area. The approach to developing this critical habitat designation was based on the best available scientific information, and on the development of a scientifically supportable model for predicting Morro shoulderband snail habitat.

Due to the time constraints imposed by the court, and the absence of fine-scale, detailed GIS coverages during the preparation of the proposed and final determination, we included some areas within the boundaries of the critical habitat designation that are not essential to the conservation of the Morro shoulderband snail, such as towns, housing developments, or other developed lands unlikely to provide habitat for the Morro shoulderband snail. However, because these developed areas do not contain the primary constituent elements for the species, we believe that activities occurring on them will not affect the snail or its designated critical habitat and thus, will not trigger a section 7 consultation.

(7) *Comment:* One commenter supplied new biological information based on his participation in biological survey work on the Morro shoulderband snail throughout the community of Los Osos. The commenter advised us that Morro shoulderband snails use coyote brush as they are commonly found under the coyote brush in an area north of unit 3. In addition, the commenter provided a U.S. Geological Survey 7.5 minute quadrangle map showing areas where Morro shoulderband snails have been found.

*Our Response:* We incorporated the commenter's new biological information in the final rule. One of the areas shaded was not within any of the proposed critical habitat units. The area is described as Cero Cabrillo and is located within Morro Bay State Park, northeast from proposed unit 3. Service staff visited the site on October 26, 2000, and Morro shoulderband snail shells were found in the area. However, we were not able to include the new location in the final rule because of time constraints in meeting the court ordered deadline for this final rule. We will consider amending the critical habitat designation to include the new location when funding is available.

**Summary of Changes From the Proposed Rule**

Based on a review of public comments received on the proposed determination of critical habitat and economic analysis for the Morro shoulderband snail, we reevaluated our proposed designation of critical habitat for this species. We found there was no need to make any substantial changes to the proposed designation for the final rule.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Economic effects caused by listing the Morro shoulderband snail as an endangered species, and by other statutes, are the baseline upon which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic effects of the critical habitat including both the cost and benefits. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of Morro shoulderband snail critical habitat designation was prepared (Industrial Economics, Incorporated 2000) and made available for public review (November 21, 2000–December 6, 2000; 65 FR 69896). The final analysis, which reviewed and incorporated public comments, concluded that no significant economic impacts are expected from critical habitat designation above and beyond those already imposed by listing the Morro shoulderband snail. 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) Reinitiation of section 7 consultations, (2) length of time in

which section 7 consultations are completed, and (3) new consultation resulting from the determination. Because areas proposed for critical habitat are within the geographic range occupied by the Morro shoulderband snail, 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 significant additional costs would accrue because of critical habitat above and beyond that resulting from listing. Our economic analysis recognizes 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 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, however.

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).

**Public Hearings**

No public hearing was requested or held for the proposed rule.

**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 more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. The Morro shoulderband snail was listed as an endangered species in 1994. In fiscal years 1994 through 1999, we conducted nine formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the snail.

The areas designated as critical habitat are currently occupied by the Morro shoulderband snail. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal entities unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the designated critical habitat would currently be considered as ''jeopardy'' under the Act in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or 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 (however, 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 Morro shoulderband snail since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all of the designated critical habitat occurs in occupied areas.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The final rule follows the requirements for determining critical habitat contained in the Act.

TABLE 2.—IMPACTS OF MORRO SHOULDERBAND SNAIL LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially affected by species listing only | Additional activities potentially affected by critical habitat designation [1] |
|---|---|---|
| Federal activities potentially affected [2] ..... | Activities conducted by U.S. Army Corps of Engineers (e.g. ordinance removal). | None. |
| Private or other non-Federal activities potentially affected [3]. | Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Morro shoulderband snail habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat. | None. |

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

**Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.)**

In the economic analysis (required under section 4 of the Act), 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 Morro shoulderband snail is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 1 (see Critical Habitat Designation section), we designated property owned by 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) Activities conducted by the Corps (e.g. ordinance removal);

(2) Road construction and maintenance funded by the FHA; and

(3) Other activities (e.g. exotic or invasive plant removal by pulling, shoveling, burning, or herbicide application) funded or permitted by Federal agencies (e.g., EPA, FEMA, and the Service).

Many of these activities sponsored by Federal agencies within the designated critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on 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 rule will have no additional restrictions.

**Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))**

In the economic analysis, we determined the designation of critical habitat will not 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; 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 August 25, 2000 *et seq*.):

(a) This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(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. 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 opportunity to utilize their property in ways consistent with the survival of the Morro shoulderband snail.

**Federalism**

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the Morro shoulderband snail 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 making 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 designated 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 Morro shoulderband snail.

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.)**

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required.

**National Environmental Policy Act**

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination 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 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 and Executive Order 13175, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

We have determined that no Tribal lands are essential for the conservation of the Morro shoulderband snail because no Tribal lands support populations of snails or suitable habitat. Therefore, we are not designating critical habitat for the Morro shoulderband snail on Tribal lands.

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### Author

The primary author of this document is Ron Popowski of our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Proposed Regulation Promulgation

Accordingly, we 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 ''Snail, Morro shoulderband (=Banded dune)'' under ''SNAILS'' 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 | | | | | | |
| * | * | * | * | * | * | | * |
| SNAILS | | | | | | | |
| * | * | * | * | * | * | | * |
| Snail, Morro shoulderband (=Banded dune). | *Helminthoglypta walkeriana.* | U.S.A. (CA) ..... | NA | E | 567 | 17.95(f) | NA |
| * | * | * | * | * | * | * | |

3. Add § 17.95(f) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(f) *Clams and Snails.*

Morro Shoulderband Snail (*Helminthoglypta walkeriana*)

1. Critical habitat units are depicted for San Luis Obispo County, California, on the map below.

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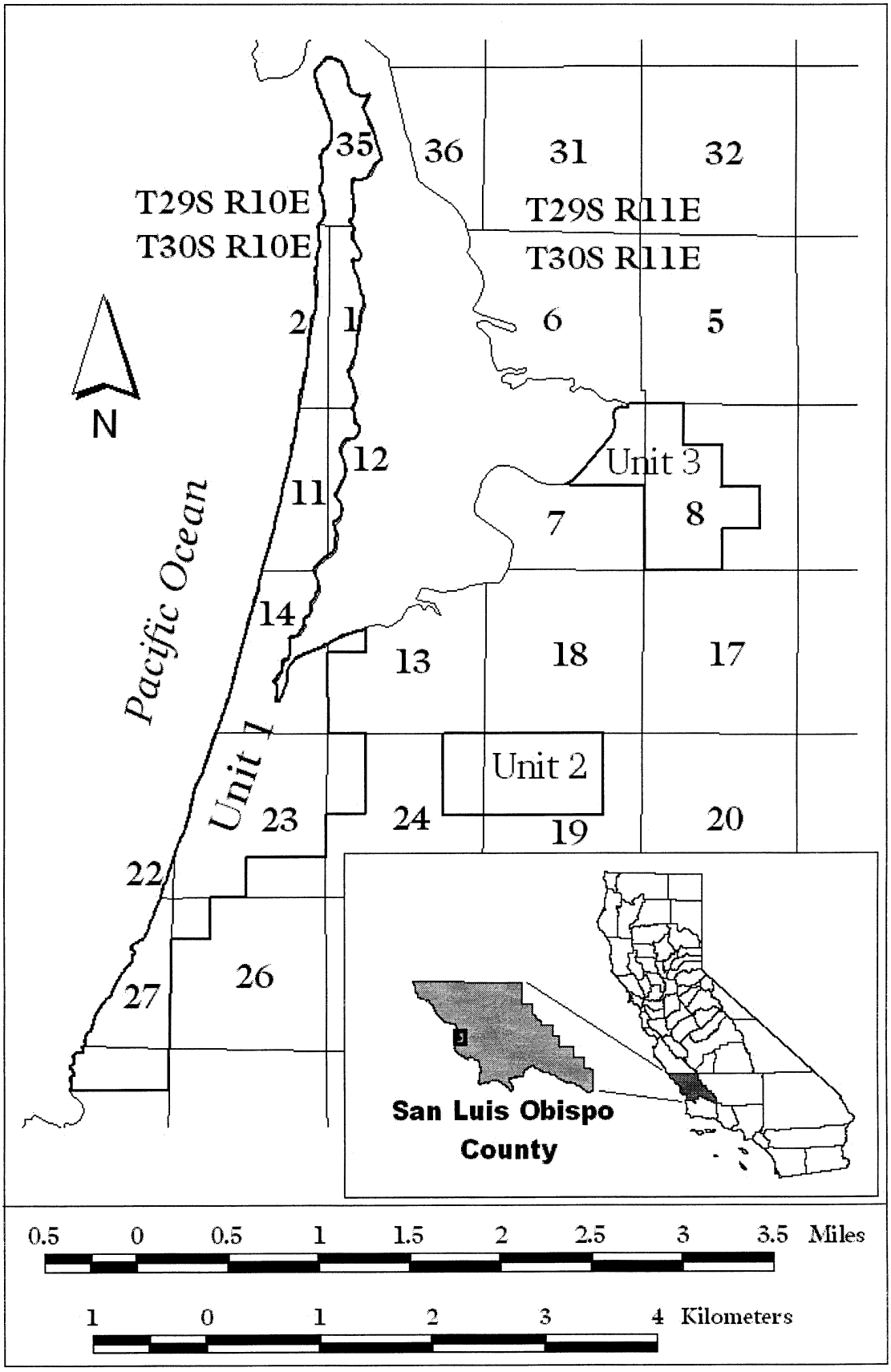


BILLING CODE 4310–55–C

Map Units 1 to 3: All located in San Luis Obispo County, California. Coastline boundaries are based upon the U.S. Geological Survey Morro Bay South 7.5 minute topographic quadrangle. Other boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Canada De Los Osos Y Pecho Y Islay Mexican Land Grant, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by us from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian.

Map Unit 1: T. 29 S., R. 10 E., all of section 35 above mean sea level (MSL); T. 30 S., R. 10 E. All portions of sections 1, 2, 11, 12, 14, 22, and 27 above MSL, SW\¼\NW\¼\ section 13 above MSL, W\½\NW\¼\ section 24, all of section 23 above MSL except S\½\SE\¼\, NW\¼\NW\¼\ section 26, N\½\N\½ section 34.

Map Unit 2: T. 30 S., R. 10 E., E\½\NE\¼ section 24; T. 30 S., R, 11 E., E\¾\N\½\ section 19.

Map Unit 3: T. 30 S., R. 11 E., All of NE\¼ section 7 above MSL; in section 8, NW\¼\NW\¼, S\½\NW\¼, SW\¼\, and NW\¼\SE\¼\.

2. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements for the Morro shoulderband snail are the following: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, coastal dune scrub vegetation.

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aqueducts, railroads, airports, paved areas, and similar features and structures.

* * * * *

Dated: February 1, 2001.

**Joseph E. Doddridge,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01–3126 Filed 2–6–01; 8:45 am]

BILLING CODE 4310–55–P

# Proposed Rules

**Federal Register**
Vol. 66, No. 26
Wednesday, February 7, 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.

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 250 and 259

**[Release No. 35–27342; International Series Release No. 1246; File No. S7–05–01]**

**RIN 3235–AF78 and 3235–AF79**

### Foreign Utility Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We are reproposing and seeking further comment on rules 55 and 56 and an amendment to rule 87 under the Public Utility Holding Company Act of 1935. The reproposed rules and amendment address various issues related to the acquisition and ownership of foreign utility companies by registered holding companies. As a related matter, we are requesting comments on amendments to forms used to report information concerning foreign utility companies. In addition, we are requesting comment on possible limitations upon the ability of a holding company to qualify foreign operations as a foreign utility company. The rulemaking is intended to carry out Congress' mandate to adopt rules concerning acquisitions of foreign utility companies by registered holding companies.

**DATES:** Comments must be submitted on or before April 9, 2001.

**ADDRESSES:** Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–05–01; include this file number on the subject line if E-mail is used. Anyone can read and copy the comment letters at our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on our Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** David B. Smith, Jr., Associate Director, at 202/942–0855 or Catherine A. Fisher, Assistant Director, at 202/942–0545.

**SUPPLEMENTARY INFORMATION:** Today we are reproposing and requesting further public comment on proposed rules 55 and 56 (17 CFR 250.55 and 17 CFR 250.56) and an amendment to rule 87 (17 CFR 250.87) under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) (''Holding Company Act'' or ''Act'').[1] We are also requesting comment on amendments to Form U–57 (17 CFR 259.207), the form used to report a company's status as a foreign utility company, and Form U5S (17 CFR 259.5s), the annual reporting form for registered holding companies. Finally, we are seeking comment on potential limitations on the ability of a holding company to qualify its foreign operations as a foreign utility company.[2]

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## I. Executive Summary and Introduction

In 1992, Congress adopted the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776 (1992)). The legislation amended the Holding Company Act to create two new types of exempt entities—exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''). Congress directed us to adopt rules concerning registered holding companies' interests in these entities.

In 1993, we proposed various rules as directed by Congress. Later that same year, we adopted the proposed rules relating to EWGs, but not those relating to FUCOs. Today we are reproposing and requesting further public comment on the rules relating to FUCOs. We are also requesting comment on proposed amendments to Form U–57 (17 CFR 259.207), the form used to report a company's status as a FUCO, and Form U5S (17 CFR 259.5s), the annual report form for registered holding companies. In addition, we are requesting comment on limitations on the ability of a holding company to qualify its foreign operations as a FUCO.

As originally proposed, rule 55 would have required us to review an acquisition if, among other things, aggregate investment in FUCOs exceeded 50% of the registered holding company's consolidated retained earnings. The reproposed rule contains conditions that are designed to address the broader issues related to FUCO investments. Reproposed rule 55 requires:

- The registered holding company to implement review and risk-assessment methodologies that address the risks of FUCO investments;
- That no more than 2% of the registered system's domestic utility employees render services to EWGs and FUCOs;
- That registered holding companies keep accurate books and records with respect to their FUCO investments and

[1] *See* Holding Company Act Release No. 25757 (Mar. 8, 1993), 58 FR 13719 (Mar. 15, 1993) (''Proposing Release'').

[2] The Commission continues to support conditional repeal of the Public Utility Holding Company Act of 1935. *See PUHCA Repeal: Is the Time Now?: Oversight Hearings Before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce,* 106th Cong., 2nd Sess. (1999) (statement of Isaac C. Hunt, Jr., Commissioner, SEC).

make these books and records available to our staff; and

- That we and other interested regulatory agencies receive prompt reports of FUCO acquisitions.

In addition, proposed rule 55 requires our prior review and approval of FUCO acquisitions in any of the following circumstances:

- The registered holding company's investment in FUCOs and EWGs exceeds 50% of consolidated retained earnings (or such greater amount as may be authorized by Commission order);
- The registered holding company or certain of its subsidiaries has experienced recent financial weakness, as indicated by certain bankruptcy proceedings or declines in earnings (conditions identical to those set forth in rule 53(b));
- The holding company has reported that it has obtained rate increases for retail customers in order to recover losses or inadequate returns on FUCO investments; or
- Any public-utility subsidiary of the registered holding company has a rating from a nationally recognized statistical rating organization with respect to its debt securities that is less than investment grade.

We are also proposing to amend Item 9 of Form U5S, the form on which registered holding companies provide information on a cumulative yearly basis, to require the holding company to disclose whether it has sought recovery of losses or inadequate returns on FUCO investments through higher rates to system retail ratepayers.

We are also reproposing rule 56 to clarify the status of subsidiary companies of registered holding companies formed to hold interests in FUCOs. Under the proposed rule, a registered holding company, unless otherwise restricted (for example, by rule 55) could acquire a subsidiary company engaged exclusively in the direct or indirect ownership of FUCOs without the need to apply for, or receive, our approval.

In addition, we are reproposing an amendment to rule 87 to require an order before an EWG or FUCO may provide services to, or construction for, or sell goods to, an associate company (other than to an EWG, FUCO or exempt telecommunications company). The proposed amendment would also require registered holding companies to furnish state and federal regulators copies of applications under rule 87 and certificates under rule 24 (17 CFR 250.24).

We are also proposing an amendment to Form U–57, which a company uses to claim FUCO status. The amended form would also be used to report FUCO acquisitions, whether or not our prior approval was required to make the acquisitions. Registered holding companies would be required to submit copies of the report on Form U–57 simultaneously to us and to other interested federal, state or local regulators. As a consequence, we and other interested regulators can monitor, regulate and provide comments and recommendations concerning the FUCO activities of registered holding companies.

## II. Background

### *A. The Internationalization of the Energy Business*

The utility business is rapidly evolving into a global industry, with participants seeking multinational investment opportunities. Sweeping political and economic changes worldwide have created a large demand for American utility expertise and significant investment opportunities for United States companies. Registered public-utility holding companies have taken advantage of these opportunities. As of December 31, 1998, registered holding companies had invested $8.2 billion in FUCOs and $892 million in domestic and foreign EWGs. Based on publicly reported information, we believe that investments made by exempt holding companies, and public utilities not part of a registered or exempt holding company system, are significantly higher.[3] In addition, foreign companies have acquired, or announced their intention to acquire, U.S. utilities and register under the Act. These transactions, and the issues they raise under the Act, were the subject of a 1999 concept release (''Concept Release'').[4]

Congress amended the Holding Company Act in 1992 to facilitate these changes. As discussed in greater detail below, the Energy Policy Act of 1992 (''Energy Policy Act'') created new categories of exempt entities, EWGs and FUCOs. We were given rulemaking authority with respect to certain matters arising from these provisions. In view of the increasing internationalization of the power industry and developments since the enactment of the Energy Policy Act, we are reproposing rules related to FUCO investments and requesting comment on international issues.

### *B. The Statutory Background*

The Holding Company Act was enacted in the wake of widespread fraud and mismanagement by large and far-flung public-utility holding companies. The Holding Company Act generally requires that a holding company limit its operations to a group of related operating utility properties within a confined geographic region.[5] To ensure that these standards are met, the Act generally requires our prior approval for public-utility company acquisitions.[6]

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[3] As of December 31, 1998, holding companies exempt under rule 2 of the Act had invested $12.3 billion in FUCOs and domestic and foreign EWGs. On August 18, 1999, AES Corp., which recently was granted an exemption from registration under section 3(a)(5) of the Act in connection with its acquisition of CILCORP Inc. (*see* Holding Co. Act Release No. 27036 (Aug. 20, 1999)), announced that it has agreed to purchase a 4,000 megawatt power station serving England and Wales for approximately $3.0 billion. In addition, domestic energy companies that are not part of either a registered or exempt holding company system have made major investments in FUCOs and EWGs in recent years. For example, in 1995 and 1996, PacifiCorp, a public utility company operating in the western United States, acquired an Australian electric distribution company and an interest in an Australian power plant and mine for a total of $1.7 billion. According to a U.S. Department of Energy report, U.S. energy companies have played ''a major role * * * as investors in the reformed and privatized electricity sectors'' in the United Kingdom, Australia and Argentina. *See* Electricity Reform Abroad and U.S. Investment Energy Information Administration, September 1997, at v.

[4] *See* Registered Public-Utility Holding Companies and Internationalization, Holding Co. Act Release No. 27110 (Dec. 14, 1999), 64 FR 71341 (Dec. 21, 1999). In the Concept Release, we noted that, among other things, the comments received would inform our consideration of applications and requests for interpretive guidance concerning foreign holding companies and our review, under section 11 of the Act, of registration statements filed by foreign holding companies. *See* Concept Release at 71344 and *infra* section III.C.

Recently, we issued an order (''NEES/National Grid Order'') approving the acquisition of New England Electric System (''NEES''), a registered holding company, by The National Grid Group plc (''National Grid''), a British utility holding company that would register under the Act, and approving certain related transactions. *See* National Grid Group plc, Holding Co. Act Release No. 27154 (March 15, 2000). On November 29, 1999, Scottish Power plc (''Scottish Power''), also a British utility holding company, acquired PacifiCorp, a U.S. utility, in a transaction that was not subject to our approval. Scottish Power has registered under the Act. By order dated December 6, 2000, we authorized PowerGen plc, another British utility, to acquire LG&E Energy Corp., a U.S holding company exempt from registration under section 3(a)(1) of the Act.*See* PowerGen plc, Holding Co. Act Release No. 27291.

[5] *See* section 11 of the Act (15 U.S.C. 79k). *See also Federal Trade Commission Report to the Senate, Utility Corporations*, S. Doc. No. 92, 74th Cong., 1st Sess. 24 (1935); *Report on the Relation of Holding Companies in Power and Gas Affecting Control*, H.R. Rep. No. 1827, 73rd Cong., 2d Sess. (1933–1935) (documenting the circumstances that gave rise to passage of the Act).

[6] Section 9(a)(1) (15 U.S.C. 79i(a)(1)) requires our prior approval for the direct or indirect acquisition of any securities or utility assets or any other interest in any business by a company in a registered system. In addition, section 9(a)(2) (15 U.S.C. 79i(a)(2)) generally requires our prior approval for an acquisition that would result in an extension of a holding-company system.

When the Act was passed over sixty years ago, Congress believed that these constraints were necessary to protect the public interest and the interests of investors and consumers.

Congress in 1935 did not foresee the changes that have taken place in recent years. Federal legislation enacted in the late 1970s and early 1990s opened the wholesale power-generation sector of the electric industry to competition. Half of the states are in the process of implementing measures to increase competition in retail markets. More and more utilities are moving toward disaggregation of vertically integrated operations in favor of focusing on one component of the utility business, such as transmission or distribution. In addition, sweeping political and economic changes worldwide have created a large demand for American utility expertise and significant investment opportunities for United States companies. Finally, the utility business is rapidly evolving into a global industry, with participants seeking multinational investment opportunities.

Congress recognized these changes in enacting Title VII of the Energy Policy Act. The Energy Policy Act was designed to address the constraints imposed by the Holding Company Act on investments by public-utility holding companies in certain types of power facilities. To this end, the Energy Policy Act added two new sections to the Holding Company Act: Section 32, relating to EWGs and section 33, relating to FUCOs.[7] An EWG, which may be either foreign or domestic, is exempt from all provisions of the Act, and may be acquired by a registered holding company without our prior approval.[8] A FUCO is ''exempt from all of the provisions of (the) Act, except as otherwise provided under (section 33(c)) * * *.'' and may be freely acquired by a registered holding company pending the adoption of rules under section 33(c)(1) concerning these acquisitions.[9] Sections 32 and 33 of the Act reduced the barriers provided by the Act to the participation of domestic companies in independent power production and foreign utility investment, activities to which the Act previously raised significant barriers.[10]

In amending the Act to accommodate EWG and FUCO investments, Congress pursued another goal—the protection of domestic ratepayers.[11] In this regard, the legislation gives state regulators significant responsibility for the protection of consumers of domestic utilities. The Commission, however, is given primary responsibility to shield the consumers of registered holding companies from any adverse effects of EWG and FUCO investments.

We have noted that there is an inherent tension between the drive toward a competitive energy market and the demand for effective consumer protection.[12] Congress gave us the responsibility to strike an appropriate balance between the statutory goals embodied in sections 32 and 33.

Under the Energy Policy Act, we continue to have jurisdiction over financing transactions related to EWG and FUCO acquisitions. The legislation required us to adopt regulations concerning EWG financings within six months of the date of enactment of the legislation. Congress also directed us to adopt rules with respect to FUCO acquisitions to address the protection of customers of the domestic operating companies of registered holding companies and the financial integrity of registered systems.

### *C. The Original Rule Proposal*

We initially proposed rules 55 and 56 in 1993 as part of a comprehensive set of regulations intended to implement sections 32 and 33 of the Holding Company Act, which were added by the Energy Policy Act.[13] The rules were, by conception and design, linked. Proposed rule 55, addressing FUCO acquisitions, incorporated the conditions of rule 53, addressing EWG financings. It is therefore important to discuss the operation of rule 53, which was adopted in 1993,[14] as background to the approach of rule 55.

Rule 53 sets forth two means by which a registered holding company may obtain approval of a proposed financing that will be used to invest in EWGs. The first is a partial ''safe harbor.'' Rule 53(a) creates a partial safe harbor by describing the circumstances in which a financing will be deemed not to have a substantial adverse impact on system financial integrity within the meaning of section 32(h)(3).[15] To rely upon the safe harbor, a registered holding company's aggregate investments in EWGs and FUCOs cannot exceed 50% of the system's

[7] Section 32 defines an EWG, in pertinent part, as any person determined by the Federal Energy Regulatory Commission to be engaged, directly or indirectly, in the business of owning or operating, or owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. Section 32(a)(1) (15 U.S.C. 79z–5a(a)(1)). The term ''eligible facility'' generally includes any facility, wherever located, that is used for the generation of electric energy exclusively at wholesale. Section 32(a)(2) (15 U.S.C. 79z–5a(a)(2)). An EWG that owns a facility located in a foreign country may make retail sales if none of the energy produced by the facility is sold to consumers in the United States. Section 32(b) (15 U.S.C. 79z–5a(b)).

Section 33 defines a FUCO as a company that owns or operates facilities that are not located in any State and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light or power. The definition further requires that a company derive no part of its income, directly or indirectly, from such utility operations within the United States, and that neither the company nor any of its subsidiaries is a public-utility company operating in the United States. Section 33(a)(3)(A) (15 U.S.C. 79z–5b(a)(3)(A)).

[8] Sections 32(e) and 32(g) of the Act.

[9] Section 33(c)(1) directs us to adopt rules concerning registered holding companies' acquisition of interests in FUCOs.

[10] *See, e.g.,* statement of Sen. Wallop, Cong. Rec. S17615 (Oct. 8, 1992) (section 32 is intended to ''streamline and minimize'' federal regulation); statement of Sen. Riegle, Cong. Rec. S17629 (Oct. 8, 1992) (''the purpose of section 33 is to facilitate foreign investment, not burden it.''). The Concept Release discusses the possible implications of section 33 for foreign companies investing in the United States; the NEES/National Grid Order discusses certain issues under the Act with respect to the acquisition of domestic utilities by foreign holding companies, including the application of section 33 to these transactions. *See supra* note 3.

[11] The legislation seeks to ''carefully strik(e) a balance between the concerns of many who are affected by its provisions, namely consumers, ratepayers, municipals, industrials, utility companies and State and Federal regulators.'' Statement of Rep. Dingell, Cong. Rec. H11428 (Oct. 5, 1992).

[12] *See* Proposing Release, *supra* note 1. This tension is also reflected in the debates over the Energy Policy Act. *Compare* statement of Sen. Riegle, 138 Cong. Rec. S17629 (Oct. 8, 1992) (''There are immediate and fleeting market opportunities for U.S. companies * * * We do not want Government barriers to these historic opportunities * * * The purpose of section 33 is to facilitate foreign investment, not burden it.'') with statements of Rep. Markey, 138 Cong. Rec. H11446 (Oct. 5, 1992) (''I am very concerned that utilities will make unwise investments in foreign utility systems with great potential risk to their asset base, and in turn to their ratepayers—residential, commercial, and industrial * * *. This provision would invite utilities to shift valuable resources and management—paid for by captive retail ratepayers—from monopoly markets to competitive markets. Utility expansion into new markets raises the same problems as does utility diversification in general: Risk of failure, diversification of utility profits from measures which would strengthen the utility's financial condition, reduced utility maintenance, the draining of top management from the core utility, and cross-subsidization.'').

[13] *See* Proposing Release, *supra* note 1. In the Proposing Release, we proposed rules 53, 54, 55, 56 and 57.

[14] *See* Holding Co. Act Release No. 25886 (Sept. 23, 1993), 58 FR 51488 (Oct. 1, 1993) (''Adopting Release''). In the Adopting Release, we adopted rules 53, 54 and 57.

[15] The ability to rely upon the safe harbor precludes a determination by us under section 32(h)(3) of the Act (15 U.S.C. 79z–5a(h)(3)) that the issuance and sale of securities in proposed EWG financings ''(are) not reasonably adapted to the earning power of (the registered holding company) or to the security structure of (the registered holding company) and other companies in the same holding company system, or that the circumstances are such as to constitute the making of (a guarantee involved in the proposed EWG financings) an improper risk for the (registered holding company).''

consolidated retained earnings (''50% CRE Requirement'').[16] In addition, no more than 2% of the system's domestic utility employees can render services to EWGs and FUCOs, and the registered holding company must give us reasonable access to the books and records of these entities, and provide copies of filings under the rule to other interested regulators.

The financing safe harbor is not available if the conditions of rule 53(a) are not satisfied or if certain specified financial events have occurred, such as an event of bankruptcy or other evidence of financial or operating problems.[17] To obtain approval in this circumstance, a registered holding company must demonstrate that the proposed financing will not have substantial adverse impact upon system financial integrity and that the transaction will have no adverse impact on any utility subsidiary or its customers, or on the ability of state commissions to protect that subsidiary or customers.[18]

Proposed rule 55 described the conditions under which a registered holding company could acquire an interest in a FUCO without the need to apply for, or receive, prior approval. Proposed rule 55 incorporated the conditions of rule 53. If the conditions were met, a registered holding company could acquire a FUCO without our approval.

Proposed rule 55 proved controversial. We received comments from registered holding companies,[19] state and local regulators,[20] and other interested parties, including the National Association of Regulatory Utility Commissioners (''NARUC''), the United States Departments of Energy and State, and several members of Congress.[21] The opposing views of the commenters generally reflected the tension in the legislation between the drive toward a competitive energy market and the demand for effective consumer protection.[22] On the one hand, regulated companies emphasized the need for flexibility to respond to historic, and fleeting, opportunities available as the utility industry world-wide undergoes a fundamental reorganization. On the other hand, consumer advocates urged caution, voicing concerns about possible detriment to captive utility ratepayers. A number of commenters asserted that the statute requires us to review each FUCO acquisition.[23]

Opinion among state regulators was also divided. Some state regulators, such as the Pennsylvania Commission, found the rules as proposed to be adequate.[24] Others suggested that they be more restrictive.[25]

Many commenters suggested that we request further comment upon the rule 55. In light of the comments and upon our own review of the matter, we decided to give additional consideration to the issues raised by proposed rule 55.[26]

### *D. Subsequent Developments*

Since the proposal of rule 55 in 1993, we have gained significant experience in addressing FUCO investments. Specifically, as of December 31, 1999, we had authorized six registered holding companies to finance FUCO and EWG acquisitions in an amount equal to 100% of their consolidated retained earnings (''100% Orders'').[27] In considering these applications, we have had an opportunity to consider the ways in which registered holding companies go about identifying and making FUCO investments. We also now have the benefit of reviewing the experience that registered holding companies have had with respect to their FUCO investments. Based on this experience, as well as the comments on proposed rule 55 and the

[16] Rule 53(a)(1)(i) (17 CFR 250.53(a)(1)(i)) defines ''aggregate investment'' as all amounts invested, or committed to be invested, in EWGs and FUCOs, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an EWG or a FUCO, and the fair market value of assets acquired by an EWG or a FUCO from a system company (other than an EWG or a FUCO).

''Consolidated retained earnings'' are defined as the average of the consolidated retained earnings of the registered holding company system as reported for the four most recent quarterly periods on the holding company's Form 10–K (17 CFR 249.310) or 10–Q (17 CFR 249.308a) filed under the Securities Exchange Act of 1934.

[17] Under rule 53(b) (17 CFR 250.53(b)), the safe harbor is unavailable if:

(1) The registered holding company, or any subsidiary company having assets with book value exceeding an amount equal to 10% or more of consolidated retained earnings, has been the subject of a bankruptcy or similar proceeding, unless a plan of reorganization has been confirmed in the proceeding; or

(2) The average consolidated retained earnings for the four most recent quarterly periods have decreased by 10% from the average for the previous four quarterly periods and the aggregate investment in EWGs and foreign utility companies exceeds two percent of total capital invested in utility operations; provided, this restriction will cease to apply once consolidated retained earnings have returned to their pre-loss level; or

(3) In the previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in EWGs and foreign utility companies, and the losses exceed an amount equal to 5% of consolidated retained earnings.

[18] *See* rule 53(c) (17 CFR 250.53(c)).

[19] American Electric Power Co., Inc. (''AEP''); Central and South West Corporation (''CSW''); Columbia Gas System, Inc. (''Columbia''); Consolidated Natural Gas co. (''CNG''); Eastern Utilities Associates (''EUA''); Entergy Corporation (''Entergy''); General Public Utilities Corporation (''GPU''); Northeast Utilities (''Northeast''); and The Southern Company (''Southern''). Citations to a particular comment letter will be in the form of [commenting party's abbreviated name] at [page number]. For example, a citation to page 3 of the comment letter of AEP would be ''AEP at 3.'' Comments we received on the Proposing Release may be found in File No. S7–9–93.

[20] Alabama Public Service Commission (''Alabama Commission''); Arkansas Public Service Commission (''Arkansas Commission''); Florida Public Service Commission (''Florida Commission''); Iowa Utilities Board; Council of the City of New Orleans and the Mississippi Public Service Commission (''City of New Orleans''); Pennsylvania Public Service Commission (''Pennsylvania Commission''); and Public Utility Commission of Texas (''Texas Commission'').

[21] We received comments from Chairman Donald W. Riegle, Jr. of the Senate Committee on Banking, Housing and Urban Affairs, Senator Dale Bumpers, and Chairman Edward J. Markey of the House Subcommittee on Telecommunications and Finance. In addition, we received comments from Baker & Botts, L.L.P.; catalyst Old River Hydroelectric Ltd. Partnership; Dewey Ballantine; Edison Electric Institute (''EEI''); The Electricity Consumers Resource Council, the American Iron and Steel Institute and the Chemical Manufacturers Association (collectively, the ''ECRC''); K&M Engineering & Consulting Corporation; and Morgan Stanley & Co., Inc.

[22] *See supra* note 11.

[23] *See* City of New Orleans at 9 (''Congress * * * intended that all foreign utility company acquisition be routinely subjected to SEC pre-approval'').

In his comments, Senator Bumpers also stated that ''Congress did not intend for a safe harbor approach to apply to holding company investments in foreign utility companies.'' In support of this assertion, Senator Bumpers explained that when he objected to the inclusion of section 33 in the final bill, proponents of the legislation assured him that ''state utility commissions would be able to provide their comments to the SEC on individual foreign investments proposed by registered holding companies.'' Sen. Bumpers at 1–2.

[24] ''Generally, the consumer protection afforded by the [SEC's] proposed rulemaking is adequate and not unduly burdensome. The Pennsylvania Commission has adequate rules to regulate its jurisdictional utilities and, in turn, protect its domestic ratepayers.'' Pennsylvania Commission at 1.

[25] The City of New Orleans and the Texas Commission proposed limiting investment in any one foreign country to 10% of consolidated retained earnings, as a measure to diversify risk. City of New Orleans at 24; Texas Commission at 3.

[26] *See* Adopting Release, *supra* note 14. Unlike section 32, section 33 did not establish a date by which the Commission must promulgate rules regarding FUCOs.

[27] *See* Southern Co., Holding co. Act Release Nos. 26501 (Apr. 1, 1996) (order) and 26646 (Jan. 15, 1997) (denying request for reconsideration), *aff'd*, Campaign for a Prosperous Georgia v. SEC, 149 F.3d 1282 (11th Cir. 1998); Central and South West Corp., Holding Co. Act Release No. 26653 (Jan. 24, 1997); GPU, Inc., Holding Co. Act Release Nos. 26773 (Nov. 5, 1997) (order) and 26779 (Nov. 17, 1997) (opinion); Cinergy Corp., Holding Co. Act Release no. 26848 (Mar. 23, 1998); American Electric Power Co., Inc., Holding Co. Act Release No. 26864 (Apr. 27, 1998); New Century Energies, Inc., Holding Co. Act Release No. 26982 (Feb. 26, 1999).

Concept Release, we are reproposing the rule.[28]

## III. Proposed Rule 55

### *A. Preliminary Matter: Commission Review of Specific Acquisitions and the Role of State Commissions*

One of the most controversial issues was whether rule 55 should require us to review each FUCO acquisition. On the one hand, several commenters asserted that our rules should require that FUCO investments be approved on a case-by-case basis, either by us or by state regulators.[29] On the other hand, many commenters stated that a case-by-case review would be impractical and inconsistent with the statutory purpose to facilitate investments in FUCOs. These commenters expressed concern that requiring case-by-case approval ''would be so complex and time-consuming that it would render the affected companies unable to react to market conditions in a timely fashion,'' and, as a result, ''these companies would be unable to take advantage of the investment opportunities that Congress, when it adopted the subject of new legislation, meant them to be able to pursue.''[30]

Having carefully considered the comments, and based on our experience, we continue to believe that a requirement that we approve each individual FUCO acquisition would undercut the purpose of section 33. We believe, however, that rule 55 should incorporate conditions that balance the registered holding companies' need for flexibility and their domestic consumers' need for protection against potential detriment from FUCO investments.

In our 100% Orders, we have focused on the preservation of capital for domestic utility operations, the effect of FUCO investments upon the daily operations of the domestic utility subsidiaries, and the possible effect of these investments upon domestic ratepayers. We have stated that ''[a]lthough foreign utility operations raise unique issues for the administration of the Act, we believe that the relevant considerations are generally those identified in section 32(h)(6), relating to the preservation of capital for domestic utility operations, the effect of foreign utility company investments upon the daily operations of the domestic utility subsidiaries, and the possible effect upon domestic ratepayers.'' [31] We have looked at numerous factors, including the holding company's current financial health, the percentage of total capital these securities transactions would amount to, the company's debt/equity ratio, the insulation of its operating subsidiaries from the debt of the holding company, the extent to which the operating companies are dependent on infusions of holding company capital to conduct their operations, and the fact that the state utility commissions with jurisdiction over the operating companies did not object to the financing. Our 100% Orders require the registered holding company to remain in compliance with the requirements of rule 53(a), other than the 50% CRE Requirement, at all times during the period of authorization of the order. The 100% Orders cease, by their terms, to be effective if one of the disqualifying circumstances described in rule 53(b) occurs during the period. The registered holding company also specifically undertakes that it will not seek recovery through higher rates to its utility subsidiaries' customers to compensate it for any possible losses that it may sustain on investments in EWGs and FUCOs or for any inadequate returns on these investments. We believe that it is appropriate to include similar requirements in proposed rule 55.[32] The reproposed rule does not, and cannot, provide absolute certainty against any potential detriment from FUCO acquisitions.

In this regard, we have given particular consideration to the urging of NARUC and other commenters that the rule be amended to include a role for state and local regulators. Our practice in granting the 100% Orders has demonstrated that state commissions have played a significant consultative role in matters relating to FUCO investments. In each of the 100% Orders, the relevant state commissions have provided us with letters stating that the order would not impair the ability of the state commission to regulate the holding company's domestic utilities or protect the utilities' customers. These views have been helpful to our decisions in these matters. We contemplate that state regulators will play a similar role in those instances where rule 55 requires our approval of FUCO acquisitions. We request comment whether this approach strikes the appropriate balance in addressing the competing concerns reflected in section 33.[33]

### *B. Conditions of Rule 55*

#### 1. Procedures and Board Review

We have frequently noted that investments in FUCOs pose risks that do not arise in the domestic utility industry. Foreign investment and commercial activities entail country-specific risks related to political and economic conditions. It is important to a holding company system's financial integrity that these risks be analyzed and addressed in a systematic way.

In commenting on proposed rule 55, the Department of Energy stated that assessment of risk is ''the proper function of utility management, not regulatory agencies. * * * The SEC can provide adequate protection to domestic consumers and investors by establishing the regulations proposed in this rulemaking and by aggressively overseeing transactions and contractual arrangements between registered holding companies and their foreign utility subsidiaries.''[34]

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[28] We are also addressing issues raised by significant FUCO ownership by foreign and domestic registered holding companies. *See* section VII, *infra*.

[29] *See supra* note 23. In addition, the ECRC, for example, voiced concern that ''safe harbors will not adequately protect U.S. electricity consumers against the hazards of [registered holding company] investment in foreign utilities and EWGs.'' NARUC suggested that companies seeking to come within a safe harbor should be required to file an application and serve each affected state and local utility commission; any affected state could then file a notice of adverse impact that would make the safe harbor unavailable. The Department of Energy suggested a procedure under which state commissions could file comments with us.

[30] AEP at 6–7; CNG at 2–3; Entergy at 22; GPU at 13; Northeast at 11–12; and the Department of Energy at 13–14.

[31] Southern Co., Holding Co. Act Release No. 26501, citing the Proposing Release, *supra* note 1.

[32] We have noted in our 100% Orders that ''(a)s a practical matter, * * * it may not be feasible to insulate the operating companies completely from a potential increase in cost of capital that could result from a major loss in connection with these investments.'' *See, e.g.*, Southern Co., *supra* note 27.

[33] Section 33(c)(1), by its terms, does not contemplate the participation of state ratemaking authorities. Although the legislative history is silent on the point, it seems that Congress may have envisaged, at most, an advisory role for state regulators with respect to FUCO acquisitions and financings for purposes of acquiring interests in FUCOs by registered holding companies. Section 33(c)(1) (15 U.S.C. 79z–5b(c)(1)), for example, expressly requires us to ''reasonably and fully consider'' the recommendation of an interested state commission regarding the registered holding company's relationship to a FUCO.

[34] Department of Energy at 13–14. Many of the registered companies agreed. *See* AEP at 6–7 (''although risk does vary from project to project and from country to country, such risks will be reflected in the company's analysis of the pricing and other negotiated terms of the transaction''); CNG at 3 (''It can be reasonably assumed that the (registered holding companies) would * * * see to adequate safety in the construction and operations of EWGs and foreign utility companies in which they invest.''); GPU at 13; Northeast at 11–12.

Southern described the factors it assesses prior to investing in a foreign project. These factors include political and financial stability, the compatibility of business practices and customs, legal systems, the availability of political insurance and currency risk

Continued

This observation is borne out by our experience with the 100% Orders. In requesting 100% Orders, applicants have emphasized the role in FUCO investments of procedures designed to analyze risks. These types of procedures cannot assure that all FUCO investments will be profitable. They are designed to assure that risks are fully analyzed by corporate personnel and their advisers and that appropriate risk-mitigation measures are implemented.

The proposed rule therefore incorporates a condition designed to assure that the risks of FUCO investments are thoroughly analyzed and addressed. The board of directors of the registered holding company would be required to adopt procedures designed to analyze the risks of investing in foreign jurisdictions. These risks include developing, constructing and operating utility facilities abroad and the related political, legal and financial, and foreign currency risks.

While the proposed rule identifies certain risks that should be addressed, the list is not intended to be exhaustive. Nor does the rule mandate specific procedures. A number of commenters emphasized the difficulty of developing uniform standards to address such diverse and complex issues as sovereign risk, currency fluctuation, repatriation of earnings, political stability, potential tort liability and adequacy of local safety standards and regulatory oversight. Holding companies would be expected to develop procedures based on the particular circumstances of the holding company and the anticipated investments.

The proposed rule also requires that specific FUCO acquisitions be approved by the holding company's board of directors. The board's approval would be based upon, among other things, findings that the FUCO investment procedures have been complied with; that measures have been, or will be, taken to mitigate the risks that the FUCO acquisition presents to the holding company and its associate companies; and that the FUCO acquisition and any related financing have been structured such that ratepayers of the holding company's associate companies are adequately insulated from any adverse effects of the FUCO investment.[35]

Copies of the procedures, the board resolutions, and any documents that serve as a basis for the board findings would be required to be preserved in the holding company's books and records. This will enable our inspection staff to determine whether appropriate procedures have been effectively implemented.

We request comment on the proposed approach. Should the rule require boards of directors to make additional findings concerning specific issues? Should the rule require certain legal and other expert opinions to serve as the basis of the findings? Should the rule specify additional procedures?

2. Personnel Devoted to FUCOs and EWGs

Proposed rule 55 also provides that no more than 2% of the system's domestic utility employees can render services to EWGs and FUCOs.[36] Rule 53 contains the same requirement. We believe that this provision offers a further safeguard for the utility operations of the registered system.[37] Diversion of expertise from the system's core business is a basic concern of the Act.[38] This same concern reappears in the legislative history of the Energy Policy Act.[39]

3. Commission Review of Certain Investments

It may be appropriate for us to review FUCO acquisitions if the holding company's investments in FUCOs exceed certain levels or if the holding company has experienced recent financial weakness. In these circumstances, the proposed rule requires the holding company to demonstrate that the acquisition will not have a substantial adverse impact upon system financial integrity or upon any system utility, its customers, or the State commission's ability to protect the utility or its customers. We believe that the approach of rule 53(c), which defines the circumstances where rule 53's safe harbor is not available, are also appropriate to define the circumstances under which our review of a transaction is appropriate.

The proposed rule would require our review when:

- The registered holding company's investment in FUCOs and EWGs exceeds 50% of consolidated retained earnings (or such greater amount as may be authorized by Commission order);[40]
- The registered holding company or certain of its subsidiaries (''Significant Subsidiaries'') has been the subject of a bankruptcy or similar proceeding, unless a plan of reorganization has been confirmed in the proceeding;[41]
- The average consolidated retained earnings for the four most recent quarterly periods have decreased by 10% from the average for the previous four quarterly periods and the aggregate investment in EWGs and FUCOs exceeds two percent of total capital invested in utility operations; or
- In its previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in EWGs and FUCOs, and these losses exceed an amount equal to 5% of consolidated retained earnings.

We are also proposing two additional circumstances that would trigger the transaction review requirement:

- The holding company has sought recovery of losses or inadequate returns on FUCO investments through higher rates to retail ratepayers.

In the 100% Orders, holding companies have always undertaken that they would not seek to recover losses from ratepayers. In order to provide greater assurance that losses, if any, are not passed on to ratepayers, we are proposing to amend Item 9 of Form U5S, the form for annual reports that registered holding companies are required to file under section 5(c) of the Act, to require disclosure of whether any rate increases to retail customers have been obtained in order to recover these losses.[42]

If, during the preceding three years, the holding company has responded to this item in the affirmative, the proposed rule would require our approval of additional acquisitions.

- The securities of any Significant Subsidiary that is a public-utility company were rated less than

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protection, as well as an evaluation of risk balanced against projected returns. Southern at 15–16.

[35] In the applications relating to the 100% Orders, registered holding companies have suggested that they take a number of measures to meet these objectives. For example, applicants have represented that they seek local partners (including government agencies) or obtain ''political risk'' insurance to reduce the risks of expropriation, reduce construction risks through performance guarantees, and seek financing that is non-recourse to the holding company. The registered holding companies have also represented that they take a number of measures to address foreign currency risks.

[36] Proposed rule 55(a)(3).

[37] ''The SEC has appropriate discretion in considering the issues and promulgating the regulations to take the steps reasonably necessary to protect operating companies and their customers.'' Statement of Sen. Wallop, 138 Cong. Rec. S17615 (Oct. 8, 1992).

[38] *See* section 1(b)(2) (15 U.S.C. 79a(b)(2)).

[39] *See, e.g.,* Statement of Rep. Markey, 138 Cong. Rec. H11446 (Oct. 5, 1992).

[40] If, for example, a holding company has received a 100% Order, the percentage would be 100%.

[41] At the time of the filing of the bankruptcy petition, the subsidiary must have had assets with a book value exceeding an amount equal to 10% or more of the holding company's consolidated retained earnings. *See* rule 55(b)(1)(i).

[42] 15 U.S.C. 79e(c). Item 9 of Form U5S requires the reporting of information concerning EWGs and FUCOs.

investment grade by a nationally recognized statistical rating organization.

This provision is designed to afford an additional protection for domestic ratepayers. The rating of the debt securities of a public-utility subsidiary has a direct effect on its cost of funds and its rates. A rating of less than investment grade suggests that we should review FUCO acquisitions to assure that they will not have an adverse impact on the financial integrity of the holding company system, which could, in turn, lead to further rate increases. This approach will also afford state regulators an opportunity to present their views concerning the effects of FUCOs on rates.

As is the case with our 100% Orders, our approval of each acquisition may not be necessary. In many circumstances, the requested authorization may reflect the ''budget method'' of our 100% Orders—that is, authorization to invest a specified amount in FUCOs. Individual review may be appropriate, for example, when a Significant Subsidiary of the holding company has experienced significant financial difficulty.

We request comment on the proposed Commission review requirement. Should any other events trigger the requirement that we review FUCO acquisitions? Should other measures be used, such as the relation of FUCO investments to consolidated capitalization, consolidated assets, or net utility plant? Should the conditions be more restrictive? Should FUCO investments be required to be insured against political and exchange risks? [43]

4. Books and Records and Reporting Requirements

Proposed rule 55 requires a company that is relying on the rule to maintain books and records with respect to the FUCO investment.[44] The proposed rule also requires that certain information be provided to retail rate regulators. Specifically, a registered holding company that makes a FUCO investment must, within ten days of the investment, file a statement on Form U–57 with us and provide a copy to every regulator having jurisdiction over the rates of any system utility. The registered holding company must also provide to the regulators other filings by the holding company related to its FUCOs. These filings are related to the financing of the FUCO acquisition and certain contractual relationships between the FUCO and the holding company, its affiliates or associate companies.

The access to information made possible by the books and records provisions and the reporting requirements under rule 55(d) should help retail ratemakers to shield consumers from the costs that may be associated with investment in FUCOs.[45] Under proposed rule 87, discussed below, our prior approval would be necessary for intrasystem service, sale and construction arrangements involving FUCOs,[46] and financing transactions and other relationships incidental to the acquisition remain subject to the Act.[47] These measures should help to ensure ''the protection of the customers of a public utility company which is an associate company of a FUCO and the maintenance of the financial integrity of the registered holding company system.'' [48]

We request comment whether these provisions (or the related provisions in rule 53) should be modified in any respect. For example, should the rule permit the FUCO to keep its books and records in conformity with local accounting conventions (rather than U.S. generally accepted accounting principles, as required by certain provisions of rule 53) if the local accounting system permits us to determine whether transactions between the FUCO and the other companies in the holding company system comply with the Act's standards?

*C. Comments Received in Response to the Concept Release*

We received comments from a wide range of commenters in response to the Concept Release.[49] While none of the commenters discussed rule 55 specifically, several commented on the operation of rule 53 and the importance of providing safeguards to limit the possibility that FUCO investments would have an adverse effect on domestic utilities, particularly the FUCO investments of *foreign* registered holding companies. One commenter suggested that the Commission should establish standards for the type of businesses in which a FUCO could engage. Several industry commenters suggested that the safe harbor approach should be modified to focus on the financial condition of the holding company, including its credit ratings, rather than the relationship of the FUCO investments to consolidated retained earnings.[50]

We believe that the suggested approach is not warranted at this time. The current approach does not establish an irrebuttable presumption concerning the appropriate ratio of FUCO investments to retained earnings; rather, it establishes a point at which the Commission can review the level of investment and, with input from state regulators, determine whether it is likely to have an adverse effect on the holding company and its public utility subsidiaries. Rule 55 would apply equally to foreign and domestic registered holding companies.

Several commenters addressed the question of whether the existing FUCO investments of foreign registered holding companies should be automatically ''grandfathered'' for purposes of rule 53.[51] Most of these commenters suggested that grandfathering should not be automatic; rather, they urged the Commission to subject these investments to the type of review required by rule 53(c). This is the approach that we took in the NEES/

[43] Department of State at 1–2.

[44] The books and records required to be kept are those required by rule 53. A registered holding company must maintain books and records to identify investments in, and earnings from, any FUCO in which it directly or indirectly holds an interest. Rule 53 also addresses the books and records that must be kept with respect to partially owned FUCOs.

[45] *See* Section 18 of the Act [15 U.S.C. 79r] (authorizing the Commission ''upon its own motion *or at the request of a state commission*'' to inquire into the business of any registered holding company or subsidiary) (emphasis added).

[46] *See* Intrasystem Service, Sales and Construction Contracts Involving Exempt Wholesale Generators and Foreign Utility Companies, Holding Co. Act Release No. 25887 (Sept. 23, 1993), 58 FR 51508 (Oct. 1, 1993), RIN 3235–AF87, File No. S7–28–93 (''Rule 87 Proposing Release''). We proposed, and today are reproposing, a clarifying amendment to rule 87. The rule currently allows subsidiary companies of a registered holding company to enter into certain intrasystem agreements without the need to apply for or receive our prior approval. The proposed amendment would make clear that our approval, by order upon application, is required for intrasystem service, sales and construction agreements involving an EWG or FUCO, and another subsidiary company in the registered system, other than an EWG or FUCO.

[47] *See* section 33(c)(2) of the Act (15 U.S.C. 79z–5b(c)(2)).

[48] Section 33(c)(1) of the Act (15 U.S.C. 79z–5b(c)(1)).

[49] We received letters from 30 commenters, including state officials and regulators, the U.S. Department of State, foreign and domestic holding companies, consumer, trade and business associations and individuals. These letters may be found in File No. S7–30–99.

[50] NEES and National Grid place particular emphasis on this approach. *See* Joint Response of The National Grid Group plc and New England Electric System to the Concept Release on Registered Public Utility Holding Companies and Internationalization in File No. S7–30–99.

[51] ''Grandfathering'' excludes FUCO investments a holding company has made prior to the time it registers under the Act from the 50% CRE Requirement of rule 53. Only investments made after registration would be subject to the percentage limitation. *See supra* note 16 and accompanying text.

National Grid Order and which is reflected in reproposed rule 55.

## IV. Proposed Rule 56

We are also reproposing rule 56. Proposed rule 56 clarifies the status of subsidiary companies of registered holding companies formed to hold interests in FUCOs. Under the rule, a company engaged directly or indirectly, and exclusively, in the business of owning or operating, or both owning or operating, all or part of one or more FUCOs would be deemed a FUCO for purposes of the Act, and a registered holding company could acquire such a company on the same terms and conditions that it could acquire the underlying FUCO.

Proposed rule 56 should not result in additional risk to consumers. To the contrary, intermediate companies permitted by the proposed rule may isolate risks that might be associated with the new ventures and secure, where possible, additional tax benefits. The statute provides a similar exemption for intermediate companies formed to hold interests in EWGs.[52]

## V. Proposed Amendment to Rule 87

Rule 87 addresses the circumstances in which a subsidiary company of a registered holding company may perform services or construction for, or sell goods to, an associate company without the need to apply for or receive our prior approval. Among other things, the rule allows a subsidiary utility company to render incidental services to an associate company, and any subsidiary company to ''perform services or construction for, or sell goods to'' an associate nonutility company.

In 1993, we proposed an amendment to rule 87 that was designed to make it clear that Commission approval is required for intrasystem agreements involving EWGs and FUCOs.[53] The proposed amendment would also have required registered holding companies to furnish state and federal regulators copies of applications under rule 87 and certificates under rule 24.[54] We noted in the Rule 87 Proposing Release that the amendment would allow us to monitor services to EWGs and FUCOs to prevent the diversion of management and goods to these companies by other system companies, and would ensure that system companies are fairly reimbursed for the use of their employees' time or for the provision of goods.[55]

Comments on the proposed rule were mixed.[56] Holding companies that commented on the proposed rule generally suggested that it would impose unnecessary administrative burdens.[57] They also asserted that rule 53, which allows no more than 2% of a holding company system's domestic utility personnel to render services to affiliated FUCOs and EWGs, and section 13(b) of the Act, requiring services to be provided at cost, protected the interests of the holding company's domestic utilities.[58] Two holding companies suggested that the scope of the rule amendment be narrowed to address only transactions with domestic public utilities.[59]

State regulators and consumer groups supported the proposal but believed that it was too narrow. They suggested that the Commission establish ''clear pricing standards'' for affiliate transactions that would protect ratepayers. Generally, they suggested that if the value of the services provided to a FUCO or EWG exceeded their cost, the utility should be required to charge the market value; if the utility was the purchaser of the services, the price should be the lower of market value or cost.

Since the proposal of the amendments to rule 87, registered holding companies have generally sought our approval of intrasystem agreements involving EWGs and FUCOs.[61] In addition, our staff has found, in its examinations of holding company systems, that transactions between service companies and FUCOs have adhered to the Act's standards.

While this experience suggests that the amendment may be unnecessary, we are nevertheless reproposing it in view of the comments of state regulators and consumer groups. These commenters suggested that they would benefit from receiving applications related to these transactions, as well as the filings under rule 24.

We are not proposing to incorporate substantive standards for transactions between FUCOs or EWGs and system utilities into the rule. We continue to believe that variations from the ''at cost'' standards of section 13(b) are best addressed on a case-by-case basis. We note that we have recently granted an exemption from the ''at cost'' standard for certain types of transactions with FUCOs.[62] We will continue to be flexible in addressing such requests particularly where they are supported by state regulators and are designed to assure that captive ratepayers do not subsidize FUCO investments.

## VI. Proposed Amendment to Form U–57

In the Proposing Release, we requested comment on a new form (Form U–57), which we adopted in the Adopting Release. Form U–57 is currently used by companies claiming FUCO status. We now propose amending Form U–57 so that it may be used by both companies claiming FUCO status as well as registered holding companies reporting the acquisition of a FUCO under rule 55. The FUCO and the holding company could file a single form, thus avoiding duplicative filings.

Form U–57, as proposed to be amended, contains four items.

- Item 1 requires a description of each FUCO acquired, its location and business address, and the facilities used for the generation, transmission and distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas. It further requires identification of each system company that holds an interest in the FUCO and,

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[52] *See* section 32(a)(1) of the Act (15 U.S.C. 79z–5a(a)(1)), which defines EWG to include an intermediate subsidiary that is engaged exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities.

[53] *See* Rule 87 Proposing Release, *supra* note 46.

[54] Filings under rule 24 are normally made within ten days of the consummation of a transaction, but may be made quarterly, semiannually or annually, as specified by the relevant order. We noted that the filing of certificates would inform the regulators of services rendered to EWGs and FUCOs and would facilitate audits of system companies. *Id.*

[55] *Id.* We also noted an earlier proposed amendment to rule 83 (17 CFR 250.83). *See* Holding Co. Act Release No. 25668 (Nov. 3, 1992), 57 FR 54025 (Nov. 16, 1992). The proposed amendment to rule 83 would have allowed subsidiaries of registered holding companies to provide services for certain foreign associate companies without the need for prior approval under section 13(b), so long as the consideration to be paid by the foreign associate company is not less than the cost of the service, sales or construction to the subsidiary company rendering such services. The requirement that services be provided at not less than cost was intended to prevent the subsidization of foreign activities by domestic system companies. We asked commenters to consider the proposed amendment to rule 83 in their comments on rule 87. *See* Rule 87 Proposing Release, *supra* note 46, at note 3.

[56] Comments on the proposed amendment to rule 87 may be found in File No. S7–28–93.

[57] Allegheny Power System; AEP; Columbia; CNG; and GPU.

[58] *Id.*

[59] Northeast; Southern.

[60] Joint comments by the City of New Orleans, the Arkansas Commission and the Mississippi Commission; joint comments by NARUC, Consumer Federation of America and Environmental Action; and the Ohio Office of the Consumer's Counsel.

[61] *See, e.g.,* Southern Co., Holding Company Act Release No. 26212 (Dec. 30, 1994); Entergy Corp., Holding Company Act Release No. 26322 (Jun. 30, 1995); National Fuel Gas Co., Holding Company Act Release No. 26847 (Mar. 20, 1998); Central and South West Corp., Holding Company Act Release No. 26887 (Jun. 19, 1998); American Electric Power Co., Inc., Holding Company Act Release No. 26962 (Dec. 30, 1998); Cinergy Corp., Holding Company Act Release No. 26984 (Mar. 1, 1999); Cinergy Corp., Holding Company Act Release No. 27016 (May 4, 1999); Entergy Corp., Holding Company Act Release No. 27039 (Jun. 22, 1999).

[62] *See* Energy Corp., Holding Company Act Release Nos. 27040 and 27039 (Jun. 22, 1999).

to the extent known, each person that holds five percent or more of any class of voting securities of the FUCO.

- Item 2 requires a statement of the purchase price paid for the FUCO; the type and amount of capital invested, directly or indirectly, in the FUCO; any debt or other financial obligation for which there is recourse to a system company (other than an EWG or FUCO); and any direct or indirect guarantee of a security of the FUCO.
- Item 3 requires the identification of each domestic associate public-utility company and, if applicable, its holding company.
- Item 4 requires the identification of the location of the books and records required by rule 53 and provides that a registered holding company, by filing the form, undertakes that it will provide us or our representatives with access to these books and records in the United States, at a location that we may reasonably request.

The amended form should provide us and state and local regulators with timely notice of all FUCO acquisitions made in reliance on rule 55 and much of the same information, on a transactional basis, that registered holding companies are required to provide us on a cumulative yearly basis in Item 9 of Form U5S. Access to information concerning these investments as they are made will enhance our ability, as well as the ability of the state commissions, to monitor, regulate, and in the case of state regulators, provide us comments and recommendations concerning the foreign utility activities of registered holding companies.

## VII. General Request for Comment and Request for Additional Comment

The Commission requests comment on the new rules, rule amendment, and form amendments proposed in this release, suggestions for additional provisions or changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this release. We also request information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

We are also seeking additional comment on the advisability of possible limitations upon the ability of a holding company to qualify its foreign operations as a FUCO. In the NEES/National Grid Order, we determined that it was appropriate for a U.K. public-utility holding company to qualify its foreign businesses as a FUCO. This status allowed the U.K. holding company to acquire a U.S. registered holding company without regard to the integration provisions of the Act. We determined that treating the foreign businesses as a FUCO would not undermine the policies of the Act or be detrimental to the protected interests. We also noted in the NEES/National Grid Order that, in addition to its foreign utility operations, National Grid holds various nonutility businesses of a type that we or Congress has found to satisfy the standards of section 11(b)(1) of the Act.

Since the date of the NEES/National Grid Order, various foreign holding companies have sought the advice of our staff concerning the qualification of their existing businesses as a FUCO for purposes of making a U.S. utility acquisition. Some of these holding companies have been agencies of foreign sovereign states; others have been foreign conglomerates. We are seeking public comment about whether the foreign business activities of these holding companies and their ownership and corporate structure could pose risks to the protected interests under the Act. Should certain circumstances or business activities or the scope and size of those activities preclude a claim of FUCO status? What standards should we adopt to reflect the considerations involved when an acquiror is controlled by a foreign sovereign, is highly diversified and/or engages in diversified activities that are significantly larger than the utility operations? We note that these standards may be as appropriate for a domestic holding company as for a foreign one.

## VIII. Regulatory Flexibility Act Certification

The proposed rules and amendments will not affect any small entities as defined in rule 110. Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), our Chairman has certified that the proposed rules and amendments will not, if adopted, have a significant economic impact on a substantial number of small entities. A copy of this certification is attached as Appendix A. We encourage written comments on the certification. Commenters are asked to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

## IX. Cost-Benefit Analysis

*Benefits*

*Proposed Rule 55; Proposed Amendments to Forms U–57 and U5S.* As discussed in section II.B. above, Congress directed us to adopt rules with respect to FUCO acquisitions to address the protection of customers of the domestic operating companies of registered holding companies and the financial integrity of registered systems. We are reproposing rules 55 and 56 under this directive.

Rule 55 will benefit investors and ratepayers of registered holding companies by ensuring that FUCO investments are undertaken with requisite prudence, while relieving companies of the burden of seeking a Commission order to make FUCO investments when proper safeguards are in place. The benefits afforded by the rule are not possible to quantify. The reporting of all FUCO investments is required by the rule; however, registered holding companies meeting rule 55(a)'s requirements with respect to their acquisitions of FUCOs will be granted a complete safe harbor from Commission review, thus obviating the need to file a Form U–1 (17 CFR 259.101) in connection with the acquisition and the costs associated with the filing.

Further, we believe that rule 55, as well as rule 56, discussed below, will benefit registered holding companies by placing them on more equal footing with other entities (*e.g.,* utilities and utility holding companies not subject to the Holding Company Act) that make investments in foreign energy projects. By giving them the ability to make these investments without our prior review or approval under certain circumstances, and by facilitating their use of intermediate subsidiaries to make these investments, the proposed rules will provide registered holding companies with greater flexibility and fewer administrative burdens.

The proposed amendment to Form U5S requires that registered holding companies report, in response to Item 9 of the form,[63] when rate increases for retail customers have been obtained in order to recover losses or inadequate returns on FUCO investments. Likewise, the proposed amendment to Form U–57, which designates the form as the means of reporting all FUCO investments under proposed rule 55(d), requires disclosure to regulators and the public regarding the nature of specific overseas investments. In conjunction with the reporting and dissemination requirements of proposed rule 55(d), the proposed form amendments will assist state and federal regulators in protecting ratepayers by notifying regulators soon after a holding company makes a FUCO investment and by alerting them to any adverse impact of FUCO investments on

[63] Item 9 of Form U5S requires the reporting of information concerning EWGs and FUCOs.

domestic rates. This will allow state regulators to consider whether any remedial action is necessary to address this impact.

The recordkeeping and reporting requirements of the rule will give the Commission and other interested regulators the ability to better monitor, regulate and provide comments and recommendations concerning the FUCO activities of registered holding companies. This will further the goals of the Energy Policy Act by helping regulators to protect domestic ratepayers from the risks associated with these activities.[64]

*Proposed Rule 56.* Proposed rule 56, which clarifies the status of certain system companies that hold interests in EWGs and FUCOs, benefits those registered holding companies that structure their ownership of FUCOs through an intermediate entity. Without this rule, an acquisition which would be exempt from Commission approval under rule 55, for example, could nevertheless require an application and Commission approval as to the creation and acquisition of the intermediate company, and that company's acquisition of the FUCO interest. This rule eliminates the need for such a filing, and thus creates savings similar to those provided by rule 55(a). As discussed in section IV above, proposed rule 56 may isolate certain risks associated with foreign ventures, but should not result in additional risk to consumers.

*Proposed Amendment to Rule 87.* The proposed amendment to rule 87 will allow the Commission to monitor services to EWGs and FUCOs to help us prevent the diversion of management and goods to these companies by other system companies. The ability of the Commission to prevent transactions which could have a detrimental effect on the system's operating utilities will benefit domestic ratepayers in ways that are not possible to quantify.[65] The filing of certificates pursuant to rule 24 will inform the Commission of services rendered to EWGs and FUCOs and facilitate audits of system companies.[66] State and federal regulators will obtain such information through the requirement that registered holding companies furnish them copies of applications under rule 87 and certificates pursuant to rule 24. Finally, prior Commission approval will ensure that system companies are fairly reimbursed for the use of their employees' time or for the provision of goods.

*Costs*

*Proposed Rule 55; Proposed Amendments to Forms U–57 and U5S.* Rule 55, and the related amendments to Forms U–57 and U5S, will impose certain costs on registered holding companies. We believe that the procedures to be followed in rule 55(a) and rule 55(b) are similar to those used by any prudent corporation, utilizing existing personnel and in consultation with outside professionals, in determining whether to make any significant investment in a foreign venture.[67] Based on our experience in reviewing and granting the 100% Orders, we believe that each of the six holding companies with a 100% Order has already implemented FUCO investment procedures consistent with the proposed rule, or can comply with the rule's risk-assessment and review requirements with only minimal additional expenditures. The other five registered holding companies with FUCO investments as of December 31, 1998, may also utilize similar procedures.[68] Therefore, we believe that rule 55(a) and (b) should not result in significant additional costs for a holding company to make a FUCO investment; rather, these provisions would incorporate common business practice in a Commission rule. Nevertheless, we are providing cost estimates based on the assumption that registered holding companies would be required to implement various procedures as a result of the proposed rule.

Proposed rule 55 prescribes the conditions under which a registered holding company can invest in a FUCO. If the company complies with all applicable provisions of the rule, it may make the investment without the need to apply for or receive our approval. Paragraphs (a), (c) and (d) of the rule apply to all FUCO investments. Paragraph (b) applies to all FUCO investments not covered by an effective Commission order.[69] Assuming paragraph (b) is applicable, use of the rule's safe harbor provision will cause registered holding companies to incur costs related to the following:

- Adopting risk-assessment methodologies that address the risks of FUCO investments (rule 55(a)(1));
- Receiving formal approval of each FUCO investment by the company's board of directors based on certain findings (rule 55(a)(2));
- Monitoring services to FUCOs by utility personnel and service company personnel (rule 55(a)(3));
- Verifying that certain adverse events have not occurred (rule 55(b)(1));
- Maintaining books and records concerning FUCO investments as required by rule 53 and in the manner required by rule 53 (rule 55(c));
- Preparing and promptly filing reports of FUCO investments with the Commission and other interested regulatory authorities (rule 55(d)).

We estimate that a registered holding company will incur an annual cost of approximately $200,000 in connection with establishing and updating risk-assessment methodologies consistent with rule 55(a)(1). In addition, we estimate that a registered holding company will incur an average cost of approximately $50,000 each year in connection with implementing these methodologies under rule 55(a)(2).[70] We base these estimates on our experience in monitoring FUCO investments and our familiarity with internal procedures currently used by registered holding companies in making these investments, particularly under 100% Orders and through staff audits of holding companies with FUCO investments.[71]

[64] *See supra* note 11 and accompanying text.

[65] For example, although rule 53(a)(3) requires Commission approval before a registered holding company system's domestic utility personnel can render services to EWGs and FUCOs in which the registered holding company holds an interest, we are concerned that this requirement could be evaded by means of rule 87. *See* Rule 87 Proposing Release, *supra* note 45, at note 5 and accompanying text.

[66] *See supra* note 55.

[67] We note that the actual cost of complying with the rule, particularly rule 55(a)(1), could be significantly higher for companies that utilize the assistance of third parties in determining whether to make a FUCO investment. We also recognize that registered holding companies consider making FUCO investments, and incur costs assessing the potential risks and returns on these ventures, that they ultimately determine not to pursue. Therefore, we believe there are significant costs associated with potential foreign ventures that do not result in actual investments.

[68] As of December 31, 1998, 11 of the 18 active registered holding companies had FUCO investments and seven had no FUCO investments. Of the 11 with FUCO investments, six had been issued 100% Orders.

[69] For example, if a registered holding company has received a 100% Order and that order is still effective, then the requirements of paragraph (b) would not apply. Rather, the company would comply with the conditions of the 100% Order and the other provisions of rule 55 in order to make the FUCO investment without further Commission authorization.

[70] This amount assumes that a registered holding company will consider ten separate FUCO investments per year. In 1998, nine registered holding companies made investments in a net total of 89 new FUCO subsidiaries (or an average of approximately ten new FUCOs each), as reported in Item 9 of Form U5S and certificates filed under rule 24. The range of new FUCO subsidiaries was broad, with one registered holding company increasing its number of FUCOs by 30, while another decreased its FUCO subsidiaries by two. The actual cost to comply with rule 55(a)(1) and (2) will vary depending on the level of FUCO activity undertaken by a holding company in a particular year.

[71] *See supra* note 34 and accompanying text. Information from a small sample of registered

Assuming each of the 11 registered holding companies with FUCO investments as of December 31, 1998, establishes, implements and updates procedures under rule 55(a)(1) and (2), we estimate that the aggregate cost would be $2.75 million each year.

We estimate that review for compliance with the criteria contained in rule 55(a)(3) and rule 55(b)(1) will cost each registered holding company an additional $200,000 per year.[72] The aggregate annual cost for the 11 registered holding companies with FUCO investments as of December 31, 1998, would be $2.2 million.

We estimate that implementing formal board review of FUCO investments will involve a one-time cost of $5,000 for each registered holding company.[73] We believe that board review can be obtained during regularly scheduled board meetings and that, once review of FUCO investments becomes part of a board's regular agenda, the cost of compliance will be nominal.

Registered holding companies that have EWG and/or FUCO investments already maintain books and records regarding these investments under rule 53(a)(2).[74] Accordingly, we believe that there will be no additional cost for maintaining books and records under proposed rule 55(c).

Rule 55(d) would require only registered holding companies to file Form U–57 for the purpose of reporting all FUCO investments and amends the form for this new purpose. Also under rule 55(d), registered holding companies will be required to provide state and local regulators with copies of all documents filed with the Commission that pertain to the registered holding company's FUCO investments (*i.e.*, Forms U–57, Forms U–1, certificates under rule 24 and Item 9 of Form U5S). However, as those FUCOs in which registered holding companies currently invest are the same as those for which the holding company has claimed FUCO status (on current Form U–57), the amendment will not itself increase the number of Form U–57s filed annually.[75] However, the form's (and rule 55(d)'s) new dissemination requirements could impose additional costs. We estimate that the annual cost for registered holding companies to comply with rule 55(d)'s filing requirement will be approximately $5,100 annually.[76] This amount includes the cost of copying and disseminating the Form U–57, including exhibits, to other interested regulators.

We estimate that the additional reporting burden imposed by the amendment to Form U5S will be minimal.

When rule 55(b) applies to a FUCO investment, a holding company must obtain our approval to make the investment. We estimate that the cost of a routine uncontested application for a FUCO investment or group of investments contained in the same application to be approximately $50,000.[77] Accordingly, holding companies eligible for the rule's ''safe harbor'' provision would forego the costs associated with preparing applications.

*Proposed Rule 56.* Because rule 56 has the effect only of clarifying the status of certain subsidiaries of registered holding companies, no compliance cost is associated with the rule.

*Proposed Amendment to Rule 87.* To the extent that a registered holding company's EWGs and FUCOs engage in transactions with other companies in the holding company system, the proposed amendment to rule 87 will cause registered holding companies to incur costs related to preparing and filing a Form U–1 seeking Commission authorization for the proposed transactions. We estimate that the cost of preparing and filing the Form U–1 for this authorization to be $10,150.[78]

*Request for Comment*

We are sensitive to the costs and benefits imposed by our rules. Therefore, we request comment on the potential costs and benefits associated with the proposed rules and amendments, and on any suggested alternatives to the proposals. We request quantitative data concerning these costs and benefits, particularly relating to costs imposed by rule 55(a) and (b).

We request information regarding the potential impact of the proposals on an annual basis. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[79] a rule is ''major'' if it has resulted, or is likely to result in:

- An Annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on any of these three areas. We note that, as of December 31, 1998, registered holding companies had $8.2 billion invested in FUCOs.[80] Accordingly, if, for example, rule 55 was likely to result in a one percent increase or decrease annually in FUCO investments, the rule could be deemed a ''major'' rule.

## X. Paperwork Reduction Act

Certain provisions of proposed rule 55 and the proposed amendments to Form U–57 and Form U5S contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'')[81], and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for these collections of information are: (1) ''Rule 55, Exemption for Certain Acquisitions of One or More Foreign Utility Companies''; (2) ''Rule 57(a), Rule 55(d) and Form U–57, Notification of Foreign Utility Company Status and Notification of Acquisition of an Interest in a Foreign Utility Company''; and (3) ''Rule 1(c)

holding companies was obtained through staff audits. We note that the actual cost of complying with the rule, particularly rule 55(a)(1), could be significantly higher for companies that utilize the assistance of third parties in determining whether to make a FUCO investment.

[72] Like estimates associated with rule 55(a)(1) and (a)(2), these estimates are based on our experience in monitoring FUCO investments and our familiarity with internal procedures currently used by registered holding companies in making these investments. We have assumed that registered holding companies will make investments in a total of approximately 90 FUCO subsidiaries annually, based on FUCO investments reported by registered holding companies during fiscal 1998. See supra note 70.

[73] This amount assumes that a registered holding company will spend an average of 50 hours at an average hourly wage rate of $100 per hour.

[74] The availability of rule 54's safe harbor provision is conditioned, among other things, on a registered holding company maintaining books and records under rule 53(a)(2). Rule 53(a)(2)'s books and records maintenance provisions cover investments in both EWGs and FUCOs. *See* 17 CFR 250.54 and 250.53(a)(2).

[75] Furthermore, as noted in the amended instructions to Form U–57, the same form may be used to fulfill the requirements of both rule 55 and 57. We expect that registered holding companies will file one report both to claim FUCO status for their FUCO subsidiaries and to report the amount of investments made in these subsidiaries.

[76] This amount represents 34 annual Form U–57 filings multiplied by three additional hours to distribute the information under rule 55(d) at an hourly cost of $50 for in-house clerical staff. *See* also section X.C. *infra.*

[77] This amount is composed of (1) $31,250 for in-house professional and support staff to prepare and file the Form U–1 with the Commission (250 hours x $125 per hour), and (2) an additional $18,750 for outside professional fees (75 hours x $250 per hour). We estimate that only one Form U–1 filing will be made annually under amended rule 55(b). *See* section X.E. *infra.*

[78] As discussed in section X.E. *infra,* this amount is comprised of (1) $10,000 of in-house professional costs (80 hours x $125 per hour) and (2) $150 of in-house clerical costs (three hours x $50 per hour). We estimate that only one Form U–1 filing will be made annually under amended rule 87.

[79] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[80] This total represents the aggregate amount of capital invested by registered holding companies in FUCOs, as reported to the Commission on annual report Form U5S.

[81] 44 U.S.C. 3501 *et seq.*

and Form U5S thereunder, Annual Report.'' Rule 55, Form U–57 and Form U5S, which the Commission is proposing to amend, contain currently approved collections of information under OMB control numbers 3235–0430, 3235–0428 and 3235–0164, respectively. The currently approved collections of information for Form U–1 and rule 24, under OMB control numbers 3235–0125 and 3235–0126, respectively, also will be modified as a result of the proposed rule 55 and amendment to rule 87. The titles for these collections of information are: (1) ''Form U–1 (17 CFR 259.101), Application or Declaration under the Public Utility Holding Company Act of 1935''; and (2) ''Rule 24, 17 CFR 250.24, Reports of Consummation of Transactions.'' An agency may not sponsor, conduct, or require responses to a collection of information unless it displays a currently valid OMB control number.

*A. Rule 55*

Current proposed rule 55 provides for a ''safe harbor'' for FUCO investments when the requirements of rule 53(a) and (b) are satisfied. The current annual reporting burden under rule 55 reflects rule 53(a)(2)'s recordkeeping and retention requirement.[82] Current rule 55 does not create a reporting burden for respondents. The current approved annual burden under rule 55 is 110 burden hours per year (10 hours per response x 11 responses = 110 burden hours). The number of annual responses reflects one response for 11 registered holding companies per year. The cost of the burden, estimated to be $100 per hour[83], is $1,000 per response. The aggregate burden for all respondents is $11,000.

Proposed new rule 55 requires registered holding companies to perform certain tasks and satisfy certain conditions in connection with making any investment in a FUCO. The information collection associated with the rule is necessary to assist the Commission in monitoring FUCO investments to ensure that they are made prudently and only when proper safeguards are in place. The information will also give the Commission and other interested regulators the ability to better monitor, regulate and provide comments and recommendations concerning the FUCO activities of registered holding companies.

We estimate that the annual burden associated with establishing and updating rule 55(a)(1) methodologies would be approximately 1,600 hours for each registered holding company. Assuming that 11 registered holding companies adopt these methodologies,[84] the total annual burden would be approximately 17,600 hours (one response per year × 11 respondents × 1,600 hours = 17,600 hours). The cost of the reporting burden, estimated to be $125 per hour, [85] would be $200,000 per respondent. The aggregate burden for all respondents would be $2.2 million.[86]

We also note that, in addition to burden hours, the rule may impose additional costs, particularly in those cases where holding companies retain third parties to assist in assessing FUCO investments.[87] As discussed in section IX above, however, we believe that the burden hours imposed by the rule on the 11 holding companies with FUCO investments as of December 31, 1998, particularly those six with 100% Orders, would be substantially less.

We estimate that the annual burden associated with implementing methodologies in rule 55(a)(2) would be 400 hours for each registered holding company. Accordingly, the aggregate annual burden for 11 registered holding companies would be 4,400 hours (400 hours per response × 11 responses = 4,400 burden hours). The cost of the reporting burden, estimated to be $125 per hour,[88] would be $50,000 per respondent. The aggregate burden for all respondents would be $550,000.

We also estimate that the annual burden hours associated with the review for compliance with rules 55(a)(3) and 55(b)(1) would be approximately 1,600 additional burden hours for each registered holding company. Accordingly, the aggregate annual burden for 11 registered holding companies[89] would be 17,600 hours (1,600 hours per response × 11 responses = 17,600 hours). Each of these 11 registered holding companies will make one response per year. The cost of the reporting burden, estimated to be $125 per hour,[90] would be $200,000 per respondent. The aggregate burden for all respondents would be $2.2 million.

We estimate that rule 55(c)'s recordkeeping requirements would impose an annual burden of approximately 10 hours for each registered holding company.[91] Accordingly, the aggregate annual burden for 11 registered holding companies would be 330 hours. However, as discussed above, each registered holding company with an EWG or FUCO investment is required to maintain books and records regarding these investments under rule 53(a)(2).[92] Accordingly, we believe that the proposed rule itself does not impose any additional burden for maintaining books and records. Burden estimates for rule 55(d)'s filing requirements are discussed in section X.C. below.

Compliance with rule 55 would be mandatory for any registered holding company making a FUCO investment. Responses to the disclosure requirements of the rule will not be kept confidential unless granted confidential treatment. Rule 55(c) includes mandatory retention periods for books and records.[93]

*B. Rule 87*

The proposed amendment to rule 87 will require Commission approval under section 13(b) of the Act before any subsidiary of a registered holding company may perform services or construction for, or sell goods to, an EWG or a FUCO. The information collection associated with the amended rule would further the Commission's monitoring of intercompany

[82] Rule 53(a)(2) requires each registered holding company with an EWG or FUCO investment to maintain books and records regarding these investments in the manner prescribed by the rule.

[83] We estimate that current rule 55's recordkeeping and retention responsibilities are performed by in-house accounting, financial and bookkeeping staff, at an average rate of $100 per hour.

[84] As of December 31, 1998, 11 of the 18 active registered holding companies had FUCO investments.

[85] We estimate that rule 55(a)(1)'s responsibilities will be primarily performed by, and equally divided among (i) in-house attorneys, accountants and senior management, at an average rate of $150 per hour, and (ii) other in-house personnel (including financial, accounting and legal support staff), at an average rate of $100 per hour.

[86] We also note that, in addition to burden hours, the rule may impose additional costs, particularly in those cases where registered holding companies retain third parties to assist in assessing FUCO investments.

[87] *See supra* note 72 and accompanying text.

[88] We estimate that rule 55(a)(2)'s responsibilities will be primarily performed by (i) in-house attorneys, accountants and senior management, at an average rate of $150 per hour, and (ii) other in-house personnel (including financial, accounting and legal support staff), at an average rate of $100 per hour.

[89] We assume that the review for compliance with rules 55(a)(3) and 55(b)(1) will be performed annually by each registered holding company with a FUCO investment. *See supra* note 85.

[90] We estimate that rule 55(a)(3) and 55(b)(1)'s responsibilities will be primarily performed by, and divided equally among (i) in-house attorneys, accountants and senior management, at an average rate of $150 per hour, and (ii) other in-house personnel (including financial, accounting and legal support staff), at an average rate of $100 per hour.

[91] As rule 55(c)'s recordkeeping requirement is identical to that of rule 53, the hour burden estimate for rule 55(c) is the same as that currently approved for rule 53—110 burden hours per year (10 hours per response x 11 respondents = 110 burden hours).

[92] *See supra* note 74 and accompanying text.

[93] Retention periods found in 17 CFR part 257 are incorporated into the rule.

transactions in order to prevent the diversion of management and goods to EWGs and FUCOs by other system companies, and would ensure that system companies are fairly reimbursed for the use of their employees' time or for the provision of goods.

Rule 87 does not currently have a reporting burden because it does not involve a collection of information under the PRA. The proposed amendment to rule 87 is discussed under ''—Form U–1'' below. Compliance with the proposed amendment to rule 87 would be mandatory for any registered holding company with certain arrangements between its EWGs or FUCOs and its other associate companies. Responses to the disclosure requirements of the rule will not be kept confidential unless granted confidential treatment.

*C. Form U–57*

The preparation and filing of Form U–57 with the Commission and certain state regulators under rule 55 would be required for each FUCO investment made by any registered holding company, whether under the new rule's safe harbor or by Commission order. Because proposed rule 55 would permit FUCO investment without our prior review or approval, the form will be used to notify the Commission of FUCO investments made in reliance on the rule and assist the staff in monitoring these investments in order to protect customers of the associate operating utilities.

The current approved burden estimate for Form U–57 is 144 hours.[94] The cost of this reporting burden, estimated to be $100 per hour,[95] is $300 per filing and the total annual cost is $14,400 for all respondents. However, the form is currently used by registered holding companies, and other entities, only to claim FUCO status for qualifying subsidiaries. Rule 55(d) would require the filing of Form U–57 by registered holding companies for the purpose of reporting all FUCO investments and amends the form for this additional purpose. In order to reflect recent trends, we propose to change the current number of annual filings from 48 to 101.[96] We also estimate that, when used to report rule 55 transactions, the amended Form U–57 will require approximately three hours to complete.[97] We believe that rule 55(d)'s requirement for registered holding companies to provide state and local regulators with copies of all documents filed with the Commission that pertain to the registered system's investment in FUCOs (*i.e.*, Forms U–57, Forms U–1, certificates under rule 24 and Item 9 of Form U5S) will add three burden hours for each of the 34 forms filed by registered holding companies. Therefore, we estimate a total increase of 261 annual burden hours for all respondents (three hours x 53 additional forms, plus three hours (under rule 55(d)) x 34 forms (those filed by registered holding companies)). The total annual hour burden for Form U–57 would increase from 144 hours to 405 hours as a result of the proposed amendment and the adjustment to reflect recent trends.

We estimate that, as is currently estimated, the cost of preparing a Form U–57 filing under rule 55 will be $100 per hour.[98] In addition, we estimate that the cost for registered holding companies to disseminate the 34 of these forms they will file each year will cost an additional $50 per hour.[99] The total annual cost for all respondents, therefore, would increase by $21,000, from $14,400 to $35,400 (101 total filings × 3 hours × $100 per hour = $30,300, plus 34 filings (those filed by registered holding companies) × 3 additional hours (under rule 55(d)) × $50 per hour = $5,100; $30,300 plus $5,100 = $35,400).

Compliance with amended Form U–57 would be mandatory for any registered holding company making a FUCO investment. Responses to the disclosure requirements of the form will not be kept confidential unless granted confidential treatment.

*D. Form U5S*

The amendment to Item 9 of Form U5S will require the holding company to disclose whether it has sought recovery of losses or inadequate returns on FUCO investments through higher rates to system retail ratepayers. This information will assist the Commission staff in protecting ratepayers from adverse consequences of FUCO investments by registered holding companies. Rule 55(d) will require that this information also be provided to other interested governmental regulators.

The current approved annual reporting burden for Form U5S is 257 hours (13.5 hours per response × 19 responses = 256.5 burden hours). Nineteen Forms U5S are filed annually, one by each of the 19 registered holding companies. The cost of the reporting burden, estimated to be $100 per hour,[100] is $1,350 per response. The aggregate cost for all responses is $25,650 per year.

We estimate that the proposed amendment would increase the hour burden per filing by one-half hour for those registered holding companies with FUCO investments. For the 11 registered holding companies with FUCO investments as of December 31, 1998, this would result in a total annual burden increase of 5.5 hours, or 262 hours for all registered holding companies. The aggregate cost for all respondents will increase by $550, from $25,650 to $26,200 per year.

Compliance with amended Form U5S would be mandatory for any registered holding company making a FUCO investment. Responses to the disclosure requirements of the form will not be kept confidential unless granted confidential treatment.

*E. Form U–1*

When rule 55(a)'s safe harbor is not available, rules 55(a)(4) and 55(b)(1) require that the registered holding company seek a Commission order to make a FUCO investment. This will require the holding company to prepare and file an application on Form U–1. The current approved annual reporting burden for Form U–1 is 224 hours per form. The Commission presently estimates that 121 forms are filed by 15 respondents annually, for a current approved aggregate burden of 27,104

[94] We currently estimate that 48 Forms U–57 are filed annually and that the current hour burden for each filing is three hours (48 responses x three burden hours per response = 144 hours).

[95] We estimate that the information provided in Form U–57 is prepared primarily by in-house financial, accounting and legal support staff, at an average rate of $100 per hour.

[96] In 1998, 78 Form U–57s were filed with the Commission by 34 different filers. In 1999, 92 Form U–57s were filed with the Commission by a total of 27 different filers. In each of these years, approximately one-third of all filings was made by registered holding companies. We estimate that the number of Form U–57s filed will continue to increase slightly and therefore estimate a new total of 101 responses per year, or an increase of 53 responses. We also estimate that approximately one-third, or 34, of the forms filed annually will be filed by registered holding companies.

[97] This burden hour estimate is based on the current approved burden of three hours per form. We believe that, when used to report rule 55 transactions, the Form U–57 also will require three hours to complete. This estimate assumes that up to three related transactions are being reported on one form. To the extent a registered holding company reports more than three transactions simultaneously on one Form U–57, the hour burden may increase.

[98] We estimate that the information provided in Form U–57 is prepared primarily by in-house financial, accounting and legal support staff, at an average rate of $100 per hour.

[99] We estimate that the dissemination requirement of rule 55(d) will be performed by in-house clerical staff, at an average cost of $50 per hour.

[100] We estimate that the information provided in Form U5S is prepared primarily by in-house financial, accounting and legal support staff, at an average rate of $100 per hour.

hours. The cost of the reporting burden, estimated to be $200 per hour, is $44,800 per response. The total cost is $5,420,800 for all respondents. Due to recent changes in filing trends, we propose to change the current estimates only with respect to the estimated number of annual respondents.

We propose to increase the annual number of respondents by 18 (from 15 to 33). For the three-year period ended December 31, 1999, an average of 15 registered holding companies filed Form U–1s each year. Over that same period, an average of 18 other companies filed Form U–1s annually. Therefore, the increase reflects the annual average Form U–1 filers other than registered holding companies. As the two additional annual Form U–1 filings resulting from the proposed rules and amendments will be filed by registered holding companies (because these rules apply only to them), and most registered holding companies already file at least one Form U–1 annually, we do not expect that the new rules and amendments will increase the annual number of Form U–1 respondents.

We estimate that approximately 250 burden hours will be required to prepare the Form U–1, under rules 55(a)(4) and 55(b)(1), describing the FUCO investment sought to be approved, respond to questions or comments, and file post-effective amendments as may be necessary or appropriate.[101] We estimate that an average of one new Form U–1 will be filed annually under the amended rule, resulting in a total of 250 burden hours per year. The cost of the reporting burden, estimated to be $125 per hour,[102] would be $31,250 per response. The aggregate hour burden for Form U–1 would then increase to 27,354 hours and the aggregate cost would then increase to $5,452,050 per year for all respondents. In addition, rule 55 will also result in an increase in the number of statements filed under rule 24. These statements must be filed with the Commission upon consummation of a transaction approved by the Commission. See ''Rule 24'' below.

The proposed amendment to rule 87 will require Commission approval under section 13(b) of the Act before any subsidiary of a registered holding company may perform services or construction for, or sell goods to, an EWG or a FUCO. We estimate that each of the 12 active registered holding companies with FUCO and/or EWG investments as of December 31, 1998, that engages in these activities, has previously sought and obtained our approval to do so under section 13 or other provisions of the Act. Accordingly, we do not believe that the amendment itself will result in the filing of any additional applications by current registered holding companies. However, an existing or newly formed registered holding company may, in the future, seek our approval under the amended rule. Therefore, we estimate that rule 87, as amended, will result in one additional Form U–1 filing per year. We estimate the annual burden hours associated with the preparing and filing of the form would be approximately 80 hours, [103] at an estimated cost of $125 per hour.[104] We estimate that furnishing state and federal regulators copies of applications under rule 87 and certificates under rule 24 will require an additional three annual burden hours of clerical time, at an estimated cost of $50 per hour. Accordingly, the aggregate annual burden for all registered holding companies would be 83 hours (83 hours per response × 1 respondent = 83 hours). The total annual cost would be $10,150 for all respondents. As a result, the aggregate hour burden for Form U–1 would increase to 27,437 hours and the aggregate cost would be $5,462,200 per year for all respondents. In addition, the amendment to rule 87 will also result in an increase in the number of statements filed under rule 24. See ''Rule 24'' below.

*F. Rule 24*

In addition to requiring one additional Form U–1 to be filed annually, rule 55(b) will increase the number of statements required under rule 24 which must be filed with the Commission upon consummation of a transaction approved by the Commission. The amendment to rule 87 will also increase the number of statements required under rule 24. The current approved annual burden under rule 24 is 636 burden hours per year (2 hours per response × 318 responses = 636 burden hours). It is currently estimated that these certificates are filed by 134 respondents per year. The cost of the reporting burden, estimated to be $125 per hour,[105] is $250 per response. The total cost is $79,500 for all respondents.

We estimate that the additional Form U–1 filed each year under rule 55(b) will require one additional certificate, or one additional response by one additional respondent, under rule 24, and that completion of the certificate will require two burden hours. Accordingly, the total burden hours will increase by two hours and the total hourly annual burden will increase to 638 hours (2 hours per response × 319 responses = 638 burden hours). The cost of the reporting burden, estimated to be $125 per hour, is $250 per response, or a total of $250 for all responses under rule 55(b). The total cost would increase to $79,750 for all respondents.

In addition, we estimate that the additional Form U–1 filed per year under rule 87 will require four additional certificates, or four additional response by one additional respondent, under rule 24, and that completion of each certificate will require two burden hours. The current approved annual reporting burden for rule 24, as adjusted to reflect the increase resulting from proposed rule 55(b), is 638 hours (2 hours per response × 319 responses = 638 burden hours). Including the amendment to rule 87, the total burden hours will increase by eight hours and the total hourly annual burden will increase to 646 hours (2 hours per response × 323 responses = 646 burden hours). The cost of the reporting burden, estimated to be $125 per hour, is $250 per response, or a total of $1,000 for all four responses under rule 87. The total cost, adjusted for both rule 55(b) and the amendment to rule 87, is $80,750 for all respondents.

[101] As noted above, we currently estimate that each registered holding company spends approximately 224 hours to prepare, file and process a Form U–1. Because of the complex nature of the authority to be sought, we believe the burden estimate for a Form U–1 filed under amended rule 87 would be slightly greater.

[102] We estimate that preparation of a Form U–1 under rule 55(b) is primarily performed by, and divided equally among (i) in-house attorneys, accountants and senior management, at an average hourly rate of $150 per hour, and (ii) other in-house personnel (including financial, accounting and legal support staff), at an average rate of $100 per hour. In addition, the staff estimates that outside attorneys and accountants will spend an additional 75 hours to assist the registered holding company in preparing and filing the form, at an average hourly rate of $250. *See supra* note 77 and accompanying text.

[103] We note that this is significantly less than the 250 hours estimated for a Form U–1 filed under rule 55(b). The lower burden estimate reflects the limited scope of the filing under amended rule 87.

[104] We estimate that preparation of a Form U–1 is primarily performed by, and divided equally among (i) in-house attorneys, accountants and senior management, at an average rate of $150 per hour, and (ii) other in-house personnel (including financial, accounting and legal support staff), at an average rate of $100 per hour. We do not estimate that outside professionals will be retained to prepare and file this form.

[105] We estimate that preparing and filing rule 24 certificates will be primarily performed by, and equally divided among (i) in-house attorneys, accountants and senior management, at an average rate of $150 per hour, and (ii) other in-house personnel (including financial, accounting and legal support staff), at an average rate of $100 per hour.

*G. Request for Comment*

The Commission requests comment on the reasonableness of these estimates. Commenters who disagree are requested to provide their own estimates with supporting rationales.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to:

- Evaluate whether the proposed collections of information are 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 collections of information;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–05–01. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–05–01 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

## XI. Statutory Authority

The Commission is proposing rules 55 and 56 pursuant to sections 14, 15, 20 and 33 of the Act, as amended, and is proposing the amendment to rule 87 pursuant to sections 13, 14, 15, 20, 32 and 33 of the Act, as amended.

## XII. Text of Proposed Rules and Amendments

### List of Subjects in 17 CFR Parts 250 and 259

Electric utilities, Holding companies, Reporting and record keeping requirements.

For the reasons set out in the preamble, title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

1. The authority citation for part 250 is revised to read as follows:

**Authority:** 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, 79z–5a and 79z–5b unless otherwise noted.

2. Sections 250.55 and 250.56 are added to read as follows:

### § 250.55 Acquisitions of foreign utility companies.

(a) *FUCO investments.* A registered holding company may not, directly or indirectly, acquire the securities of, or any interest in, a foreign utility company (''FUCO Investment'') unless the following conditions are satisfied:

(1) The board of directors of the registered holding company has adopted procedures (''FUCO Investment Procedures'') designed to analyze the risks of investing in foreign jurisdictions, including, for example, operational risks, construction risks, commercial risks, management risks, political risks, legal risks, financing risks and foreign currency risks.

(2) The board of directors has reviewed, and adopted a resolution approving, the FUCO Investment based upon, among other things, findings that:

(i) The FUCO Investment Procedures have been complied with;

(ii) Measures have been, or will be, taken to mitigate the risks that the FUCO Investment presents to the holding-company system; and

(iii) The FUCO Investment and any related financing have been structured so that ratepayers of the system's public-utility companies are adequately insulated from any adverse effects of the FUCO Investment.

(3) No more than two percent of the employees of the system's domestic public-utility companies render services, at any one time, directly or indirectly, to exempt wholesale generators or foreign utility companies in which the registered holding company, directly or indirectly, holds an interest; provided, that the Commission has previously approved the rendering of such services.

(4) If paragraph (b) of this section is applicable, the registered holding company has obtained an order from the Commission approving the FUCO Investment.

(b) *Commission approval of certain investments.*

(1) A registered holding company may not make FUCO Investments except pursuant to an order granted by the Commission if any of the following events has occurred: (i) The registered holding company, or any subsidiary company having assets with book value exceeding an amount equal to 10% or more of consolidated retained earnings (''Significant Subsidiary''), has been the subject of a bankruptcy or similar proceeding, unless a plan of reorganization has been confirmed in such proceeding;

(ii) The registered holding company system's average consolidated retained earnings for the four most recent quarterly periods, as reported on the holding company's Form 10–K or 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78) as amended, have decreased by 10% from the average for the previous four quarterly periods and the aggregate investment in exempt wholesale generators and foreign utility companies exceeds two percent of the registered holding company system's total capital invested in utility operations. This restriction will cease to apply once consolidated retained earnings have returned to their pre-loss level;

(iii) In its previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in exempt wholesale generators and foreign utility companies, and such losses exceed an amount equal to 5% of consolidated retained earnings;

(iv) If, during the three fiscal years preceding the acquisition, the holding company has reported, in response to Item 9 of Form U5S (§ 259.5s of this chapter) increases for retail customers have been obtained in order to recover losses or inadequate returns on FUCO Investments;

(v) Any Significant Subsidiary of the holding company that is a public-utility company has a rating from a nationally recognized statistical rating organization with respect to its debt securities that is less than investment grade; or

(vi) The registered holding company's investment in FUCOs and EWGs exceeds 50% of consolidated retained earnings or such greater amount as may be authorized by the Commission by order under § 250.53(c).

(2) An applicant that is required to obtain Commission approval of FUCO Investments must affirmatively demonstrate that the investments:

(i) Will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and

(ii) Will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect the subsidiary or its customers.

(c) *Books and records.* A registered holding company that makes a FUCO Investment must maintain, and cause its subsidiaries to maintain, the books and records required by § 250.53 in the manner prescribed by § 250.53. The registered holding company will provide the Commission or its representatives with access to these books and records in the United States, at such place as the Commission may reasonably request. The books and records must be maintained for the periods set forth in Part 257 of this title, as appropriate.

(d) *Form U–57 and other filings.* A registered holding company that makes a FUCO Investment must, within ten business days of making the FUCO Investment, file a statement on Form U–57 (§ 259.207 of this chapter) with the Commission. The company must also simultaneously submit complete copies of the following, including exhibits, to every federal, state or local regulator having jurisdiction over the rates of any system public-utility company:

(1) The Form U–57 filed by the registered holding company in connection with the FUCO Investment;

(2) Any Forms U–1 (§ 259.101 of this chapter) and certificates under § 250.24 filed by the registered holding company in connection with the issuance of securities for purposes of financing the FUCO Investment, the entering into of service, sales or construction contracts, or the creation or maintenance of any other relationship with the foreign utility company and the registered holding company, its affiliates or associate companies; and

(3) A copy of Item 9 of Form U5S (§ 259.5s of this chapter) and Exhibits G and H to that Form.

**§ 250.56 Status of subsidiary companies of registered holding companies formed to hold interests in foreign utility companies.**

A subsidiary of a registered holding company which is engaged exclusively in the direct or indirect ownership of the securities, or an interest in the business of, one or more foreign utility companies, shall be deemed to be a foreign utility company.

3. Section 250.87 is amended by adding paragraphs (d) and (e) to read as follows:

**§ 250.87 Subsidiaries authorized to perform services or construction or to sell goods.**

* * * * *

(d) This section shall not be applicable to the performance of services or construction for, or the sale of goods to, an associate company of a registered holding company if such associate company is an exempt wholesale generator or a foreign utility company. This section shall further not be applicable to the receipt by an associate company of a registered holding company of services or construction from, or the purchase of goods from, an associate company that is an exempt wholesale generator or a foreign utility company.

(e) Any application, or amendment thereto, filed directly or indirectly by a registered holding company seeking authority to render services or construction or to sell goods to an exempt wholesale generator or foreign utility company, or to receive services, construction or goods from an exempt wholesale generator or foreign utility company, must be simultaneously submitted to every State commission and to every federal or local governing body having jurisdiction over the retail rates of any affected public-utility company in the registered holding company system.

## PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

### Subpart A—Forms for Registration and Annual Supplements

4. The authority citation for part 259 is revised to read as follows:

**Authority:** 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t.

5. Item 9 of Form U5S (referenced in § 259.5s) is amended by adding paragraph (e) to read as follows:

**Note:** The text of Form U5S does not and the amendment will not appear in the Code of Federal Regulations.

**Form U5S**

* * * * *

**Annual Report**

* * * * *

**Item 9. Wholesale Generators and Foreign Utility Companies**

(e) State whether or not the holding company has sought recovery of losses or inadequate returns on any investment in a foreign utility company through higher rates to retail ratepayers.

* * * * *

6. Section 259.207 and Form U–57 (referenced in § 259.57) are revised to read as follows:

**§ 259.207. Form U–57, for notification of foreign utility company status pursuant to rule 57(a) (§ 250.57 of this chapter) and statement by registered holding company in connection with the acquisition of an interest in a foreign utility company pursuant to rule 55 (§ 250.55 of this chapter).**

This form shall be filed pursuant to section 33(a)(3)(B) of the Act by a company claiming foreign utility company status. This form shall also be filed by a registered holding company acquiring any securities or other interest in the business of a foreign utility company. *See* §§ 250.55 and 250.57 of this chapter.

**Note:** The text of Form U–57 does not and the amendment will not appear in the Code of Federal Regulations.

**OMB Approval**

OMB Number: 3235–0428.

Expires: October 31, 2001.

Estimated average burden hours per response: 3.00.

Securities and Exchange Commission, Washington, DC. 20549: FORM U–57—Notification of Foreign Utility Company Status and Notification of Acquisition of an Interest in a Foreign Utility Company

Filed Under Section 33(c) or Rule 55 of the Public Utility Holding Company Act of 1935.

_____

(Name of registered holding company)

_____

(Name of foreign utility company)

**General Instructions**

*1. Use of Form*

This form should be filed by, or on behalf of, a company that is or proposes to become a foreign utility company. This form should also be filed by a registered holding company that acquires an interest in a foreign utility company. *See* rule 55. A single filing on this form should be made by both the company claiming FUCO status and the registered holding company that makes an investment in the FUCO.

*2. Formal Requirements*

File two copies of this form with the Commission. Manually sign and file one copy at the place designated by the

Commission for filings under the laws it administers. Provide the second copy to the Division or Office responsible for administering the Act. Registered holding companies submitting this form under rule 55 shall simultaneously submit copies of this form to each federal, state or local regulator having jurisdiction over the rates of any public-utility company affiliated with the holding company.

*3. Definitions and Other Matters*

All terms used have the same meaning as in the Public Utility Holding Company Act of 1935 and rules and regulations. All monetary amounts reported on this form must be stated in United States dollars.

*4. Withdrawal of Filing*

Amend this form within 45 days of a determination that the company identified as the foreign utility company is not a foreign utility company (*i.e.*, due to a change in its business, a change in applicable law or otherwise).

Item 1

For each interest in a foreign utility company (''company'') acquired, identify the company, its location and its business address. Describe the facilities used for the generation, transmission and distribution of electric energy for sale or for the distribution at retail of natural or manufactured gas. Identify each system company that holds an interest in the company and describe the interest held. To the extent known, identify each person that holds five percent or more of any class of voting securities of the foreign utility company and describe the amount and nature of the interest.

Item 2

State the purchase price paid for the foreign utility company. State the type and amount of capital invested in the company by the registered holding company, directly or indirectly. Identify any debt or other financial obligation for which there is recourse to a system company (other than an exempt wholesale generator or foreign utility company). Identify separately any direct or indirect guarantee of a security of the foreign utility company by the registered holding company.

Item 3—Associate Companies

Name each domestic associate public-utility company and, if applicable, its holding company.

Item 4—Books and Records

Identify the location of the books and records required by rule 53. By filing this form, the registered holding company undertakes that it will provide the Commission or its representatives with access to these books and records in the United States, at such place as the Commission may reasonably request.

**Exhibit A**

If applicable, the state certification(s) required under section 33(a)(2) of the Act. Certification(s) previously filed with the Commission which are still in effect and which encompass the foreign utility company for which this notification is being filed may be incorporated by reference. If the certification(s) is not available at the time of filing the Form U–57, so state, and undertake to file such certification as an amendment when available.

**Signature**

The undersigned registered holding company has duly caused this statement to be signed on its behalf by the undersigned thereunto duly authorized.

By _____

(Signature and printed name and title of signing officer)

Date _____

By the Commission.

Dated: February 1, 2001.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Appendix A**

**Note:** *Appendix A to the preamble will not appear in the Code of Federal Regulations.*

**Regulatory Flexibility Act Certification**

I, Arthur Levitt, Chairman of the Securities and Exchange Commission (''Commission''), hereby certify pursuant to 5 U.S.C. 605(b), that proposed rules 55 and 56 and amendments to rule 87, Form U–57 and Form U5S under the Public Utility Holding Company Act of 1935, as amended (''Holding Company Act''), would not, if adopted, have a significant economic impact on a substantial number of small entities.

Proposed rule 55 would define the circumstances under which a holding company registered under section 5 of the Holding Company Act can acquire an interest in a foreign utility company (''FUCO'') without the need to apply for or receive Commission approval. Proposed rule 56 would clarify the status of intermediate subsidiaries of registered holding companies that engage exclusively in the business of owning or operating, or both owning and operating, FUCOs, or a combination of eligible wholesale facilities (''EWGs'') and FUCOs. Under proposed rule 56, a registered holding company, unless otherwise restricted, could acquire the securities of, or an interest in, such a company without the need to apply for or receive Commission approval. The proposed amendment to rule 87 requires, with certain exceptions, a registered holding company to obtain a Commission order before an EWG or FUCO could provide services to, or construction for, or sell goods to, an associate company. The proposed amendment to rule 87 also would require registered holding companies to furnish state and federal regulators copies of applications under rule 87 and certificates under rule 24 of the Holding Company Act. The proposed amendments to Form U–57 and Form U5S govern reporting requirements relating to transactions subject to the proposed rules and rule amendments.

The proposed rules and amendments apply only to holding companies registered under section 5 of the Holding Company Act. Presently, there are 30 registered holding companies, none of which qualifies as a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act.

Accordingly, the proposed rules and amendments would not have a significant economic impact on a substantial number of small entities.

Dated: January 31, 2001.

**Arthur Levitt,**

*Chairman.*

[FR Doc. 01–3155 Filed 2–6–01; 8:45 am]

BILLING CODE 8010–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[TX–105–1–7404; FRL–6935–2]**

### Approval and Promulgation of Air Quality State Implementation Plans; Texas; Approval of Clean Fuel Fleet Substitution Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the State of Texas' Clean Fuel Fleet (CFF) substitute plan, incorporating them into the State Implementation Plan (SIP) under the Federal Clean Air Act (CAA). The State's CFF Substitute Plan is addressed in the SIP revision submitted on August 27 1998, and supplemented with additional technical information in a letter to the EPA dated November 17, 2000, by the State of Texas for the purpose of establishing a substitute CFF program.

In the Final Rules Section of this **Federal Register**, EPA is approving this SIP submittal as a direct final rule without prior proposal because we view it as noncontroversial and anticipate no adverse comments. See the direct final rule for detailed rationale for the approval. If EPA receives no adverse comments in response to this action, no further activity is contemplated. If EPA does receive adverse comments, we will

withdraw the direct final rule and respond to all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. If you are interested in commenting on this action, you should do so at this time.

**DATES:** Written comments must be received on or before March 9, 2001.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD) are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

**FOR FURTHER INFORMATION CONTACT:** Steven Pratt, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–2140, E-Mail Address: *pratt.steven@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule, which is located in the Rules Section of this **Federal Register**.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Implementation Plans, Reporting and recordkeeping requirements.

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

Dated: January 4, 2001.

**Gregg A. Cooke,**

*Regional Administrator, Region 6.*

[FR Doc. 01–1825 Filed 2–6–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IL198–1b; FRL–6935–5]**

### Approval and Promulgation of State Implementation Plan; Illinois

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The USEPA is proposing to approve a negative declaration submitted by the State of Illinois which indicates there is no need for regulations covering the industrial cleaning solvents category in the Chicago ozone nonattainment area. The Chicago ozone nonattainment area includes Cook County, DuPage County, Aux Sable and Goose Lake Townships in Grundy County, Kane County, Oswego Township in Kendall County, Lake County, McHenry County and Will County. The State's negative declaration regarding industrial cleaning solvents category sources was submitted to USEPA in a letter dated December 23, 1999.

**DATES:** Written comments must be received on or before March 9, 2001.

**ADDRESSES:** Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

**SUPPLEMENTARY INFORMATION:**

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I. What action is USEPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

### I. What Action Is USEPA Taking Today?

USEPA is proposing to approve a negative declaration submitted by the State of Indiana on December 23, 1999. This negative declaration concerns a source category located in the Chicago ozone nonattainment area which is classified as a severe nonattainment area for the pollutant ozone. The negative declaration indicates that the State has searched its emissions source inventory for the Chicago ozone nonattainment area and determined that there are no unregulated sources with a potential to emit 25 tons per year or more of volatile organic compounds (VOC) in the industrial cleaning solvents category.

### II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: January 8, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01–1823 Filed 2–6–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MI–52–01–7260, FRL–6939–6]**

### Approval and Promulgation of Implementation Plans; Michigan; Emission Trading Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve Michigan's State Implementation Plan (SIP) revision for ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter and lead. EPA is proposing to approve the revision under section 110 of the Clean Air Act (Act). This SIP revision, submitted July 21, 1999 relates to Michigan's Emission Averaging and Emission Reduction Credit Trading Rules, which provide sources with flexibility in meeting regulatory requirements for reducing emissions of ozone precursors and criteria air pollutants other than ozone. This proposed approval would allow sources in Michigan to use emission averaging and trading for compliance with SIP requirements. EPA will not publish final approval until receiving some revisions to the SIP that Michigan will provide.

**DATES:** Comments on this proposed action must be received by March 9, 2001.

**ADDRESSES:** You should address written comments to: Carlton T. Nash, Chief,

Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal for this rulemaking are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Alexis Cain before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Alexis Cain at (312) 886–7018.

**SUPPLEMENTARY INFORMATION:**

## Overview

The Environmental Protection Agency (EPA) is proposing to approve the Michigan Department of Environmental Quality's (Michigan's) Emissions Averaging and Emissions Credit Trading Rules. In a previous action (62 FR 48972, September 18, 1997), EPA proposed approval of an earlier version of this program (submitted as an optional revision to the SIP on April 17, 1996) ''upon correction of certain deficiencies'' that were identified in the proposed action. EPA believes that Michigan has corrected these deficiencies in a SIP revision submitted July 21 1999. EPA is proposing approval, rather than publishing final approval, to give opportunity for public comment on the revised SIP submission. In addition, upon further review, EPA has identified additional areas requiring clarification or deficiencies that need Michigan must correct. EPA will not finalize approval until receiving these clarifications and corrections from Michigan.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

**EPA's Action**
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What is Open Market Emissions Trading?
What is Emission Averaging?
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Environmental Protection
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How Does EPA Respond to Public Comments on the September 18, 1997 Proposed Approval?
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Conclusion
Administrative Requirements

## EPA's Action

### *What Action Is EPA Proposing Today?*

EPA is proposing approval of Michigan's revision to the State Implementation Plan (SIP) submitted to EPA on June 21, 1999. This SIP revision relates to Michigan's Emissions Averaging and Emission Reduction Credit Trading Rules (Michigan's trading program).

### *What Is Emissions Trading?*

Air emission trading is a program where one source reduces its emissions below the level it is required to meet, and below the level it has been meeting. This source then sells or trades these reductions as credits to another source that is then allowed to release emissions above its required levels. In return for this flexibility, the second source must purchase additional credits beyond those needed to comply, therefore reducing overall emissions. Emissions trading uses market forces to reduce the overall cost of compliance for sources, while maintaining emission reductions and environmental benefits.

### *What Is Open Market Emissions Trading?*

In an open market emission trading program, a source generates short-term emission reduction credits, by reducing its emissions. EPA generally refers to such credits as ''discrete emission reductions,'' but this proposal uses the term ''emission reduction credits (ERCs)'' since this is the term used under Michigan's trading program. The source may then use these credits at a later time, or trade them to another source to use at a later time. Open market programs rely on many sources continuing to generate new credits to balance emissions increases caused by other sources using previously generated credits.

### *What Is Emission Averaging?*

Emission averaging provides a source or group of sources (typically stationary sources) flexibility in complying with a rate-based regulatory limit. Under an emission averaging program, a source that exceeds its rate limit could comply with that limit by averaging its emissions with a second source emitting below its limit.

### *What Guidance Did EPA Use To Evaluate Michigan's Trading Program?*

EPA's basis for evaluating Michigan's trading program is whether it meets the SIP requirements described in section 110 of the Act. The primary guidance used to determine whether the program meets these requirements is EPA's September 18, 1997 Proposed Action on Michigan's Trading Rules. This proposed approval identified the actions that Michigan needed to take prior to receiving full approval.

The proposed approval was guided by EPA policy on emission trading as expressed in 1994 and 1995 guidance. In 1994, EPA issued Economic Incentive Program (EIP) rules and guidance (40 CFR part 51, subpart U), which outlined requirements for establishing EIPs that states are required to adopt in some cases to meet the ozone and carbon monoxide standards in designated nonattainment areas. There is no requirement for Michigan to submit an EIP, so Michigan's program need not necessarily follow the EIP rule. Nonetheless, subpart U also contains guidance on the development of voluntary EIPs, which EPA has used in the evaluation of Michigan's program.

EPA has also published an August 3, 1995 proposed policy on open market trading programs (60 FR 39668)and an August 25, 1995 model open market trading rule (60 FR 44290). EPA's proposed policy describes the elements of an open market trading program that EPA considers to be desirable and necessary for a program to be approvable as a SIP revision. The proposed policy, which was never finalized, also allowed states to adopt rules that varied from the proposed model rule. In a March 10, 1998-letter from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation to Congressman Thomas J. Bliley, EPA clarified its policy on open market trading. The letter says EPA will work with states to develop open market programs tailored to their individual circumstances, using the August 1995 proposal as guidance.

Subsequently, on September 15, 1999, EPA published a revised proposed Economic Incentive Program guidance (64 FR 50086) which contains additional guidance on open market trading. EPA has not yet released a final revision to the EIP of 1994. Since EPA

had not proposed revised guidance when Michigan sent its SIP revision request, EPA is not using the revised guidance (with one exception) in reviewing Michigan's program. EPA is using one part of the proposed EIP guidance in the evaluation of Michgan's program: the guidance on hazardous air pollutants (HAPs) as a result of trading of VOC, to clarify Michigan's obligations with regard to this issue, which was identified in the September 18, 1997 **Federal Register**. This guidance is in section 17.2 of the EIP proposed on September 15, 1999.

Due to EPA's lack of experience with open market trading programs and the many issues that such programs raise, EPA will use the final EIP guidance as a basis for re-evaluating Michigan's trading program, in coordination with the State, to ensure that its operation is consistent with the Clean Air Act and federal regulation. EPA will notify the State of any deficiencies, within 18 months after EPA issues a final EIP guidance. As with any SIP, EPA may require Michigan to revise the trading program where necessary and re-submit it according to the requirements and deadlines under section 110(k)(5) of the Act. According to section 110(k)(5), Michigan may have up to 18 months to revise and re-submit the trading program after EPA notifies the State of any deficiencies.

*What Is EPA's Evaluation of Michigan's Program?*

EPA believes that Michigan's program is approvable as a revision to the SIP, and proposes to approve the SIP revision of July 21, 1999, upon receipt of additional materials from Michigan. This July 21, 1999 submittal replaces the April 17, 1996 submittal that was the subject of prior proposed rulemaking. EPA provided a description and evaluation of Michigan's trading program in the September 18, 1997 **Federal Register**. This proposal provides a brief description of some of the features of the program that are particularly important to environmental protection, then describes the resolution of issues identified in the September 18, 1997 proposal.

Environmental Protection

Michigan's trading program allows both emission averaging and open market trading. It includes several features designed to prevent averaging or trading from harming air quality. In deciding to propose approval of Michigan's trading program, EPA has considered the overall structure of the program and the various elements designed to protect the environment. EPA has determined that the program is likely to result in environmental improvement, with little risk of environmental degradation. Some features of Michigan's program may not be approvable within an emission trading program that has a different overall design or that lacks all of the environmental protections Michigan's program contains.

A significant number of emission reductions generated under Michigan's program will expire without being used to allow offsetting emission increases. Under Rule 1212, ten percent of emission reductions generated under Michigan's program must be retired to protect the environment, with VOC and $NO_X$ ERCs used for compliance with an ozone season limitation discounted an additional ten percent annually until expiration. All ERCs expire after five calendar years beyond the year of generation. Under Rule 1205, $NO_X$ and VOC ERCs cannot be used during the ozone season unless they were generated during the ozone season.

Rule 1204(1) prohibits use of ERCs or emissions averaging that would cause a violation of the National Ambient Air Quality Standards (NAAQS) or other requirements of the Clean Air Act. Rule 1204(13) requires that ERCs be ''real, surplus, enforceable, permanent, and quantifiable,'' and generated using an accurate, reliable and replicable quantification method. These requirements are backed by notice review procedures that allow Michigan to identify cases where these requirements are not met, before ERCs are generated or used.

Credits cannot be generated by emission reductions that are already required by regulation. Rule 1204(1) requires that the use of credits be consistent with reductions required for reasonable further progress and attainment demonstrations. Moreover, reductions cannot generate credit unless they are ''surplus,'' defined in Rule 1201(hh) as reductions below an established source baseline (of actual emissions) not mandated by any applicable requirement, including the SIP, an attainment demonstration, reasonable further progress plan, or maintenance plan. Michigan staff have indicated that the intention of this definition is to exclude from eligibility for generation of emission reduction credit all reductions that are relied upon (as well as mandated) by an attainment demonstration, reasonable further progress plan, or maintenance plan. EPA expects, as a condition of approval, to receive clarification of this position in writing.

Under Rules 1213(5) and 1214(5), ERCs cannot be generated or used until Michigan declares a notice of generation or use to be ''complete.'' A completeness determination does not constitute ''approval,'' leaving sources liable for generation or use of bad credits or for failure to comply with a requirement. However, the completeness determination gives Michigan a significant opportunity to prevent generation of ERCs that are not adequate and to prevent ERC uses that create a risk of violating the NAAQS or other Clean Air Act provisions, including prevention of significant deterioration (PSD) increments, attainment plans, maintenance plans, reasonable further progress, and transportation conformity. Moreover, the completeness review includes a determination of whether trading will result in increased emissions of toxic pollutants at levels that create risk to public health.

EPA has determined Michigan's July 21, 1999 SIP revision satisfies the conditions for approval proposed in the September 18, 1997 **Federal Register**. These conditions are as follows:

*Trading of Oxides of Nitrogen:* EPA stated that while the intent of Michigan's trading program seemed to be to allow trading of $NO_X$, the ozone precursor, as well as $NO_2$, the criteria pollutant, the rules fail to specify that $NO_X$ is eligible for trading. For $NO_X$ to be eligible for trading, EPA proposed that Michigan must add it to the list of compounds eligible for trading.

The July 21, 1999 SIP revision makes this change.

*Ownership claims:* EPA noted that circumstances could arise in which ownership of emissions reductions is unclear, for instance if the manufacturer of a device that reduces auto emissions and the owner of an auto fleet that utilized these devices both claimed credit for the same reductions. EPA proposed that Michigan ''must address the issue of ownership claims'' in its procedures for determining the completeness of notices of credit generation.

The July 21, 1999 SIP revision includes the State's Notice of ERC Generation Review Procedures, which require Michigan staff to review notices to determine whether ''all or a part of the emission reductions being claimed have previously been used for emission averaging (NOA) or for ERC generation.'' If so, then a finding of ''incomplete'' must be rendered under Rules 1213(4)(b) and (c), which require ERC generators to certify that emission reductions being claimed have not previously been used for emission

averaging or ERC generation. Thus, Michigan has effectively adopted a ''first-come, first-served'' approach to the issue of who owns emission reductions which might have competing ownership claims.

*ERC Generation Start Date:* EPA expressed concern about provisions of Michigan's trading program that allow credits to be generated prior to the enactment of the program (March 16, 1996), from actions starting in 1991. Michigan allowed such credits to be registered, after being discounted 50 percent, although no such credits can be registered after March 16, 1997. These credits, like all credits generated in Michigan's program, would expire five years beyond the year the reductions occurred. EPA noted that credits generated from actions occurring prior to the enactment of the rule ''could flood the market, creating widespread use of cheap credits and discouraging the generation of old credits.'' Thus, EPA proposed that Michigan must provide ''an accounting of the number of pre-enactment credits generated and the remaining life of these credits, and an analysis which demonstrates to EPA's satisfaction that the potential use of these credits is unlikely to have a detrimental impact on attainment or maintenance of the NAAQS or any other requirement of the Clean Air Act.''

Michigan has provided an analysis that shows that 8,309 $NO_X$ ERCs were generated in 1995, of which none have been used. These ERCs expired on January 1, 2001. In addition, 3,143 $NO_X$ ERCs were registered in 1996, prior to program enactment, of which 1,711 have been used or retired, and the balance of which will retire January 1, 2002. None of these $NO_X$ ERCs have been used to allow emissions increases in Michigan (all of the $NO_X$ ERCs used have been retired under consent decrees or used as voluntary demonstrations of emission trading). Moreover, it is highly unlikely that these $NO_X$ ERCs will be used in Michigan given that there is no regulatory incentive to use $NO_X$ ERCs prior to 2004.

For CO, 74 pre-enactment ERCs have been generated, all of which will be used in 1999 ''to temporarily satisfy offset requirements as ordered by a Federal Judge.'' This use of CO credits does not lead to an emission increase that would not otherwise have occurred, and could not have a detrimental impact on air quality.

For VOCs, 11 ERCs expired, unused, on January 1, 1999. Twenty-nine VOC ERCs have been used, 89 expired at the end of 1999, and 66 will expire either at the end of 2000 or 2001. These amounts of VOC credits are negligible, and their use poses no threat to air quality.

EPA agrees that use of pre-enactment ERCs so far and the potential future use of remaining pre-enactment ERCs will not have a detrimental impact on attainment or maintenance of the NAAQS or any other requirement of the Clean Air Act.

Activity Level Reductions

EPA proposed that provisions of Michigan's rule that allowed use of credits generated through activity level reductions (production curtailments or shutdowns) were unacceptable. Use of such credits could cause emissions to be higher than they would be in the absence of the trading program, threatening the integrity of Michigan's attainment and maintenance plans. EPA suggested three different options that Michigan could use to correct this program deficiency: prohibiting generation of shutdown and curtailment credits; prohibiting use of shutdown credits in nonattainment and maintenance areas; and, demonstrating that use of such credits would not be contrary to Michigan's attainment and maintenance plans. Michigan has chosen to incorporate in its trading program rules a prohibition against use of shutdown credits in nonattainment and maintenance areas.

Michigan's rule contains additional unique protections against the negative consequences of shutdown and curtailment credits, through limiting both their generation and their use. Michigan's program creates significant barriers to the generation of credits through shutdowns and especially through curtailment. Production curtailment credits can be generated only if the generator informs MDEQ of this credit-generation strategy ahead of time (Rule 1208(5)). Thus, to generate credits during a production slowdown, the source would have to plan the slowdown and would have to adopt an enforceable requirement not to increase production. As a result, no credits were successfully generated through production curtailment in Michigan during the first three and half years of program operation, a period when 5,789 tons of VOC reductions were registered. In addition, no source has provided the notice required under Rule 1208(5) to generate credits through production curtailment in the future. Moreover, generation of credits from curtailment (and shutdowns) is prohibited if the shutdown or curtailment leads to emissions shifting among sources under common ownership or control (see Rule 1207(5)). An additional limitation on generation of shutdown credits is that such credits can be generated for only five years after the shutdown occurs (see Rule 1208(6)).

In addition to these limits on generation of credits from shutdowns and curtailment, Michigan is unlike most open market programs in that it limits the ability of sources to generate credit while increasing production. Michigan bases credit generation on reductions in emissions below prior actual levels, as opposed to reductions from what emissions would have been based on activity levels during the generation period. In other words, most open market programs create a baseline for reductions based on historical emissions rates times activity level during the period of generation, while Michigan's program creates a baseline based on actual emissions. Thus, in comparison with other open market programs, Michigan's program limits credit generation at sources that increase production, partially offsetting the potential generation of credits from sources that reduce production.

Moreover, as noted above, unless approved by EPA, Michigan's program prohibits the use of credits generated from production shutdown, except as offsets, in nonattainment and maintenance areas (see Rule 1204(7)), eliminating the concern that use of such credits could compromise attainment and maintenance demonstrations. This exception for offsets is acceptable, since use of reductions based on activity level reductions is already allowed under the new source review program.

As a result of these protections, curtailment credits have not been generated, and shutdown credits have been generated but not traded in Michigan, apparently because of the limitations on their use. Thus, EPA concludes that no damage to the environment has or will occur as the result of shutdown and curtailment credits in Michigan. EPA expects to review this aspect of Michigan's SIP again after finalizing the EIP guidance.

Quantification Protocols

EPA noted the importance of high quality emissions quantification protocols to ensure that ERCs are based on real reductions, surplus to all applicable requirements, that are enforceable, permanent, and quantifiable. To assure the quality of emissions quantification protocols, EPA proposed that Michigan must ''incorporate into the emissions trading rules a requirement that sources in categories without EPA-approved protocols must follow a set of EPA-approved protocol development criteria * * * and second, commit in the SIP to

require use of existing and future EPA-approved protocols for quantifying emission reductions at applicable sources, and to allow sources to deviate from an EPA protocol only if they first get the approval of EPA.'' EPA provided the protocol development criteria to Michigan in a July 1, 1997 letter from David Kee to Dennis Drake.

The July 21, 1999 SIP revision makes the changes that EPA specified. Rule 1209 now requires any source that generates or uses credits to use a protocol that has been federally-approved for the purpose of emission reduction credit trading, where one exists for the relevant source category. Where a federally-approved protocol does not exist, the source must use either: a protocol that the State or EPA has approved for purposes of demonstrating compliance with applicable requirements, provided that this protocol also meets a list of criteria specified in the rules; or a new or alternate emission monitoring and quantification protocol which Michigan has approved for purposes of emission averaging or emission reduction credit trading. All emissions quantification protocols must be consistent with promulgated state and federal procedures.

Michigan has recently revised its procedures for the review of notices of generation to require, in cases where reductions will be quantified based on a quantification technique that is not in a Title V source's operating permit, that the source will not be able to generate credits until the permit is revised to reflect the new technique. Thus, for Title V sources, credit generation must always be based on a measurement method specified in the permit. This revised procedure was not included in the July 21, 1999 SIP submission; Michigan must submit this revised procedure prior to receiving final approval.

Mobile source credits must additionally be consistent with federally approved mobile models for the emission reduction credit generation year, and consistent measurement and calculation methods which Michigan or EPA have approved.

Synthetic Minor Sources

A ''synthetic minor'' source is one that has the potential to emit at major source levels defined by the New Source Review (NSR) program, but whose emissions are limited by its permit to levels below those that would subject it to the major source requirements of NSR. Synthetic minor permits frequently limit production or hours of operation to limit emissions. The version of Michigan's trading rules reviewed in the September 18, 1997 proposed rulemaking allowed synthetic minor sources temporarily to increase emissions above major source thresholds, without being subject to major source requirements.

EPA noted that allowing sources to exceed major source thresholds without being subject to major source requirements could lead to a loss of the significant emission reduction benefits that can occur when sources are subject to New Source Review. Therefore, EPA proposed that Michigan must remove this provision from the trading rules.

The July 21, 1999 SIP revision makes this change, as requested.

Offsets and Netting

EPA proposed that Michigan's rules must state that ERCs may be used for offsets and netting only in a manner consistent with New Source Review requirements. This is to ensure that Michigan's trading rule regulations are bound by the offset and netting requirements of the New Source Review program. For instance, this includes the requirement that offsets must be permanent, quantifiable, and federally enforceable, as these terms are defined in the New Source Review regulations.

The July 21, 1999 SIP revision makes this change in Rule 1204(8), and also removes netting from the list of appropriate uses of credits.

Ownership Prior to Use

EPA proposed that Michigan's rules must require ERCs to be owned prior to use, and to specify that failure to hold sufficient credits is a violation. Without such provisions, sources could stay in compliance simply by ''trueing up'' after having exceeded their emission limits.

The July 21, 1999 SIP revision makes these changes, in Rule 1216(5).

Use Baseline

EPA proposed that Michigan's rules must include a definition of user source baseline.

The July 21, 1999 SIP revision makes this change, defining user source baseline in Rule 1201(e) as ''the allowed level of emissions specified by the applicable requirement with which emission reduction credits will be used to maintain compliance.''

Geographic Restrictions on Use of Ozone Precursor ERCs

The version of Michigan's trading rules reviewed in the September 18, 1997 **Federal Register** lacked geographic restrictions on trading, and would have allowed sources in nonattainment and maintenance areas to use ERCs generated in distant attainment areas. EPA proposed that geographic restrictions on trading were required, to prevent use in areas of poor air quality of credits generated in areas of good air quality. EPA proposed prohibiting use in nonattainment or maintenance areas of VOC ERCs generated more than 100 kilometers beyond the area boundary, and of $NO_X$ ERCs generated more than 200 kilometers beyond the area boundary.

For VOC, the July 21, 1999 SIP revision establishes the suggested geographic restrictions, slightly modified, in Rules 1211(6) and (7). For the purpose of these geographic restrictions, adjacent nonattainment and maintenance areas are counted as a single area, and the boundary for trading extends to the entirety of any county that lies partly within 100 kilometers of the nonattainment or maintenance area. EPA believes that these modifications do not threaten air quality in nonattainment or maintenance areas, and that they serve the goals of administrative simplicity and establishing healthier markets for trading.

For $NO_X$, Rule 1211 (4) allows trading within Michigan without geographic restrictions, as long as the use area is not a nonattainment area for $NO_2$. EPA is now willing to accept this aspect of Michigan's trading program because of modeling done by the Ozone Transport Assessment Group showing that $NO_X$ trading throughout the eastern United States would not have a detrimental impact on ozone concentrations in nonattainment areas.

Geographic Restrictions on Use of Criteria Pollutant ERCs

EPA noted that trading criteria pollutants other than ozone, even between adjacent sources, could lead to air quality problems. Emissions of these pollutants have highly localized effects, and ambient concentrations depend not only on the emission rate but also on factors such as stack height. Therefore, EPA proposed to require inclusion in the SIP of procedures that the State would follow to prevent uses of credits or emission averaging that would cause violations of the NAAQS or other relevant provisions of the Clean Air Act.

The July 21, 1999 SIP submission includes procedures for reviewing notices of ERC use and notices of emission averaging. These procedures require a review of proposed uses of ERCs or of emissions averaging above de minimus levels. These de minimus levels are: VOC–40 tons; $NO_X/NO_2$–40 tons; CO–100 tons; $SO_2$–40 tons; $PM_{10}$–15 tons, and lead–0.6 tons. For CO, $SO_2$,

$PM_{10}$ and lead, this review includes a modeling analysis. The State will not find the notice complete if the review reveals that the proposed use would result in a NAAQS violation or overconsumption of PSD increment, or be inconsistent with an attainment demonstration, maintenance plan, or any applicable requirement. The State will also find the notice incomplete if the source does not provide sufficient information to make this determination. These requirements address the concern identified in EPA's prior proposed rulemaking.

Public Availability of Information

EPA proposed that Michigan ''must ensure access to information collected by sources as part of an environmental self-audit that demonstrated erroneous or willful generation or use of invalid credits.''

In a December 12, 1997 letter to Russell J. Harding, Director of the Michigan Department of Environmental Quality, from Steven A. Herman, EPA stated that ''the changes to [the Michigan audit privilege and immunity law] * * * along with the Michigan Department of Environmental Quality's commitment in your July 1 letter on the use of confidentiality agreements and the interpretations by the Attorney General, address the U.S. Environmental Protection Agency's (EPA) concerns regarding the effect of [the audit law] on delegated, authorized and approved programs.'' Therefore, EPA believes that Michigan's self audit law no longer poses a barrier to access to information, collected during environmental audits, regarding generation or use of invalid credits.

Hazardous Air Pollutant Emissions

EPA noted that trading of VOC and particulate matter can affect emissions of hazardous air pollutants (HAPs). Trading could result in increased overall emissions of HAPs, or creation of localized ''toxic hotspots.'' EPA proposed that prior to final approval, Michigan must require facilities to divulge the effect of emission trading on HAP emissions, and to examine the effects of the trading program on HAP emissions as part of the periodic program performance audit.

Since publication of the September 18, 1997 proposal, EPA has developed additional guidance on treatment of HAP emissions in trading programs, related specifically to HAP emissions that are VOC. This guidance is in section 17.3 of the proposed revisions to EIP guidance (62 FR 50086). EPA is applying this supplemental guidance because of the significance of this issue and the lack of prior guidance. Under this guidance, VOC trading programs must contain the following: Consideration in program design of options for prevention and/or mitigation of unacceptable impacts from VOC trades; sufficient publicly-available information available to allow for meaningful public review and participation; public participation in program design, implementation and evaluation; and periodic program evaluations to evaluate the impact of VOC trades on the health and environment of local communities.

The emissions trading program includes provisions that directly protect against significant localized increases in HAP emissions. Rule 1204(3) states that emissions averaging or credit use is prohibited if it would cause an increase in the maximum hourly emission rate of any toxic air contaminant (TAC),[1] unless it can be demonstrated that the increase will not ''cause or exacerbate'' an exceedance of a TAC screening level set under Michigan's air toxics rules. Air contaminant screening levels are ambient air pollution concentrations that are protective of public health. To determine whether a source has exceeded a screening level, the State performs a modeling analysis that predicts, using conservative assumptions, the maximum ambient air concentration that would result from a source's emissions of the toxic air contaminant.

Rule 1204(3) applies to increases in TACs that result from use of credits, but not to foregone decreases. However, VOC RACT has already been implemented statewide in Michigan, so there is negligible potential for existing sources to use credits to forego reductions in VOCs that would otherwise be required.

Rule 1204(3) could create incentives for some sources to reduce emissions of toxic pollutants, to become eligible to use ERCs for compliance with VOC emission limits. In the absence of the emissions trading program, Michigan's air toxics rules are invoked only when sources apply for a permit to install. Thus, existing sources constructed prior to the toxics rules becoming effective (in 1992) may emit toxic air contaminants in amounts that exceed a screening level. As a result of this provision of Michigan's trading program, such sources would be unable to use ERCs that would result in any increase in maximum hourly emissions of that TAC (since such an increase would ''exacerbate'' an exceedance).

Moreover, Rule 1204(4) allows Michigan to prohibit emission averaging or ERC uses that would result in increased emissions of a list of pollutants that are of particular concern in Michigan and in the Great Lakes region generally. Michigan can prohibit such uses if it determines that they would be inconsistent with the Clean Air Act or ''the protection of public health, safety, or welfare.'' These pollutants are: Mercury; alkylated lead compounds; cadmium; arsenic; chromium; polychlorinated biphenyls; chlordane; octachlorostyrene; toxaphene; hexachlorobenzene; benzo(A)pyrene; DDT and its metabolites; 2,3,7,8-tetrachlorodibenzo-p-dioxin; 2,3,7,8-tetrachlorodibenzofuran.

The structure of Michigan's program makes it likely that emissions trading will lead to decreases in HAP emissions, including in overburdened communities. In addition to the direct protections against HAP increases in the trading program, the program creates incentives for overall reductions in HAP emissions by encouraging reductions of VOC. Besides the ten percent reduction in all ERCs registered, VOC (and $NO_X$) ERCs used to comply with an ozone season limitation are reduced a further ten percent each year until expiration. Expiration of ERCs after five years also makes it likely that reductions will be generated without being used. Moreover, the availability of ERCs as a cost-effective means of compliance will allow the State to refuse to grant exemptions from regulatory requirements based on economic or technical infeasibility. Thus, sources that would not be required to make any VOC reductions in the absence of the program can be required to purchase reductions from other sources. In addition, it should be noted that Rule 1204(2)(a) prohibits use of credits to comply with federal or State limits on emissions of toxic pollutants, including federal new source performance standards, national emission standards for hazardous air pollutants, or ''a maximum achievable control technology requirement established for a hazardous air pollutant under section 112 of the federal clean air act.'' This provision prevents use of credits for compliance with any MACT standard, whether established through a national standard or on a case-by-case basis.

[1] TACs, under Michigan's air toxics rules, are defined as any air contaminant for which there is no national ambient air quality standard and which is or may become harmful to public health or the environment when present in the outdoor atmosphere in sufficient quantities and duration. Forty substances are specifically exempt from the definition of toxic air contaminant, including such things as inert gases, nuisance particulates, and substances that have relatively low toxicity. HAPs are included.

The public will have access to substantial information about the effects of emissions trading on HAPs. Information about trading activity, including quantity of credits generated, traded and used by any source, is posted electronically on Michigan's web site. This information allows tracking of VOC trades and use not only at the aggregate level, but at individual companies or sources. Any member of the public that wishes to find out about the effects of a particular trade or group of trades on HAPs can request additional data from the Michigan Department of Environmental Quality. Michigan has committed in the SIP to ''make the data, calculations, and results of any cumulative or individual (e.g., even individual screening level checks * * *) air toxics analysis available to the general public upon request.'' Such information will include speciation of TACs that are increased as a result of credit use.

Sources will be required to submit sufficient information for air toxics analyses to be performed. No source can use credits without submitting a notice of use to the State and the State declaring the notice to be ''complete.'' The State's notice of use review procedures require that for credit uses that would result in an increase in emissions of a TAC, ''the notice submittal must, at a minimum, include sufficient information * * * to make the evaluation,'' including period of use, the pollutants in question, the current and proposed emission rates of the relevant pollutants, as well as facility information needed for modeling.

With regards to public participation, Michigan has satisfied the notice and comment requirements for SIP revisions, and has gone beyond them by soliciting comments on multiple drafts of the trading program design, and by holding numerous meetings with a public stakeholder group, consisting of both industry and environmental groups.

The public can participate in the implementation of Michigan's program by reviewing State evaluations of toxics increases, performing their own analyses, and providing these to the state. In cases where a citizen's analysis reveals that the use of credits is violating Michigan's toxics rules, the Department could prohibit the use of the credits. If a citizen's analysis revealed use of invalid credits, the State would require replacement of invalid credits with three times the number of required credits.

The program requires periodic (every three years) program evaluations that assess ''whether the program has caused any localized adverse effects to the public health, safety, or welfare or to the environment.'' Michigan has revised its rules to state that this evaluation shall include ''an analysis of the effects of emission trading on air toxic emissions.'' EPA expects that this analysis will include an assessment of whether use of ERCs is preventing HAP reductions that would otherwise have occurred in communities already overburdened with HAP emissions.

Rule 1217(2) requires MDEQ to prepare a report based on its evaluation, to seek public input on the findings of the report, to provide public notice and comment, and a public hearing. Moreover, the procedures for general program evaluation, included in the SIP, promote input from communities that are potentially most affected by HAP emissions. The general program evaluation procedures state that public hearing on Michigan's Program Evaluation Report ''shall be held in the geographic area which has had the greatest volume of ERCs used in the state during the period covered by the evaluation. Similar education and outreach activities shall also focus on these areas, and the input of Environmental Justice (EJ) organizations shall be sought.'' If the Program Evaluation Report identifies a need for program revisions, then the program will be revised within six months.

Interstate Trading

EPA noted that interstate exchange of credits raises issues that must be addressed, including potential for multiple uses of the same ERC, enforceability of credits generated out of state, and proper accounting of emission shifts in emissions budgets. EPA proposed that Michigan must not allow interstate emissions trading without a Memorandum of Understanding (MOU) with the other relevant state that ''addresses the consistency between key trading rule elements in each State, including: 1. The ERC identification system; 2. Sharing of required Notices and a compatible credit tracking system; 3. Geographic limitations * * * 4. Credit lifetimes and expiration dates; 5. Record retention requirements; 6. The list of acceptable credit generation and use activities; 7. Consistent treatment of credit generation and use protocols; 8. Credit generation base case definitions; and ozone season definition and any other temporal requirements.''

The July 21, 1999 SIP revision makes these changes. The revised rules, however, state that trading of ERCs ''under an emission cap or budget established for a region or as part of a national air pollution control strategy'' will not require an MOU. Thus, an interstate MOU will be required except under a federally-approved program that creates an exemption from the MOU requirement.

Protection of Class I Areas

EPA proposed that to protect Class I areas (pristine environments such as international parks, large national parks, and wilderness areas), provision must be made in Michigan's program to inform Federal Land Managers (FLMs) of credit uses that could affect air quality in Class I areas. EPA proposed that this notification should take place 30 days prior to ERC use activity in, or within 100 km of, a Class I area.

The July 21, 1999 SIP revision includes procedures for reviewing notices of ERC use and notices of emission averaging. These procedures require Michigan staff to determine whether the use or averaging would take place within 100 km of a Class I area, and if so to ''provide immediate notification of the proposed ERC use or emission averaging increases to the FLM,'' and to state ''that any input the FLM would like to provide regarding the proposal will be considered during the review process, where such input is provided within 15 days of notification.'' In most cases, immediate notification would lead to nearly, but not quite, 30 days notice prior to use of credits, since the rules give Michigan 30 days to determine the completeness of notices.

While this response does not meet the 30-day notification requirement proposed by EPA, EPA believes that it provides equivalent opportunity for FLMs to have an impact on trading that may affect Class I areas. Rather than pro-forma notification within 30 days, with no provision for considering FLM comments, Michigan is providing a 15-day opportunity for FLMs to influence whether or not ERC use is allowed to proceed.

Operating Permits

EPA proposed that Michigan must revise its federally required operating permit program to cite the trading rule in order to recognize ERC use as a compliance alternative for permitted sources that are covered by the emissions trading rule. EPA further proposed that before a source with a federally-required operating permit is allowed to use emission averaging or ERCs, its permit must reference the emission averaging and trading rules and contain language allowing averaging or ERCs to be used to demonstrate compliance.

MDEQ responded to these issues by including the following statement in its implementing procedures for ERC use and for emission averaging: ''where ERCs [or emission averaging] are to be used under a Renewable Operating Permit (ROP or title V permit), the reviewer shall coordinate with the permit engineer to ensure that the ROP contains enabling language which provides for ERC use [or emission averaging] as a compliance option under the ROP. * * * Note that the use of ERCs [or emission averaging] under a ROP is only allowed where the ROP rules reference the emission trading program rules, and where the ROP specifically provides for such use.''

With respect to the title V program authority issues, Michigan's rule 213(2) requires that operating permits include limits and standards that ensure compliance with all applicable requirements. Further, Michigan's rule 101(o)(i) defines applicable requirements to include requirements in the Michigan SIP. These provisions allow ROPs to include trading rule requirements for title V sources that choose to participate in Michigan's trading program. However, although MDEQ's title V regulations do generally allow for the incorporation of the trading program provisions into title V permits, MDEQ has committed to revise its operating permit program rules to clearly state that trading program provisions, including averaging and ERC use, can be used as compliance alternatives for SIP provisions to the extent provided by the SIP approved trading rule.

With respect to the title V permit content issues, MDEQ provided only a general commitment to include trading program enabling language in title V permits, and did not address title V permit content requirements in any detail. Under the title V program, the State must ensure that operating permits contain all applicable requirements, including detailed compliance provisions necessary to assure compliance with each applicable requirement.

It is also important to note that the title V program requirements are distinct from any trading rule provisions incorporated under the separate authority of the title I SIP. Thus, title V program requirements, such as permit modification requirements, must not be subsumed, overridden, or otherwise affected by requirements of a discretionary trading program approved into an implementation plan. The trading program provisions applicable to a source become part of the underlying applicable requirements of the source's title V operating permit. Thus, the permit becomes a valuable tool to ensure compliance with the requirements of the trading program. In this way, title V permits help ensure the trading program's integrity. Title V permits provide a mechanism to create detailed, practically enforceable, and often unique requirements and procedures that are critical to implementing the trading program for each subject source.

Trading program provisions that are applicable to a source are included in sources' title V permits in much the same way as all other applicable requirements. If a source's title V operating permit limits—or does not address—participation in a trading program, the source must obtain a formal permit revision prior to participating. If the permit includes terms and conditions necessary to implement the trading program in its title V operating permit, the source may typically exercise these provisions without the need for future formal permit revisions. Relevant notices of use, transfer, and generation must be included in the permit file. However, neither EPA nor state permitting authorities have had extensive experience with trading programs and the incorporation of trading program provisions in title V permits, and few discretionary trading programs have been approved to date. As such, EPA cannot comprehensively address all potential permit revision or content issues that could arise during the implementation of trading program provisions. Therefore, EPA and MDEQ will need to work together to ensure that title V permits contain up-to-date, clear, practically enforceable terms that reflect the requirements of the trading program, while requiring permit revisions only when necessary. Generally, permit content will be largely dictated by the individual trading program provisions being implemented, and whether they address trading, use, generation, averaging, etc. For additional information on title V and trading program interface issues, including permit content, see EPA's draft EIP guidance, which is available electronically at *http://www.epa.gov/ttn/oarpg.*

Michigan's operating permit rules do address the State's trading program in the operational flexibility provisions, which address what types of changes can be made without a permit revision. Specifically, rule 215(2)(b) provides that a person may make any changes allowed by an applicable emissions trading program approved into Michigan's SIP without a revision to the permit, provided (1) the person meets the notification requirements, (2) the changes are not a modification under title I of the Act, and (3) the actual emissions resulting from the changes to do not exceed the emissions allowed under the ROP. EPA notes that the Michigan rule provision combines the 40 CFR part 70 provisions of operational flexibility that address within source trades [40 CFR 70.4(b)(12)] and general economic incentive trading programs that allow trading between sources [40 CFR 70.6(a)(8)].[2] MDEQ has committed to revising its rules to distinguish between these different trading provisions, in accordance with the federal regulations.

Early $NO_X$ Reductions

EPA expressed concern about $NO_X$ ERCs generated under Michigan's trading program through early compliance with the $NO_X$ reduction requirements of the Acid Rain provisions of the Clean Air Act. Under Michigan's program, such credits expire five calendar years ''after the first year of generation, or one calendar year after the effective date of final compliance, whichever occurs first.'' Thus, $NO_X$ ERCs generated through early compliance will expire by January 1, 2002, since affected sources must be in compliance with the requirements for Phase II $NO_X$ reductions under the Acid Rain program by 2000. Given that these ERCs will expire prior to imposition of $NO_X$ reduction requirements in Michigan, EPA stated that its only remaining concern was to assure that other states would be able to determine that these credits had expired, so that sources outside of Michigan could not use these ERCs after January 1, 2002.

Michigan has demonstrated that its electronic registry makes clear when ERCs expire, assuring that other states will be able to determine that these

[2] Note that the term ''emissions allowed under the renewable operating permit'' is defined in Michigan's rule consistent with the 40 CFR 70.2 definition of ''emissions allowable under the permit''. However, this term as used in the federal regulations addresses operational flexibility within a single source [40 CFR 70.4(b) (12)], whereas the Michigan rule broadly applies the concept to interstate or regional trading programs. Although the term as used in part 70 specifically prohibits the use of operational flexibility provisions for within-source trading where the emissions exceed the emissions allowable under the permit, the State rule's broader use of the term can allow for changes provided that the changes meet the requirements of the SIP approved trading program, and the applicable trading program provisions are included in (and therefore allowed by) the operating permit. Also note that the federal economic incentives trading provision [40 CFR 70.6(a)(8)] also requires that any such changes be specifically provided for in the permit.

early $NO_X$ reductions cannot be used after January 1, 2002.

Property Rights

EPA proposed that prior to approval, Michigan must establish that ERCs do not constitute a property right. This protection is necessary to ensure that ERC holders, and courts, understand that ERCs are limited authorizations to emit pollutants that under some circumstances could be revoked.

The July 21, 1999 SIP submission makes this change, by providing a certification by the Attorney General of the State of Michigan, dated June 29, 1999, that ERCs do not constitute a property right.

Transportation Conformity

This issue was not raised in the September 18, 1997 proposal, but is dealt with here because the July 21, 1999 SIP revision makes possible the use of ERCs for conformity purposes. Previously, Michigan's rules stated that ERCs ''shall not be used to comply with federally mandated mobile source requirements.'' The July 21, 1999 SIP revision adds the clause ''except conformity where the emission reduction credits were generated in the conformity area'' (Rule 1204(10).

Michigan's procedures for reviewing notices of ERC generation include provisions to protect against ''double counting'' of mobile source emission reductions in the trading program and in conformity demonstrations. The procedures include checking existing transportation conformity projects to ensure that the emission reductions have not already been used for transportation conformity. In addition, under these procedures the Michigan Department of Environmental Quality will notify the Michigan Department of Transportation that ''the mobile source sector ERC generation proposal may go forward under the emission trading program, and that these emission reductions should not be used for emission reduction credit in any future transportation conformity project.''

Transportation conformity is an appropriate use of ERCs. Michigan's procedures for reviewing notices of generation contain appropriate protections against double counting emission reductions in the trading and conformity programs.

Issues To Be Addressed Before Final Approval

As noted above, EPA will not publish a final approval of Michigan's trading program until Michigan submits several changes or clarifications. Required changes mentioned above are:

- Revised procedures for staff review of notices of generation, incorporating a procedure that for Title V sources staff would find ''incomplete'' any notice of credit generation based on reductions quantified using a technique not specified in the source's Title V permit, as well as any other procedures for review of notices required under the program.
- A confirmation from Michigan that emission reduction credits cannot be generated by reductions that are relied upon by an attainment demonstration, reasonable further progress plan, or maintenance plan.

In addition, Michigan must submit changes to the SIP submittal regarding the use of credits related to best available control technology (BACT) or lowest achievable emission rate (LAER) requirements for new sources, and to clarify the limits to the enforcement relief created by self-reporting provisions. Rule 1204(2)(b) prohibits the use of credits for compliance with BACT or LAER requirements for new sources. However, this provision provides an exception for instances in which the required control technology has been properly installed and is being properly operated and maintained, but the source nonetheless cannot meet the permit limit. The purpose of this provision is to allow sources that have an incorrectly-set BACT or LAER permit limit to remain in compliance with the permit limit until the permit is revised. The September 18, 1997 proposed approval proposed to allow this provision. However, upon further consideration, EPA has determined that there is a possibility that this provision might be used for compliance with BACT or LAER in circumstances other than an incorrectly-set permit limit, and that a preferable way to accommodate sources with incorrectly-set permits is through enforcement discretion. Michigan has agreed to re-submit the SIP, removing from EPA's consideration the sentence in Rule 1204(2)(b) that creates an exception to prohibition on use of credits for BACT or LAER compliance. EPA will not provide final approval until receipt of this change.

Rule 1216(2) allows a source that has generated or used credits that are not ''real, surplus, enforceable, permanent and quantifiable'' to withdraw the credits or, if the credits have been used or traded, to replace the bad credits with good credits. To make use of this reconciliation provision, a source must notify the department within 30 days of discovering that the credits were bad, and must provide the reconciliation and replace the bad credits, if necessary, within 30 days from the date of notice. According to Rule 1216(4), use of this provision can bring a source into compliance with rule 1208(1)(c), which requires that reductions that generate credits must be ''real, surplus, enforceable, permanent and quantifiable.'' The rules do not say, however, that a source that used bad credits for compliance with an emissions limit would be in compliance with that emissions limit as the result of reconciliation. Therefore, EPA's understanding is that this provision does not shield sources that have used bad credits from enforcement for violation of the underlying requirement. Michigan staff have confirmed this interpretation, and have indicated that Michigan will assert this interpretation in a letter to EPA. EPA will not finalize approval until it receives this letter.

**How Does EPA Respond to Public Comments on the September 18, 1997 Proposed Approval?**

EPA received numerous comments from the public on the September 18, 1997 proposed approval, which we considered in the development of this action. The public comments opposing the proposed action, or raising substantial questions about it, are summarized here, along with EPA's responses.

*Comment:* The Michigan Department of Environmental Quality commented with ''commitments to complete rule changes and procedural changes to address the approvability issues.''

*Response:* These changes have been made, and EPA now proposes to approve the program.

*Comment:* The Coalition to Advance Emission Trading (Coalition) and Michigan requested that EPA propose a direct final action to approve Michigan's SIP revision, as soon as the deficiencies identified in the September 18, 1997 proposed action were corrected. The Coalition would like to expedite approval of Michigan's SIP to provide for the possibility of trading to meet SIP requirements as soon as possible.

*Response:* While EPA understands the desire to implement emission trading quickly, it believes that, given the complexity of the emissions trading program and of the program revisions made in response to the September 18, 1997 proposed action, the public should have an additional opportunity to comment on EPA's proposed approval of the SIP revision prior to final approval being granted.

*Comment:* The Coalition argued that EPA should not require Michigan to impose geographic restrictions on trading as a condition of approval, since ''in Michigan, the area most likely to be

the State's most significant non-attainment areas—Detroit—lies downwind of the most likely sources of attainment ERCs—cities like Flint, Lansing, Saginaw and Grand Rapids.'' Thus, the Coalition and Michigan urged EPA to accept ''at the very minimum'' extension of the 100 km and 200 km trading boundaries for VOCs and $NO_X$ to include the boundary of any affected county and to allow contiguous nonattainment or maintenance areas to be combined for trading purposes into a single area. Preferably, trading should be allowed across attainment/maintenance area boundaries statewide. Moreover, the Coalition ''believes that there is no reason to prohibit trades of non-ozone precursors from attainment to non-attainment areas as well.''

*Response:* EPA proposes to approve the State's extension of the 100 km and 200 km trading boundaries for VOCs and $NO_X$ to include the boundary of any affected county and to allow combining contiguous nonattainment or maintenance areas for trading purposes into a single area. Under this SIP, VOC trading will be allowed between Detroit and Flint, Lansing or Saginaw (though not Grand Rapids). While emissions of VOC may have some impact on ozone more than 100 km downwind, EPA believes that it is wise to maintain the 100 km boundary, since increasing emissions in the Detroit maintenance area in exchange for emission decreases more than 100 km upwind of Detroit could diminish air quality in the Detroit maintenance area. Similarly, the local impact of emissions of criteria air pollutants makes it unwise to allow long-distance trades of these pollutants that could harm air quality in a nonattainment or maintenance area.

*Comment:* The Coalition noted that the market has not been flooded with credits created prior to enactment of the trading program.

*Response:* EPA agrees, and accepts the State's analysis that use of pre-enactment credits does not threaten air quality or the integrity of the program.

*Comment:* The Coalition commented that credits based on production shutdowns and curtailments are the most permanent and quantifiable of all credits. Michigan's program protects against the load-shifting at commonly-owned sources, and through the requirement that credits must be ''surplus,'' and not relied upon in an attainment demonstration, RFP plan or maintenance plan. Furthermore, the Coalition and Michigan noted that Michigan's attainment plans and maintenance plans do not rely on emissions reductions from activity level reductions, since these plans do not include ''emission reductions resulting from economic downturn.'' The Coalition also objected to the statement in the September 8, 1997 proposed approval that Michigan should seek additional public comment on the use of activity level reductions to generate credit. This has been done; doing so again would serve no purpose.

*Response:* EPA agrees that credits based on production shutdowns and curtailments are permanent and quantifiable. However, they may not be surplus; despite the requirements in Michigan's rules, the version of the program reviewed in the September 18, 1997 SIP revision contained no means to ensure that such reductions are not relied upon in attainment or maintenance plans, except for the protection against load shifting among sources under common ownership. The fact that Michigan's attainment demonstrations and maintenance plans do not rely on emissions reductions resulting from general economic downturn does not mean that these plans do not rely on production decreases at some sources. Even within a growing economy, some sources cease or reduce production, while other sources start up or increase production. Allowing sources that decrease production to generate credit within an open market program (with no emissions cap) could cause emissions to increase above what they otherwise would be and to compromise attainment or maintenance plans. EPA requested that Michigan obtain additional public comment because of the complexity of this issue, and the potential interest of the public.

*Comment:* General Motors commented that sources ought to be able to generate emission reduction credits through activity level reductions, to increase industry's ability to respond quickly to market fluctuations, and that Michigan's rules had sufficient protections against load shifting among sources under common ownership or control. For sources not under common ownership or control, General Motors argues that it is impossible to protect against load shifting.

*Response:* Since it is very difficult to protect against load shifting among sources not under common ownership or control, EPA believes that it was appropriate for Michigan to change its rules to prevent sources in areas that have or need an attainment or maintenance demonstration from using credits generated through activity level reductions. This is the best way to protect the integrity of Michigan's attainment and maintenance plans.

*Comment:* The Coalition, Michigan and General Motors commented that they are concerned about the requirement that sources must use EPA-approved emissions quantification protocols, where available, or a method that follows EPA protocol development criteria. If such a protocol is inconsistent with current compliance demonstration methods, confusion will result.

*Response:* EPA believes that most protocols for quantifying ERCs will use the same emission measurement methods as used for other applicable requirements. In those cases where ERC quantification requires different measurement methods, EPA believes that confusion will be manageable.

*Comment:* The Coalition argues that EPA's draft protocol development criteria are unreasonably long, especially for use by small sources. Moreover, delays in finalizing the protocol guidance documents could delay implementation, and testing procedures to verify some of the emission quantification protocols for mobile sources have not been developed. The Coalition and Michigan commented that Michigan's program had adequate provisions for requiring adequate protocols.

*Response:* EPA believes that changes Michigan has made to its trading rule provisions dealing with emissions quantification protocol improve the program significantly, and were needed to establish clear standards for judging the validity of emission reductions. Open market trading is a relatively new concept; EPA has drafted, but not finalized, guidance for development of protocols to quantify emission reductions used to generate credit in open market trading programs. EPA believes that it is appropriate for Michigan to require quantification of ERCs using state and federal procedures that might be promulgated in the future. Such a requirement does not delay implementation, and EPA believes that small sources will still be able to generate credits.

*Comment:* General Motors commented that synthetic minor sources that temporarily violate a synthetic minor permit condition should be allowed to avoid major source status temporarily through the use of emissions reduction credits. The emissions impact of allowing sources to utilize the program in this way is likely to be small. The Coalition and Michigan argue that the provisions of Michigan's program for synthetic minor sources are consistent with federal New Source Review regulations.

*Response:* EPA encourages emissions trading that provides alternative means of compliance with existing regulatory requirements. However, EPA cannot accept programs that allow sources, even temporarily, to avoid regulatory requirements. To do so would allow trading programs to increase emissions above what they would be in the absence of trading. The earlier version of Michigan's program reviewed in the September 18, 1997 proposal would have allowed sources to use credits to violate conditions in synthetic minor permits designed to ensure that sources do not emit above major sources thresholds, thereby potentially avoiding requirements that otherwise would have applied. In response to EPA's concerns, Michigan removed this provision.

*Comment:* GM commented that trading for non-ozone precursor emissions should be allowed between attainment and nonattainment areas, ''approved on a case-by-case basis which demonstrates their benefit.''

*Response:* EPA agrees, and proposes to accept the provisions of Michigan's program that allow use in a nonattainment area of criteria pollutant ERCs generated in ''an adjacent area that contributes to the relevant air quality problem in the proposed use areas.''

*Comment:* The Air Bank commented that requiring the use of EPA protocol development criteria will impose excessive requirements on small sources. Instead, sources should use EPA-approved protocols where they exist, with Michigan having latitude to review and implement alternative protocols.

*Response:* EPA believes that it is necessary to apply protocol development criteria to judge the adequacy of protocols that are developed as part of an open market trading system. Without such criteria, sources would have no basis for knowing whether emissions reductions would be considered valid, and it would be difficult to enforce against generators and users of bad credits. Alternative protocols can be implemented through SIP revisions.

*Comment:* Michigan, the Air Bank and the Coalition commented that interstate trading should be allowed without a Memorandum of Understanding (MOU) between the affected states. MOUs are not required by federal law and do not enhance federal enforceability. States may be reluctant to develop MOUs, and they may be too narrowly written to foster development of a robust market.

*Response:* MOUs are needed not to enhance federal enforceability, but to ensure state enforceability of interstate trades. MOUs are needed to ensure that states have adequate access to information, and to address consistency between key EIP elements in each of the states that are involved. While it may be time-consuming to negotiate an MOU with other states, states participating in the $NO_X$ cap and trade program will not need to develop MOUs for interstate trading. $NO_X$ is the pollutant most likely to be traded between states.

*Comment:* The Coalition disagreed that it is necessary for Michigan to outline the procedures that will ensure that $NO_X$ ERCs generated though early compliance with title IV of the Clean Air Act will expire prior to January 1, 2002, and that they will not be utilized in other states. The Coalition points out that Michigan's rules already require such credits to expire, and that Michigan can do nothing beyond that to ensure that such credits are not used in other states.

*Response:* EPA agrees that Michigan's rules will require $NO_X$ ERCs generated through early compliance with title IV to expire prior to January 1, 2002. Michigan's only responsibility to other states is to ensure that such credits are removed from the trading registry. EPA is now satisfied that Michigan's program accomplishes this removal.

*Comment:* Michigan and the Coalition objected to the condition that Michigan must require sources that participate in trading ''to disclose all estimated or measured negative effects of trading on emissions of the hazardous air pollutants (HAPs) listed in section 112 of the Act.'' This condition would create requirements in trading programs beyond those in current command and control regulations, and are unnecessary because Michigan's program allows only de minimis increases in HAP emissions. Moreover, the disclosure requirement would create an impediment to emission trading by requiring firms to quantify every increase in HAP emissions (rather than simply verifying that such increases were below allowed levels).

*Response:* As the Coalition points out, Michigan's program already requires verification that toxic emissions thresholds are not being exceeded. What EPA requires is that the information generated through such verification be made available to the public. Michigan has agreed to make this information available to any citizen who requests it, and to evaluate the overall impact of the trading program on HAP emissions in its publicly available tri-annual review of the program. EPA believes that these extra protections are not onerous, and are needed so that the public can be aware of the impact on localized HAP emissions of the use of ERCs, particularly for compliance with VOC RACT.

*Comment:* Michigan objected to the proposed requirement that the SIP include a statement that ERCs do not constitute a property right. Unlike trading programs in which credits are government-certified, there is no implication in the Michigan program that credits might constitute a property right, and no ability of sources to demand restitution from the State if credits are canceled. However, Michigan will provide an Attorney General statement to the effect that ERCs do not constitute a property right.

*Response:* EPA agrees with Michigan's interpretation of this issue, and believes that the Attorney General's statement helps clarify the legal status of ERCs.

*Comment:* Citizen's Commission for Clean Air in the Lake Michigan Basin (CCCA–LMB) commented that until the rule receives full approval, sources using ERCs for SIP compliance are potentially subject to citizen suits for non-compliance with SIP requirements, and the State of Michigan is potentially subject to citizen suit for non-implementation of the SIP. Moreover, the program raises the possibility of complaints and suits under Title VI of the Civil Rights Act. EPA should communicate that trades under Michigan's trading program are unacceptable and illegal.

*Response:* EPA believes that Michigan's program will achieve environmental benefits through the retirement of ten percent of all ERCs and by allowing Michigan to require RACT at sources that could not comply with RACT except by using ERCs. While it is true that sources that use Michigan's emissions trading rules for compliance with SIP requirements could be subject to enforcement action, EPA does not wish to discourage environmentally beneficial trades under the program.

*Comment:* CCCA–LMB comments that proposed approval of Michigan's trading program was inappropriate, given the deficiencies that were identified with the program. Upon correction of the deficiencies, EPA should re-propose its rulemaking action, ''to allow the public a chance to review and comment on the program in appropriate context.''

*Response:* EPA agrees that the public should have an additional opportunity to comment, given the significance of the changes to Michigan's trading program since publication of the September 18, 1997 proposal. EPA is providing such an opportunity with this action.

*Comment:* CCCA–LMB commented that the basis for EPA's rulemaking is unclear, and that EPA has declined to review the program against previous guidance.

*Response:* EPA has used both the 1994 EIP guidance and the 1995 proposed Open Market trading guidance in its evaluation of Michigan's program.

*Comment:* CCCA–LMB commented that Michigan's program defines ''surplus'' inadequately, and fails to require that ERCs be based on emissions reductions beyond those required in the SIP or presumed in the applicable attainment, progress, or maintenance plans. The regulations fail to ''require either the source or the State to determine if the reductions have been otherwise presumed in the applicable plans.'' Moreover, inadequacies in parts of Michigan's SIP other than the trading program undermine the validity of the open market trading program, since attainment demonstrations predict continued ozone NAAQS violations and rely on overly optimistic emission budget projections. Moreover, several areas in Michigan are in violation of the one and eight hour ozone NAAQS.

*Response:* Michigan's rules define surplus as emissions reductions made below an established baseline and not required by the SIP, federal implementation plan, attainment demonstration, reasonable further progress plan, or maintenance plan. EPA is requiring a statement from Michigan that the surplus concept applies to all reductions relied upon in applicable plans. Program rules require sources that register ERCs to certify that reductions are surplus. This rulemaking addresses the adequacy of Michigan emissions trading program, and not the other elements of Michigan's SIP. The trading program has environmental benefits and satisfies applicable requirements irrespective of any alleged deficiencies in Michigan's attainment demonstrations.

*Comment:* CCCA–LMB commented that EPA's proposed action does not ensure compliance with executive orders on environmental justice, and that CCCA–LMB is concerned that the program will lead to increases or foregone reductions in emissions of toxics in industrial minority and low income communities. The State's rulemaking has not provided adequate opportunities for CCCA–LMB and its partners to comment on its concerns regarding environmental justice and the impact of trading on HAP emissions. The East Michigan Environmental Action Council expressed concern that the program could result in the creation of toxic hot spots.

*Response:* Michigan's program protects against credit uses that would cause significant localized increases in HAP emissions, large enough to cause or exacerbate a violation of a toxic air contaminant health based screening level. Moreover, the program creates incentives for overall reductions in VOCs, reducing the probability of a localized increase in HAPs. These are the program's first line of defense against creating unacceptable concentrations of HAPs, including in minority and low income communities. The program has added a second line of defense: triennial program review to determine the impact of the program on air toxics emissions. EPA expects that the State will take action if this review reveals the program has contributed to the creation of toxic hot spots, or that it has prevented the elimination of a toxic hot spot. The State has satisfied the requirements to provide opportunity for the public to express concerns about the program.

*Comment:* CCCA–LMB commented that some provisions of Michigan's program lack needed public comment and review. Provisions identified as needing public comment and review include the development of a triennial report evaluating the effectiveness of the program and the ''decision making on adequacy of ERC generation and usage.''

*Response:* Rule 1217(2) states that Michigan ''shall seek public input on the findings contained in the evaluation report and shall provide for the public notice of the findings, a public comment period on the findings, and an opportunity for a public hearing on the findings contained in the report.'' EPA believes that Michigan's program provides adequate opportunity for public review of the triennial evaluation report. EPA does not believe that public comment and review on the adequacy of each generation or use of ERCs is necessary; in fact, requiring such comment and review would seriously hamper the operation of the program.

*Comment:* CCCA–LMB commented that EPA should require Michigan to submit detailed audit and reconciliation procedures, rather than the general provisions that require assessment of whether the program is consistent with attainment and maintenance of the NAAQS. For instance, the program's impact on the temporal and spatial assumptions in attainment, progress, and maintenance plans should be evaluated, as stated in the proposed guidance on Open Market Trading Programs.

*Response:* EPA believes that the general provisions on evaluating the program's consistency with attainment, progress, and maintenance plans, as well as provisions requiring assessing compliance, impact on public health and the environment, achievement of reductions across a spectrum of sources, and the sufficiency of source audits, are adequate. EPA believes that to accomplish such an evaluation, Michigan would need to assess the program's impact on the temporal and spatial assumptions in attainment, progress, and maintenance plans. Michigan should refer to all relevant EPA guidance when developing its program audit report.

*Comment:* CCCA–LMB commented that inter-sector trading in Michigan's program ''lacks even cursory consideration of appropriate baselines, allocation, enforcement, etc.''

*Response:* EPA believes that these provisions in Michigan's program are adequate.

*Comment:* CCCA–LMB requested that EPA disapprove Michigan's program, and that EPA ''issue guidance for review and comment clarifying the appropriate use of such programs before reconsideration of this rule.''

*Response:* EPA is developing revised guidance on emissions trading programs, but is still obligated under the Clean Air Act to review SIP revisions submitted by the State in a timely manner. EPA believes that Michigan's program is approvable under applicable existing guidance.

*Comment:* The East Michigan Environmental Action Council (EMEAC) commented that it is troubling that emissions trading treats the right to pollute as a commodity ''which can be monetized and traded.''

*Response:* Emission trading does not create a right to pollute. Instead the program modifies an existing set of restrictions on allowable emission rates to authorize alternative restrictions that EPA views as collectively more stringent.

*Comment:* EMEAC objected to the fact that the program will allow older facilities to buy credits in lieu of reducing emissions. EMEAC commented that the program should be restructured to encourage emission reductions from older industrial facilities in urban areas, rather than creation of credits in ''greenfield'' areas which could be ''sold to innercity industries to delay pollution prevention measures indefinitely.''

*Response:* While Michigan's program will allow some older facilities in urban areas to use emission reduction credits in lieu of reducing emissions, EPA believes that on balance the program creates incentives for emissions reduction in urban areas. New facilities

in ''greenfields'' generally have to be controlled with best available control technology or meet the lowest achievable emission rate. Therefore, such facilities are unlikely to have surplus emissions to reduce. Thus, EPA expects that most credit generation will be in urban areas and other areas with older facilities.

*Comment:* EMEAC commented that a five-year lifetime for VOC credits ''is unacceptable and undercuts the goal of environmental protection.'' A lifetime of two ozone seasons is more appropriate.

*Response:* EPA considers a five-year lifetime for VOC credits to be acceptable. The proposed guidance on open market trading would allow an indefinite credit lifetime. Michigan's program discounts older credits by requiring VOC (and $NO_X$) ERCs used for ozone season compliance to be discounted 10 percent annually until retirement.

*Comment:* EMEAC commented that the Michigan program lacks ''flow control'' provisions that would prevent credits from being consumed faster than they are created. Absent such provisions, emission spikes could occur, creating an exceedance of the NAAQS.

*Response:* EPA believes that in a program of this nature, available ERCs are likely to represent a small percentage of the total inventory, reducing the possibility of spiking. Moreover, credit discounts and notice review procedures reduce the probability of emissions spiking. Nonetheless, EPA recognizes that the open market trading creates a potential for emissions spiking. Thus, Michigan is expected to perform an analysis of whether spiking has occurred under the triennial program evaluation provisions requiring assessment of whether the program is consistent with maintenance of the NAAQS.

*Comment:* EMEAC noted that VOCs differ in their toxicity and reactivity (ozone-forming potential). Yet, Michigan's program would allow trading of VOCs with no consideration of their differing reactivities and inadequate consideration of their differing toxicities.

*Response:* EPA believes that it is unlikely that VOC trading will have a tendency to increase emissions of highly reactive VOCs; safeguarding against this unlikely possibility would place a significant burden on a trading program. EPA believes that Michigan's program adequately protects against increases in emissions of toxic air contaminants in amounts that could be damaging to the public health.

*Comment:* EMEAC commented that it might be preferable for Michigan to adopt a ''mandatory'' program with an emissions cap that would assure continued attainment with the NAAQS. Such a program might fit better with interstate trading efforts.

*Response:* EPA would welcome submission of a cap-and-trade program as part of Michigan's SIP. Moreover, EPA encourages Michigan to participate in the regional $NO_X$ cap-and-trade system. Nevertheless, EPA believes that voluntary programs can be environmentally beneficial.

*Comment:* EMEAC commented that ''credits should not be used by any facility currently in violation of any rule or permit requirement.''

*Response:* There is no law, policy or guidance prohibiting emission trading at sources that are in violation of a rule or permit requirement. In fact, requiring sources to purchase ERCs in settlement of enforcement action can be an effective way to discourage violations and to stimulate the market for emission reductions. Michigan's trading program appropriately prohibits generation of credits through reductions made to correct violations.

*Comment:* The Environmental Defense Fund (EDF) commented that cap and trade programs are superior to open market trading programs, such as Michigan's, and that EPA should not approve ''substandard'' programs that do not guarantee environmental performance as successfully as well-designed cap and trade programs. Cap and trade programs set an overall emissions cap consistent with achievement of air quality objectives, and allow emissions trading under that cap.

*Response:* EPA agrees that cap and trade programs can be effective means of gaining emissions reductions, while providing flexibility to sources. However, EPA disagrees that open market trading programs are necessarily ''substandard,'' and believes that with inclusion of appropriate protections, they can provide flexibility for sources and maintain or even improve environmental performance.

*Comment:* EDF commented that EPA should not allow Michigan's program to apply to criteria pollutants other than ozone.

*Response:* EPA was concerned that trading of criteria pollutants other than ozone under Michigan's program could create attainment or maintenance problems, given the potential for localized ''hot spots'' of these pollutants. Therefore, in the September 18, 1997 proposed action, EPA identified a need for procedures in the SIP that would require modeling analysis to ensure identification of credit uses that might lead to such problems. Michigan has included such procedures in its SIP, and will disallow credit uses when modeling reveals potential problems. Therefore, EPA is satisfied that trading in Michigan for criteria pollutants other than ozone is acceptable and will be environmentally beneficial.

*Comment:* EDF commented that open market trading programs such as Michigan's fail to create adequate incentives for continual, sustained, credit generation to balance use of previously-generated credits, since they lack emissions caps to drive demand for credits.

*Response:* The demand for credit generation under open market trading is driven not by emissions caps but by an anticipated market for credits that can be used to comply with existing and future regulations. Thus, if sources use ERCs, it will imply a future market for additional ERCs, creating an incentive for additional credit generation.

*Comment:* EDF commented that Michigan's trading program would fail to achieve and maintain the NAAQS, and fail to ensure that emissions reductions are surplus. The program's lack of an emissions cap would mean that emissions might exceed those anticipated in an area's emissions budget. Thus, trading would not ensure compliance with the NAAQS. If emissions credits are used in a circumstance in which an emissions budget has been exceeded, the credits are no longer surplus.

*Response:* Unlike cap and trade programs, open market trading programs are not designed to achieve overall programmatic reductions. Instead, they allow flexibility in complying with existing regulations. While an open market emissions trading program must not interfere with attainment of the NAAQS, the primary responsibility for limiting emissions to ensure that NAAQS and other Clean Air Act requirements are met belongs to the other elements of the SIP, and the State's attainment, progress and maintenance plans. In an open market program, emissions reductions cannot generate credit unless they are surplus to the SIP and attainment, progress, and maintenance plans. If these plans are inadequate, then they, not the trading program, must be corrected. However, Michigan's program does provide additional protections against NAAQS violations and uses of credits that would exceed an attainment or maintenance plan emissions budget; the rules state that credit use may not result in a violation of the NAAQS, PSD increments, maintenance plan, RFP, or

attainment. This provision is backed by procedures (which have been submitted for inclusion in the SIP) that require, for credit uses above de minimis levels, evaluation of whether the proposed use would result in a violation of the NAAQS, attainment progress, or maintenance plans.

*Comment:* EDF and EMEAC commented that generation of credits based on shutdowns and curtailments should not be allowed. EMEAC expressed a concern that allowing such credits will create an economic incentive for sources to leave existing sites in urban areas and reopen in ''greenfield'' sites, creating urban sprawl.

*Response:* EPA agrees that it is problematic to allow use of credits based on shutdowns and curtailments under an open market trading program, since use of such credits could compromise attainment and maintenance of the NAAQS. EPA's preferred option, as stated in the September 18, 1997 proposed action, would be to prohibit generation of such credits. However, there is another acceptable option, which Michigan has selected: to allow shutdown and curtailment credits to be generated, but protect against the possibility that use of such credits could compromise attainment or maintenance by prohibiting their use inside an area that has or needs an attainment or maintenance plan. Sources will be able to use such credits in nonattainment or maintenance areas only for offsetting (which is already allowed under the federal new source review program), or if EPA determines that such uses are acceptable. EPA does not believe that the economic gains from generating credits through activity level reductions provide an economic incentive sufficient to promote shutdowns or curtailments that would not otherwise occur.

*Comment:* EDF objected to the liability scheme in Michigan's trading program, in which credit users are liable for the validity of the credits that they use, even if those credits were generated by another source. EDF commented that ''the agency should re-cast the proposed rule to rely on generator liability with prior certification of emissions reduction credits.'' Detection and punishment of non-compliance are made more difficult by this liability scheme, since assessment of a user source's compliance requires determining not only whether sufficient credits are held to cover emissions, but also determining whether the credits themselves are valid. Determining whether credits are valid will be particularly difficult to make if the credits are years-old. Moreover, the using source may have little incentive to assure the quality of the credits that it uses, since in enforcement cases it could invoke ''good faith reliance'' on representations made by the credit generator.

*Response:* EPA appreciates EDF's concerns, but believes that the liability scheme in Michigan's rule will be effective. Prior certification of emission reduction credits, as EDF favors, could strain state staff resources, potentially leading to certification of invalid credits. Under Michigan's program, incentives for generators to assure the validity of credits that they register will be provided by state audits of generating sources combined with user source efforts to assess credit validity. EPA believes that the recordkeeping requirements of Michigan's program will help in this assessment, even for credits that are several years old. Moreover, user sources will not be able to invoke ''good faith reliance'' in an enforcement case, given that Rule 1216(1) states that ''notwithstanding another person's liability, negligence, or false representation, a person who owns or operates a source * * * shall be solely responsible to ensure that any affected source * * * under his or her ownership or control is in compliance with all applicable emission standards and limitations.'' Thus, the rules provide that user sources are responsible for the validity of credits that they use.

*Comment:* EDF commented that the proposed rule would impose liability only for false or deficient certification of credits on generators, while failing to alter the generator's emissions limitation requirements to reflect credit generation.

*Response:* Rule 1213(6) states that ''the methods used and operational changes made to reduce emissions and the conditions and requirements for emission averaging or the generation of emission reduction credits'' become ''legally enforceable operating requirements'' for the generating source.

*Comment:* EDF commented that Michigan's program would ''undermine development of comprehensive trading programs and strategies for addressing long-range pollution transport,'' specifically the $NO_X$ budget trading rule for the 22 states, including Michigan. A provision in Michigan's program addressing the interface between the program and potential interstate cap and trade programs is ''inadequate and exposes a fundamental misunderstanding of how emissions trading works.'' Baseline and inter-temporal features of Michigan's program make it incompatible with the 22-state $NO_X$ reduction program.

*Response:* Michigan's program will not undermine interstate trading programs, including the 22-state $NO_X$ budget program. EPA is implementing this program and will not allow interstate trading to meet $NO_X$ requirements except through the EPA-administered program. Other potential regional programs will define their requirements, either to include or to exclude use of ERCs generated under Michigan's trading program and other trading programs, as appropriate.

**When Was Michigan's Program Adopted?**

Michigan provided public notification of proposed revisions to the Emission Averaging and Emission Reduction Credit Trading Rules on June, 4, 1998 and held a public hearing on July 8, 1998, with written comment requested on the same day. Michigan's revised Emission Averaging and Emission Reduction Credit Trading Rules were adopted on March 26, 1999, became effective April 13, 1999, and were corrected on April 30, 1999.

**When Was Michigan's Program Submitted to EPA and What Did It Include?**

Michigan submitted its revised emission trading SIP revision to EPA on July 21, 1999. EPA determined the submittal administratively and technically complete on August 23, 1999.

Michigan's emissions trading program SIP revision included the following elements:

- Part 12 Emission Averaging and Emission Reduction Credit Trading Rules, as amended April 13, 1999 and including changes made pursuant to a notification of obvious correction from Michigan Department of Environmental Quality Office of Regulatory Reform Regulatory Reform Officer to Michigan Legislative Services Bureau Legal Counsel;
- A June 29, 1999 Certification by the Michigan Attorney General that ERCs do not constitute a property right;
- An analysis of ERCs generated prior to the effective date of the original Part 12 Rules (March 16, 1999);
- Notice of ERC Generation (NOG) Review Procedures, including State-Approved NOG Form;
- Notice of ERC Transfer/Trade (NOT) Review Procedures, including State-Approved NOT Form;
- Notice of ERC Use or Retirement (NOU) Review Procedures, including State-Approved NOU Form;

- Notice of Emission Averaging (NOA) Review Procedures, including State-Approved NOA Form; and
- General Program Evaluation Procedures.

**Conclusion**

EPA is proposing to approve the Michigan SIP revision for ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide, particulate matter and lead. This SIP revision implements Michigan's Emission Averaging and Emission Reduction Credit Trading Rules.

EPA is requesting public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section.

**Administrative Requirements**

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

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Emission trading, Hydrocarbons, Lead, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671(q).

Dated: January 19, 2001.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01–3164 Filed 2–6–01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[NH035–1–7161b; A–1–FRL–6942–4]**

### Approval and Promulgation of Air Quality Implementation Plan; New Hampshire; Discrete Emissions Reductions Trading Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes regulations for an emissions trading program Env–A 3100, Discrete Emissions Reductions Trading Program, which provides a more cost-effective mechanism for sources to meet regulatory requirements for reducing oxides of nitrogen and volatile organic compound emissions. This action is being taken under the Clean Air Act (CAA). Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**DATES:** Comments must be received on or before March 9, 2001.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, PO Box 85, Concord, New Hampshire 03302–0095.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl at (617) 918–1657, or by electronic mail at *Dahl.Donald@EPA.GOV*.

**SUPPLEMENTARY INFORMATION:**

**Overview**

The Environmental Protection Agency (EPA) is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes regulations for an emissions trading program Env–A 3100, Discrete Emissions Reductions Trading Program.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

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EPA's Proposed Action

## What Action Is EPA Proposing Today?

EPA is proposing a conditional approval of New Hampshire's Env–A 3100. On January 9, 1997, the New Hampshire Air Resources Division (ARD) submitted Env–A 3100 to EPA for approval into the New Hampshire SIP. Additional documentation was submitted to EPA by DES on February 24, 1998. This revision establishes regulations for an emissions trading program Env–A 3100, Discrete Emissions Reductions Trading Program (DER).

## Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit written comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections,
- Fulfill New Hampshire's and EPA's requirements under the Clean Air Act (the Act),
- Make New Hampshire's DER Program federally-enforceable.

## What Is Emissions Trading?

Air emission trading is a program where one source, for example a power plant, reduces its emissions below the level it is required to meet. This source then sells or trades these reductions as credits to another source which continues to release emissions above its required levels. In return for this flexibility, the second source must purchase additional credits beyond those needed to comply, therefore reducing overall emissions. Emissions trading uses market forces to reduce the overall cost of compliance for sources, while maintaining emission reductions and environmental benefits.

## What Is Discrete Emissions Reduction Trading?

New Hampshire's Discrete Emissions Reduction Trading Program (DER Program) is similar to an Open Market Emission Trading Program as described in EPA's model Open Market Trading Rule (OMTR) which was proposed on August 25, 1995 (60 FR 44290). In a Discrete Emissions Reduction trading program, a source generates short-term emission reduction credits, called discrete emission reductions (DERs) by reducing its emissions. The source can then use these discrete credits at a later time, or trade them to another source to use at a later time. The trading program relies on many sources continuing to generate new discrete credits to balance with other sources using previously generated discrete credits.

For example, a power plant adds on additional controls that reduce oxides of nitrogen ( $NO_X$) emissions beyond Clean Air Act requirements. This emission reduction could generate discrete credits. The power plant trades these discrete credits to an industrial manufacturer that operates boilers to generate process steam. In the future, the manufacturer can use the discrete credits to meet its $NO_X$ control requirements. While the manufacturer is using the discrete credits, the power plant and other sources are also reducing emissions and generating discrete credits. But the manufacturer must also purchase an additional amount, 10 percent, of discrete credits above the number of credits they would otherwise need to comply. The manufacturer, or any other source, will never use this additional amount for compliance. This is known as a retirement of credit to benefit the environment. The total effect is to reduce emissions.

## What Are EPA's Proposed Conditions for Approval?

EPA is proposing the following conditions that would need to be met before EPA can approve New Hampshire's DER Trading Program. These areas of New Hampshire's DER Program do not fully satisfy EPA's guidance. A Technical Support Document (TSD), prepared in support of this proposed action, contains a full description of EPA's conditions for approval. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

### *1. Using Approved Emission Quantification Protocols*

With regard to New Hampshire, the credit quantification protocol provisions of Env–A 3100 mirror EPA's August 1995 proposed model rule language concerning protocols. However, since the proposal there have been some changes made to EPA's guidance regarding emission quantification protocols in trading programs. See EPA's proposal to grant conditional approval of New Jersey's open market trading program, 66 FR 1796. One of the recent changes addresses the procedures for adopting alternative protocols in existing guidance. The notice for New Jersey's program states that EPA approval is required prior to allowing a source to deviate from an established EPA emission quantification protocol. ENV–A 3107.02(b) states that EPA approval is not needed in advance when a source wants to deviate from

established protocols in calculating emission credits. In order to receive full approval, New Hampshire must require that deviations to existing protocols first be approved by EPA prior to their use.

*2. Delayed Trading*

EPA guidance requires emission trading programs to require sources to purchase credits prior to the source having to use those credits to comply with their emission limits. ENV-A 3104.11 allows a source, when credits are unavailable, to delay the purchase of credits after the period the source needed them to comply with emission limits resulting from New Hampshire's Reasonable Available Control Technology requirements. If a source is dependent on using emission credits to comply with RACT requirements, it is the source's responsibility to ensure that credits will be available when it makes it's choice not to add emission controls to comply with the RACT requirements. Therefore, for full approval New Hampshire must require source's to have sufficient emission credits prior to the intended use period.

*3. Claiming Ownership of Discrete Credits*

Env-A 3100 states that a source is eligible to generate discrete credits. However, New Hampshire's DER Program is unclear in a situation when different parties try to claim the same emission reduction from a source as a credit. This issue is significant because the rights to credits generated by a particular credit generation strategy will be unclear in some cases. For instance, a manufacturer of a device or fuel additive that reduces automobile emissions might attempt to register credits based on the sale of the device or fuel additive within New Hampshire. However, an owner of a vehicle fleet might also attempt to register credits based on his or her installation of those same devices or use of fuel within the fleet. Registration of both sets of credits would double count the emission reductions, leading to the generation of excess credits.

For full approval, New Hampshire must address the issue of ownership claims in its regulation and make provisions for reporting ownership claims in the Notice and Certification of Generation.

*4. Notifying Metropolitan Planning Organizations*

To avoid double-counting the emission reductions generated by mobile sources in trading programs, the state must ensure coordination between the emission trading program and the conformity analyses in the area in which the trading program takes place. Metropolitan Planning Organizations should not use any reductions they receive notice about, for transportation conformity. Similarly, the trading program should not allow use of reductions that the Metropolitan Planning Organizations rely on in a transportation conformity determination. New Hampshire should require a generator of mobile-source emission reductions to notify the Metropolitan Planning Organizations in the area, and the State Department of Transportation of the generator's intention to generate emission reductions. The generator must provide enough information to the Metropolitan Planning Organizations about the likely emission reductions from the activity to allow the Metropolitan Planning Organizations to adjust its regional conformity analyses appropriately. Once notified, the Metropolitan Planning Organizations may not use these emission reductions to satisfy the requirement for transportation conformity.

*5. Notifying the Federal Land Manager*

EPA has a policy of providing special protection for Class I areas (pristine environments such as international parks, large national parks and wilderness areas), as required under sections 160 through 169 of the Act. New Hampshire has two Class I areas—the Great Gulf Wilderness Area and Presidential Range-Dry River Wilderness Area. This policy includes keeping Federal Land Managers informed of activities that could affect air quality in Class I areas. In accordance with this policy, New Hampshire must revise Env-A 3100, or submit procedures as part of the SIP, which requires New Hampshire to send a notification to the relevant Federal Land Manager at least 30 days prior to any discrete credit use activity occurs approximately within 100 kilometers of a Class I area.

*6. Accounting for Discrete Credits in Emission Inventory*

The Act requires states to have an emissions inventory that specifically accounts for actual emissions of all major stationary sources and minor/area source categories. EPA's General Preamble guidance to the Act also requires the inventory to consider credits available for use as if they are in the air for all attainment demonstrations. Therefore all attainment modeling demonstrations must include all unused credits, that sources can eventually use, as actual emissions. While this can inflate an area's actual emissions inventory above the level of what will probably occur, it does not inflate emissions above what could potentially occur. For emission trading purposes, EPA has and continues to require that attainment, reasonable further progress and rate-of-progress demonstrations use a worst-case emissions scenario. This is to discourage the accumulation of large banks of credits that could potentially ruin any attainment plan or demonstration if the credits were all used at the same time. For full approval of Env–A 3100, New Hampshire must submit to EPA additional information on how the emission inventories account for unused credits under New Hampshire's DER Program.

*7. Rule May Allow Use of Credits To Avoid Permitting Requirements*

Env–A 3104.10 contains a list of situations where DERs cannot be used. Env–A.3104.10(b) correctly states that DERs cannot be used to avoid the applicability of NSR requirements. This is consistent with EPA's policy that emission credits cannot be used to avoid the applicability of a Clean Air Act Requirement. Credits can only be used to comply with requirements. However, New Hampshire's rule does not prohibit the use of DERs to avoid a source's applicability to New Hampshire's title V operating permit program (state regulation Env–A 609). For full approval, New Hampshire must add to Env–A 3104.10 a prohibition on using DERs to avoid the title V operating permit program.

*8. Rule Allows for Trading $NO_X$ Emission Reductions To Meet VOC Reduction Requirements*

Env–A 3104.10(f) allows for $NO_X$ reductions to be used to meet VOC reduction requirements using a $NO_X$ to VOC ratio of 1:1. EPA recognizes that inter-precursor trading can be done under very limited circumstances. First, the pollutants being traded must impact the environment in the same way. In New Hampshire's rule, inter-precursor trading is limited to trading $NO_X$ emission decreases for VOC emission increases. Science and the Clean Air Act (CAA) recognize that both $NO_X$ and VOC emissions combine in the atmosphere to create ozone and that in some areas reducing one of these pollutants is more important. In fact, CAA § 182(c)2(C) provides for states with ozone problems to substitute $NO_X$ reductions for VOC reductions in their Attainment and Reasonable Further Progress Plans. Second, EPA believes that any proposed inter-precursor

emission trade should be analyzed for the extent of impact from each pollutant involved in the trade. For example, it would not make sense to allow a trade of a decrease of 1 ton of pollutant A for an increase of one ton of pollutant B if pollutant B has a greater environmental impact than pollutant A. New Hampshire's rule allows for a one ton decrease in $NO_X$ to be traded for a one ton increase of VOC. Both VOC and $NO_X$ impact the concentration of ozone.

Based on this policy, in 1997, EPA told New Hampshire that in order for EPA to accept New Hampshire's trading program, an analysis would have to be performed to demonstrate that $NO_X$ emissions impact ozone formation more than or the same as VOC emissions. On February 24, 1998, New Hampshire submitted to EPA an analysis of trading $NO_X$ for VOC emissions. The analysis is based on a series of urban airshed modeling runs which demonstrate that $NO_X$ emissions have a greater effect than VOC reductions on reducing ground level ozone in New Hampshire. Based on this supporting documentation, EPA finds that a 1:1 ratio of $NO_X$ for VOC is supportable in New Hampshire. This means that a one ton decrease in $NO_X$ emissions can be used for a one ton increase of VOC emissions.

Env–A 3104.10(f), however, also allows the state to increase the ratio of $NO_X$ to VOC from 1:1 to something greater, based on another analysis. The state rule requires any additional analysis to follow some general criteria. The problem with this provision is that inter-precursor emission trades using a ratio different from 1:1 could occur without the opportunity for EPA or public review. It is critical that the public and EPA are given the opportunity to review any analysis used to support inter-precursor emission trading.

Therefore, for full approval, New Hampshire must revise Env–A 3104.10(f) to remove the ability for the state to allow for inter-precursor trading at a ratio greater than a 1:1 ratio of $NO_X$ for VOC emissions. In the future, if New Hampshire demonstrates that a different ratio is more appropriate, New Hampshire should revise Env–A 3100 to reflect the new analysis and submit the rule change to EPA for approval as a revision to the New Hampshire SIP.

**What Other Clarifications Should New Hampshire Make in Their Program?**

In addition to the issues which EPA is conditionally approving Env–A 3100, there is one area of the rule that New Hampshire should clarify. New Hampshire should clarify in Env–A 3110 that it is a violation for each and every day within an averaging period if a source does not meet the requirements of the trading rule (e.g., have sufficient discrete emission reductions, keep records, etc) for that averaging period. That is, a source will have 30 days of violations if a monthly averaging limit is not met and 365 days of violations if an annual limit is not met. While EPA understands that this is what New Hampshire meant in Env–A 3110, this provision is not an approval issue, and clarification would make the DER program more understandable.

**How Can New Hampshire Get Full Approval for Their Program?**

EPA is proposing conditional approval of New Hampshire's DER Program, provided New Hampshire commits to correct the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section, in writing, on or before March 9, 2001. New Hampshire must then correct the deficiencies and submit them to EPA within one year of EPA's final action on the DER Trading Program SIP revision.

If New Hampshire submits a commitment to comply with EPA's conditions, EPA will publish a final conditional approval of New Hampshire's DER Program. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the January 9, 1997 and February 24, 1998 submittals. If New Hampshire does not make the required commitment to EPA, EPA is proposing to disapprove the DER Program.

**What Guidance Did EPA Use To Evaluate New Hampshire's Program?**

EPA's basis for evaluating New Hampshire's DER Program is whether it meets the SIP requirements described in section 110 of the Act. In 1994, EPA issued Economic Incentive Program (EIP) rules and guidance (40 CFR part 51, subpart U), which outlined requirements for establishing EIPs that States are required to adopt in some cases to meet the ozone and carbon monoxide standards in designated nonattainment areas. There is no requirement for New Hampshire to submit an EIP, so its DER Program need not necessarily follow the EIP rule. However, since subpart U also contains guidance on the development of voluntary EIPs, New Hampshire did follow certain aspects of the EIP guidance in the development and submittal of its DER Program. Lastly, on September 15, 1999 EPA proposed changes to the 1994 EIP.

EPA also published on August 3, 1995, a proposed policy on open market trading programs and on August 25, 1995, a model open market trading rule. EPA's proposed policy describes the elements of an open market trading program that EPA considers to be desirable and necessary for a program to be approvable as a SIP revision. The proposed policy also allowed States to adopt rules that varied from the proposed model rule. In a March 10, 1998-letter from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation to Congressman Thomas J. Bliley, EPA clarified its policy on open market trading. The letter said that EPA will work with states to develop open market programs tailored to their individual circumstances and use the August 1995 proposal as guidance.

Also available for reference is EPA's September 18, 1997 Proposed Action on the State of Michigan's Trading Rules and EPA's January 9, 2001 Proposed Action on the State of New Jersey's Trading Rules.

For further discussion of how these documents provide the basis of today's proposed action, see the section ''What is the Basis for Today's Proposal?'

**What Is EPA's Evaluation of New Hampshire's Program?**

EPA has determined New Hampshire's new Env–A 3100 regulation for New Hampshire's DER Program is consistent with EPA's guidance, except for the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section. New Hampshire's DER Program is based upon and is consistent with EPA's proposed Open Market Policy and Model Rule of 1995, EPA's proposal of 1997 on Michigan's Program, EPA's proposal of 2001 on New Jersey's Program, and EPA's proposal of 1999 to revise the EIP.

New Hampshire's Env–A 3100 contains provisions for definitions, generation, transfer, verification and use of discrete credits, the registry, geographic restrictions, recordkeeping, public availability, demonstrating compliance and penalties.

Given the documentation in the SIP submittal and the provisions of New Hampshire's DER Program, EPA believes New Hampshire has demonstrated the State's other regulations will achieve at least the same quantity of $NO_X$ and volatile organic compound (VOC) emission reductions, with or without the DER Program. Furthermore, given the extra reductions inherent in New Hampshire's reasonably available control technology (RACT) program, the

State will continue to meet the reasonable further progress and SIP attainment requirements. Based upon these analyses and documentation, and a requirement to conduct a periodic program audit, EPA believes that New Hampshire's DER Program will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

EPA has also determined, with the exceptions discussed in the ''What are EPA's Proposed Conditions for Approval?'' section, the emission quantification protocol criteria, monetary penalty structure, geographic scope of trading, early reduction credit, and program audit provisions of New Hampshire's DER Program are consistent with EPA's guidance.

A TSD, prepared in support of this proposed action, contains the full description of New Hampshire's submittal and EPA's evaluation. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

**New Hampshire's Open Market Emissions Trading Program**

*How Do Sources Generate Credits?*

Sources participating in the DER Program generate discrete credits by reducing emissions below a baseline over a discrete time period. The generation baseline is established by existing requirements, and is determined by the lower of allowable emissions or actual past emissions. Sources which generate discrete credits must submit a ''Notice'' to the state, which includes information about the source generating the reductions, the methods of generating the reductions, the amount of reductions, and the methods used to measure the reductions. An official representative of the source must certify the following:

- Information in the Notice is true, accurate and complete,
- Emission reductions generated are real and surplus,
- The emission quantification protocol used to calculate the emissions reductions, and
- A prohibited generation strategy is not the basis for the emission reduction.

*How Do Sources Use Credits?*

New Hampshire's DER Program requires discrete credits to be assigned a unique serial number by the state before they are used. The source using the credits must hold the credits prior to the compliance period for which the credits are going to be used. The user must submit a notice of intent to use the credits at least 30 days prior to the use period. Sources that wish to trade or use discrete credits must provide notices to the state with information about the source's intent to use discrete credits, as well as the source's use of the discrete credits. The notices must also include:

- Number of discrete credits to be used,
- The requirements the source will comply with through the use of discrete credits,
- Copy of the generation Notice for the discrete credits used,
- Statements that the discrete credits were not previously used or retired, and
- Certifications similar to the other Notices.

A generating source can use discrete credits at a later time, or trade them to another source to use at a later time. The source using discrete credits must purchase an additional 10 percent of discrete credits above the number of credits they would otherwise need to comply. This additional amount is not used for compliance, but retired to benefit the environment.

*What Are the Other Requirements of New Hampshire's Program?*

New Hampshire's DER Program also contains requirements on the geographic scope of trading, recordkeeping, public availability of information, and quantification protocols.

Sources can trade VOC or $NO_X$ discrete credits. Discrete credits must be designated as either ozone season (May 1 through September 30) or non-ozone season credits. Discrete credits generated outside of the ozone season cannot be used during the ozone season.

*How Does New Hampshire's Program Protect the Environment?*

New Hampshire submitted these rules as a SIP revision to allow sources which emit ozone precursors—$NO_X$ and VOCs—flexibility in complying with requirements already in the SIP. The program provides emissions sources with a financial incentive to reduce emissions below levels required by applicable Federal and State requirements and below the source's actual emissions of the recent past. Sources that make these extra reductions going beyond requirements generate discrete credits that they can use later or sell to other sources. Discrete credits may be used by sources to comply with emissions limits. The program is not a means of limiting emissions; instead, trading is meant to provide an opportunity to comply with existing emission limits in a more cost effective manner.

However, the DER Program protects the environment in several ways:

- New Hampshire has demonstrated that in each ozone season the number of discrete credits generated will be equal to or greater than the number used,
- The calculation of the number of discrete credits needed for use is conservative since the source must retire an additional 10 percent of credits, and
- The DER Program specifically requires credits to be surplus to reductions already relied on in the SIP.

*How Is New Hampshire's Program Enforced?*

New Hampshire's DER Program divides compliance responsibilities between the generator and user of discrete credit. In general, the generator and user are responsible for actions within his or her control, and a generator or user is in violation of Env–A 3100 if they do not fulfill their respective responsibilities.

The generator is responsible for ensuring that it has created discrete credits according to the DER Program and that the discrete credits are real, surplus, and properly quantified.

The user is responsible for ensuring that its use of discrete credits complies with the provisions of the DER Program, including the prohibitions on use (Env–A 3104.10). A user is also responsible for ensuring a discrete credit is not used unless the credit is verified, the credit was not previously used or retired, and the discrete credit is valid. In any enforcement action, the generator and user bear the burden of proof on each of their respective responsibilities

*How Does New Hampshire's Program Interact With Title V Permits?*

The purpose of the Title V permitting program, codified in 40 CFR Part 70, is to ensure that a single document identifies all applicable requirements under the Act for sources that are ''major sources'' or are otherwise required to obtain a federally enforceable operating permit. Part 70 contains provisions designed to streamline the process of modifying operating permits for facilities that wish to participate in an emissions trading program like the New Hampshire's DER program. See, e.g., 40 C.F.R. §§ 70.6(a)(8), 70.7(e)(2)(B).

*How Does New Hampshire's Program Provide for Emissions Quantification Protocols?*

A key element in the design and implementation of trading programs, including open market trading programs, is methods for quantifying

amounts of emissions. Precisely determining these amounts would be important to determine the amount of emissions by which a source may be exceeding its SIP or permit limits, and therefore the amount of emissions reductions the source would need to acquire in an emissions trade in order to meet those limits; as well as the amount of emissions a source may generate to sell. These methods are often referred to as emissions quantification protocols, or, simply, protocols.

In its notice regarding the New Jersey Trading Program, EPA identified as an issue the question of whether protocols maybe included in a Title V permit in lieu of the SIP itself. For a more complete discussion of this, see the New Jersey Notice, 66 FR 1796. However, EPA proposes to approve New Hampshire's DER Program on the basis that at the time New Hampshire adopted and submitted it to EPA, New Hampshire relied on the guidance provided at that time. As a result, EPA proposes to approve the provisions of the DER Program that the SIP must include criteria for protocol development but not the protocols themselves.

*When Was New Hampshire's Program Adopted?*

New Hampshire adopted the DER program on January 13, 1997.

*When Was New Hampshire's Program Submitted to EPA and What Did it Include?*

EPA received New Hampshire's submittal of its DER Program SIP revision to EPA on January 28, 1997. The rule was deemed administratively and technically complete by operation of law on July 28, 1997. Additional information was submitted by New Hampshire on February 24, 1998.

New Hampshire's DER Program SIP revision included the following elements:

- Env–A 3100 and
- Modeling analysis to support inter-precursor emission trading, specifically, $NO_X$ emission decreases to meet VOC emission reduction requirements.

**Other Significant Items Related to New Hampshire's Program**

*How Does New Hampshire's Program Avoid Adverse Local Impacts of Hazardous Air Pollutant Emissions?*

In VOC trading programs, it is important to recognize that many VOCs are also classified as hazardous air pollutants (HAPs). EPA is committed to protecting the health and environment of local communities from any negative impacts related to VOC trading. EPA is also committed to providing flexibility for local decision making that can allow for different circumstances in different localities.

While sources involved in VOC trading are required to meet all applicable current and future air toxics requirements, such as maximum achievable control technology (MACT), EPA believes VOC trading programs should build in additional safeguards for HAPs. In the September 15, 1999, proposed revisions to the EIP guidance, EPA outlined a draft framework for addressing HAP-related issues in VOC trading programs. The draft framework says VOC trading programs must contain the following general safeguards:

- A program review of the trading program to evaluate the impacts of VOC trades involving HAPs on the health and environment of local communities,
- Prevention and/or mitigation measures to address any negative impacts,
- Public participation in program design, implementation and evaluation, and
- Availability of sufficient information for meaningful review and participation.

EPA believes New Hampshire's DER Program is consistent with the proposed framework for addressing HAP-related issues in VOC trading programs as outlined below, even though New Hampshire adopted its DER Program prior to the proposed revisions to the EIP.

*Periodic Program Evaluation Provisions*

Env–A 3109 requires New Hampshire to audit the DER Program and assess the effects of toxic emission resulting from the DER Program. This audit is made available to the public within one year after the audit begins. Evaluation can also occur on a source-by-source basis through the public accessibility of the Notice and Certification of emission credit generation and use.

*Prevention and Mitigation Provisions*

New Hampshire's DER program is more restrictive than EPA's proposed open market trading model rule with respect to HAPs. The proposed model rule requires a user source to disclose the amount of HAPs emitted as a result of the use of discrete credits and certify compliance with the state's ambient air levels (AAL). AAL's are defined in New Hampshire's Regulated Toxic Air Pollutants, Env–A 1400. This state regulation requires existing, new, or modified sources to demonstrate that permitted emissions from the source do not violate the ambient air limits established by Env–A 1400. The DER Program requires each source to certify that any emission trade will not effect the source's compliance with the AALs. The public is further protected because New Hampshire uses risk analysis as the basis for developing AALs.

*Public Participation Provisions*

In developing the DER program, New Hampshire created a work group called Emission Reduction Trading Advisory Committee, which met on a monthly basis during program development. New Hampshire also held a public hearing on October 10, 1996 to discuss the rule before finalizing the rule in 1997.

*Information Availability Provisions*

New Hampshire's program requires each generator and user of emission credits to analyze the impact on air toxic emissions resulting from VOC emission trading. In cases where a source is required to have an operating permit, New Hampshire requires the emission trade information to be attached to the permit.

As of this writing, EPA believes New Hampshire's DER Program is consistent with EPA's current thinking on addressing HAP-related issues in VOC trading programs. As EPA develops additional guidance, EPA will provide this guidance to New Hampshire as the State continues to discuss these and other issues in the program audit and, where appropriate, require New Hampshire to revise the DER Program.

*How Does EPA's Proposed Action Affect Earlier Credits?*

Upon a final approval of New Hampshire's DER SIP revision, Env–A 3100 will be federally-enforceable. Since Env–A 3100 is a SIP flexibility mechanism, compliance with its terms is essential in order to avoid complying with other applicable requirements of the SIP. Also, the generator may have other responsibilities related to proper quantification of the discrete credits. EPA suggests that the generators and any users of the discrete credits review these specific discrete credit generation strategies before Env-A 3100 becomes subject to EPA enforcement.

*How Will New Hampshire Audit the Program?*

Env–A 3109 requires New Hampshire to conduct a program audit every three years, beginning no later than 1999. New Hampshire has submitted a program audit that summarizes emission trades through 1998.

*What is the Basis for Today's Proposal?*

As discussed in the section ''What Guidance Did EPA Use to Evaluate New Hampshire's Program?'' the 1994 EIP includes requirements for mandatory EIPs and guidance for voluntary EIPs. 40 CFR part 51, subpart U; 59 FR 16690. EPA proposed revised guidance to accommodate open market trading programs, by notices dated August 3, 1995, 60 FR 39668, and August 25, 1995, 60 FR 44290. EPA received comments on both of these proposals. EPA proposed action on a Michigan emission trading program by notice dated September 18, 1997, 62 FR 48972. EPA proposed action on a New Jersey emission trading program by notice dated January 9, 2001, 66 FR 1796. EPA also proposed revisions to the EIP on September 15, 1999, 64 FR 50086.

In addition, in a letter to Congressman Thomas J. Bliley, dated March 10, 1998, Richard D. Wilson, EPA's Acting Assistant Administrator for Air and Radiation, stated that EPA would ''work with the States to develop open market programs tailored to their individual circumstances. In this process EPA and the States are using the August 1995 [open market trading] proposal as guidance and taking into account both State circumstances and the many useful comments we received in response to the proposal.''

New Hampshire adopted its SIP on January 13, 1997 and submitted it to EPA on January 21, 1997. In response to requests by EPA, New Hampshire supplemented the submittal with modeling analysis to support inter-precursor trading on February 24, 1998.

By notice dated September 15, 1999, EPA proposed revised guidance for economic incentive programs. 64 FR 50086. That proposal would revise in certain respects the Agency guidance provided in the 1994 EIP, the 1995 open market trading program proposals and the guidance provided in the 1997 EPA proposal to approve the Michigan program and the 2001 EPA proposal to approve the New Jersey program. The public comment period on the September 15, 1999 proposal ended December 10, 1999. EPA is currently considering the public's comments in developing a final revision to the EIP guidance.

In developing its DER SIP revision, New Hampshire relied on EPA's statements that New Hampshire could base its SIP revision on the 1995 open market trading proposal. New Hampshire's submittal of the SIP revision also accorded with EPA's representations to Congressman Bliley that States could use the 1995 guidance to assist them in developing their open market trading programs. EPA mostly evaluated the SIP revision against the guidance available at the time of the program's development and submittal. In light of this reliance, EPA is today proposing to approve the New Hampshire's SIP revision, except for the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section. In doing so, EPA is proposing to apply, on an interim basis, both the 1995 open market trading program proposals, the 1999 proposed revisions to the EIP, and the guidance contained in the 1997 EPA proposal to approve the Michigan program and the 2001 EPA proposal to approve the New Jersey program, recognizing that some aspects of these proposals may be further revised by the policies of the 1999 EIP proposal, if and when it is finalized.

*How Will New Hampshire Address Future EPA Trading Guidance?*

EPA believes the basis for today's proposed action is a reasonable approach in the interest of supporting trading programs. However, due to EPA's lack of experience with open market trading programs and the many issues that such programs raise, EPA will use any future final revised EIP guidance as a basis for re-evaluating New Hampshire's DER Program, in coordination with the State, to ensure that its operation is consistent with the Clean Air Act and federal regulation. EPA will notify the State of any deficiencies in the DER Program, within 18 months after EPA issues a final revised EIP guidance. As with any SIP, EPA may require New Hampshire to revise the DER Program where necessary and re-submit the DER Program according to the requirements and deadlines under section 110(k)(5) of the Act. According to section 110(k)(5), New Hampshire may have up to 18 months to revise and re-submit the DER Program after EPA notifies the State of any deficiencies.

*What is the Status of the 1994 Economic Incentive Program?*

The 1994 EIP established, through notice-and-comment action, rules for mandatory EIPs and guidance for voluntary EIPs. Any final action that EPA may take to approve the New Hampshire DER Program, to the extent that action differs from the guidance portion of the 1994 EIP, would revise that portion of the 1994 EIP action only for purposes of today's action on the New Hampshire SIP submittal. EPA's proposed 1999 EIP guidance, once completed through notice-and-comment action, may further revise the guidance portion of the 1994 EIP action.

**Conclusion**

EPA is proposing to approve conditionally the New Hampshire SIP revision for Env–A 3100. This SIP revision implements New Hampshire's DER Program. EPA is proposing conditional approval of New Hampshire's DER Program, provided New Hampshire commits to correct the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section, in writing, on or before March 9, 2001. New Hampshire must then correct the deficiencies and submit them to EPA within one year of EPA's final action on the DER SIP revision.

If New Hampshire submits a commitment to this effect, EPA will publish a final conditional approval of New Hampshire's DER Program. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the January 21, 1997 submittal. If New Hampshire does not make the required commitment to EPA, EPA is proposing in the alternative to disapprove the DER Program.

EPA is requesting public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63

FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 19, 2001.

**Mindy S. Lubber,**

*Regional Administrator, EPA-New England.*

[FR Doc. 01–3160 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[DE043–1030b; FRL–6941–4]**

### Approval and Promulgation of Air Quality Implementation Plans; Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to New Source Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to convert its conditional approval of Delaware's revised New Source Review (NSR) regulations to a full approval and to incorporate those regulations into the Delaware State Implementation Plan (SIP). In the Final Rules section of this **Federal Register.** EPA is taking direct final action to convert the conditional approval to full approval as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**EFFECTIVE DATE:** Comments must be received in writing by March 9, 2001.

**ADDRESSES:** Written comments should be addressed to Makeba Morris, Chief, Permits and Technology Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Linda Miller, (215) 814–2068, at the EPA Region III address above, or by e-mail at miller.linda@epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information on EPA's proposed action to convert its conditional approval of revisions to Delaware's New Source Review Program to a full approval, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: January 17, 2001.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 01–3159 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[I.D. 012301A]**

### Western Pacific Fishery Management Council; Public Meetings and Hearing

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

**ACTION:** Notice of public meeting/public hearing.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its 108th meeting February 12 through February 15, 2001, in Honolulu, HI.

**DATES:** The Council's Standing Committees will meet on February 12, 2001, from 7:30 a.m. to 5:30 p.m. The full Council meeting will be held on February 13, 2001, from 9 a.m. to 5 p.m. and February 14 and 15, 2001, from 8:30 a.m. to 5 p.m. A public hearing will be held on February 13, 2001, at 4 p.m. on a framework amendment to extend the Northwestern Hawaiian Islands (NWHI) lobster fishery closure. See **SUPPLEMENTARY INFORMATION** for specific dates and times for these meetings and the hearing.

**ADDRESSES:** The Council meeting, Standing Committee meetings, and public hearing will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808-955-4811.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

**SUPPLEMENTARY INFORMATION:**

#### Dates and Times

*Committee Meetings*

The following Standing Committees of the Council will meet on February 12, 2001. Enforcement/Vessel Monitoring

System (VMS) from 7:30 a.m. to 9:30 a.m.; International Fisheries/Pelagics from 9:30 a.m. to 11:30 a.m.; Executive/Budget and Program from 11:30 a.m. to 1:30 p.m.; Precious Corals from 1:30 p.m. to 3 p.m.; Crustaceans from 1:30 p.m. to 3 p.m.; Bottomfish from 3 p.m. to 4:30 p.m; Ecosystem and Habitat from 3 p.m. to 4:30 p.m.; and Fishery Rights of Indigenous People from 4:30 p.m. to 5:30 p.m.

*Public Hearing*

A public hearing will be held on February 13, 2000, at 4 p.m. on a framework amendment to extend the NWHI lobster fishery closure.

The agenda during the full Council meeting will include the items listed below. In addition, the Council will hear recommendations from its advisory panels, plan teams, scientific and statistical committee, and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

**Agenda**

*1. Introductions*

*2. Approval of Agenda*

*3. Approval of 107th Meeting Minutes*

*4. Island Reports*

A. American Samoa
B. Guam
C. Hawaii
D. Commonwealth of the Northern Mariana Islands (CNMI)

*5. Federal Fishery Agency and Organization Reports*

A. Department of Commerce
(1) NMFS
(a) Southwest Region, Pacific Island Area Office
(b) Southwest Fisheries Science Center, La Jolla and Honolulu Laboratories
(2) NOAA General Counsel, Southwest Region
B. Department of the Interior
(1) U.S. Fish and Wildlife Service (USFWS)
C. U.S. State Department

*6. Enforcement*

A. U.S. Coast Guard activities
B. NMFS activities
C. Commonwealth, Territories, and State activities
D. Report on State/NMFS/USCG meeting
E. Cooperative agreements for Guam/CNMI
F. Status of violations

*7. VMS*

A. Hawaii VMS report
B. Report on national VMS efforts
C. Assessment of VMS needs in American Samoa, Guam, CNMI

*8. Precious Corals*

A. Status of 1999 framework amendment regarding new harvesting requirements
B. Status of 2000 framework adjustment regarding Hawaiian Islands exploratory area quota increase
C. Precious Coral draft environmental impact statement (EIS)

*9. Bottomfish Fisheries*

A. Status of the stocks
B. Status of the fishery: litigation, Biological Opinion (BO), observers
C. Status of DEIS

*10. Crustacean Fisheries*

A. Framework measure for closure of the fishery
B. Status of spring research tagging charter
C. Status of plans for 5-year review/technical review panel
D. Status of DEIS
E. Public hearing on a framework amendment to extend the NWHI lobster fishery closure.

In early 2000, while developing the estimate of the annual exploitable lobster population and harvest guideline for the NWHI commercial lobster fishery, NMFS' scientists noted increasing uncertainty in model parameter estimates, as well as problems with the model assumptions, and concluded that the estimates may be inaccurate and should be used cautiously.

The underlying concern with these population estimates revolves around the use of mixed species and spatially disaggregated data (i.e., under bank-specific harvest guidelines first implemented in 1998) in an algorithm designed to estimate aggregated, single species populations.

Specific concerns surround the validity of the following assumptions of the model: that homogeneous population dynamics exist between banks; that there is constant recruitment throughout the NWHI; that the model's catchability estimates are correct; that natural mortality is constant irrespective of species, age, or sex; and that commercial catch per unit of effort (CPUE) is a reliable index of lobster abundance in the NWHI. Based on new information from research surveys, tagging data, and recent advances in NMFS' understanding, these assumptions have been increasingly called into question. Declining commercial CPUE in recent years suggests that lobster populations are not rebuilding. Based on the above problems, including reductions in both catches and catch rates, NMFS closed the NWHI commercial lobster fishery for the 2000 lobster season as a precautionary measure. NMFS scientists are continuing work to refine the model used to estimate exploitable populations, as well as to gather fishery independent data that can be used to reassess the model's assumptions and parameters. A charter tagging cruise is tentatively planned for the spring and a research cruise for the summer (if funding is available). Last year's emergency closure of the fishery was authorized under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) based on recent data suggesting low recruitment in the fishery.

*11. Pelagic Fisheries*

A. Fourth quarter 2000 Hawaii and American Samoa longline fishery report
B. Turtle management
(1) Pelagic DEIS: preferred alternative
(2) BO, recommended measures
C. Shark management: Amendment 9 blue shark quota following state and Federal finning bans.

In July 2000, the Council sent NMFS Amendment 9 to its Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (Pelagics FMP). Among the measures contained in the amendment was a 50,000 blue shark annual harvest guideline that was based on the average number of blue sharks caught and retained for finning, i.e., removing the fins from sharks and discarding the remainder of the carcasses at sea.

However, a new Federal law was enacted in December, 2000, (the Shark Finning Prohibition Act), that amended the Magnuson-Stevens Act and banned the landing of shark fins without the accompanying shark carcasses throughout the United States. Consequently, the Council will revisit the provisions of Amendment 9 since the basis of the 50,000 harvest guideline for blue sharks is no longer relevant and, in its present form, the amendment would only be partially approved by NMFS. The Council will review the amendment and consider several options, including a no-harvest guideline for blue sharks, maintaining the present 50,000 blue shark harvest guideline with a requirement specifying that carcasses must be landed with fins, or a new harvest guideline based on a potential directed fishery for blue sharks.

D. Seabird management: USFWS BO regarding interactions with the Hawaii-based pelagic longline fishery

E. Proposed Kingman Reef wildlife refuge: environmental assessment

F. Hawaii offshore handline fishery and gear conflicts at Cross seamount

G. Exclusion of purse-seine vessels from American Samoa 50 nautical mile (nm) closed area proposal

In October 2000, the Council sent NMFS an FMP framework measure to its Pelagics FMP, that would establish a 50 nautical mile closed area around all the islands of American Samoa, in which U.S. pelagic fishing vessels ≤ 50 ft (15.24 m) in overall length would be prohibited from fishing. This would include large longline, purse seine, and trolling vessels. This measure, requested by American Samoa fishermen, is intended to protect the expanding small-scale artisanal longline fishery based on small 30-40 ft (9.1-12.2 m) outboard-powered catamarans. At the 107th Council Meeting in November 2000, the American Samoa Council members expressed the American Samoa government's desire that purse seine vessels be exempted from the terms of this management measure. The Council voted at the 107th meeting to discuss this exemption at the next Council meeting. The Council will review the framework measure and the options for exemption of purse seiners from the provisions of the 50 nm closed area.

H. Re-categorization of Hawaii longline fishery under the Marine Mammal Protection Act

*12. Ecosystems and Habitat*

A. Draft Coral Reef Ecosystems Fishery Management Plan and Draft EIS

(1) Aspects for further discussion

(2) Review of (initial) public and agency comments

B. Impacts of Executive Order 13178 on NWHI fisheries: Fishery disaster relief

*13. Fishery Rights of Indigenous People*

A. Eligibility criteria for Community Development Program bottomfish Mau zone permit

B. Eligibility criteria for Community Demonstration Projects

C. Local observer program update

D. Hawaiian green sea turtle cultural and religious uses

E. Status of Marine Conservation Plans

*14. Program Planning*

A. Reauthorization of Magnuson-Stevens Act, ESA, and Antiquities Act

B. Status of marine debris initiative

C. Palmyra Atoll

(1) Establishment of National Wildlife Refuge

(2) Fisheries management and development

D. Fishing activities, support operations at Midway Atoll National Wildlife Refuge

E. Report on program planning activities

F. Western Pacific Fisheries Information Network/Fisheries Data Coordinating Committee

*15. Administrative Matters*

A. Administrative reports

B. Upcoming meetings and workshops including the 109th Council meeting

C. Advisory group member changes

*16. Other Business*

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 1801 *et seq.*

Dated: February 1, 2001.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 01–3098 Filed 2–6–01; 8:45 am]

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# Notices

**Federal Register**

Vol. 66, No. 26

Wednesday, February 7, 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 COMMERCE

### Census Bureau

### 2002 Economic Census Covering the Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) Sectors

**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 Jack Moody, U.S. Census Bureau, Room 2784, Building 3, Washington, DC 20233–0001 on (301) 457–2689 or via the Internet at jmoody@census.gov.

**SUPPLEMENTARY INFORMATION**

## I. Abstract

The economic census, conducted under the authority of Title 13, United States Code (U.S.C.), is the primary source of facts about the structure and functioning of the Nation's economy. Economic statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The 2002 Economic Census covering the Information; Professional, Scientific, and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services; Educational Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services (Except Public Administration) sectors (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of 2.5 million establishments. The information collected will produce basic statistics by kind of business on the number of establishments, receipts/revenue, expenses, payroll, and employment. It will also yield a variety of subject statistics, including receipts/revenue by receipts/revenue line, receipts/revenue by class of customer, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires, and other electronic data collection methods.

## II. Method of Collection

### *A. Mail Selection Procedures*

Establishments for the mail canvass will be selected from the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in the information; professional, scientific, and technical services; management of companies and enterprises; administrative and support and waste management and remediation services; educational services; health care and social assistance; arts, entertainment, and recreation; or other services (except public administration) sector; (ii) it must be an active operating establishment of a multi-establishment firm (*i.e.* a firm that operates at more than one physical locations), or it must be a single-establishment firm (i.e. a firm that operates at only one physical location) with payroll; and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

1. Establishments of Multi-Establishment Firms

Selection procedures will assign all active operating establishments of multi-establishment firms to the mail component of the potential respondent universe. We estimate that the 2002 Economic Census mail canvasses will include approximately 429,000 establishments of multi-establishment firms.

2. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe. This study will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each kind of business. This payroll size distinction will affect selection as follows:

(a) Large Single-Establishment Firms. Selection procedures will assign single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the 2002 Economic Census mail canvasses will include approximately 706,000 large single-establishment firms.

(b) Small Single-Establishment Firms. Selection procedures also will assign a sample of single-establishment firms having annualized payroll below the cutoff for their industry to the mail component of the potential respondent universe. Sampling strata and corresponding probabilities of selection will be determined by a study of the potential respondent universe conducted shortly before mail selection operations begin. We estimate that the 2002 Economic Census mail canvasses will include approximately 72,000 small single-establishment firms selected in this sample.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. Generally, we will not include these small employers in the census mail canvass. However, administrative records sometimes have fundamental deficiencies that make them unsuitable for use in producing detailed industry statistics by geographic area. When we find such a deficiency, we will mail the firm a census classification form to collect basic information needed to resolve the problem. We estimate that the 2002 Economic Census mail canvasses for sectors covered under this submission will include approximately 490,000 small single-establishment firms that receive these classification forms.

**III. Data**

*OMB Number:* Not available.

*Form Number:* The 66 standard and 18 classification forms used to collect information from businesses in these sectors of the economic census are tailored to specific business practices and are too numerous to list separately in the notice. You can obtain information on the proposed content of the forms by calling the Service Census Branch on (301) 457–2689 or via the Internet at scb@census.gov.

*Type of Review:* Regular review.

*Affected Public:* State or local governments, businesses or other for profit, non-profit institutions, and small businesses or organizations.

*Estimated Number of Respondents*

Information: Standard Form—91,458, Classification Form—none
Professional, Scientific, and Technical Services: Standard Form—241,800, Classification Form—123,466
Management of Companies and Enterprises: Standard Form—52,645, Classification Form—none
Administrative and Support and Waste Management and Remediation Services: Standard Form—145,202, Classification Form—123,220
Educational Services: Standard Form—12,193, Classification Form—13,938
Health Care and Social Assistance: Standard Form—345,717, Classification Form—91,202
Arts, Entertainment, and Recreation: Standard Form—54,517, Classification Form—19,703
Other Services (Except Public Administration): Standard Form—263,085, Classification Form—118,141
Total: 1,696,287

*Estimated Time Per Response*

Information: Standard Form—1.2 hours, Classification Form—none
Professional, Scientific, and Technical Services: Standard Form—1.6 hours, Classification Form—.1 hours
Management of Companies and Enterprises: Standard Form—.8 hours, Classification Form—none
Administrative and Support and Waste Management and Remediation Services: Standard Form—1.2 hours, Classification Form—.1 hours
Educational Services: Standard Form—.9 hours, Classification Form—.1 hours
Health Care and Social Assistance: Standard Form—1.1 hours, Classification Form—.1 hours
Arts, Entertainment, and Recreation: Standard Form—1.2 hours, Classification Form—.1 hours
Other Services (Except Public Administration): Standard Form—1.0 hours, Classification Form—.1 hours

*Estimated Total Annual Burden Hours*

Information: Standard Form—109,750, Classification Form—none
Professional, Scientific, and Technical Services: Standard Form—386,880, Classification Form—12,347
Management of Companies and Enterprises: Standard Form—42,166, Classification Form—none
Administrative and Support and Waste Management and Remediation Services: Standard Form—174,242, Classification Form—12,322
Educational Services: Standard Form—10,974, Classification Form—1,394
Health Care and Social Assistance: Standard Form—380,289, Classification Form—9,120
Arts, Entertainment, and Recreation: Standard Form—65,420, Classification Form—1,970
Other Services (Except Public Administration): Standard Form—263,085, Classification Form—11,814
Total: 1,481,773

*Estimated Total Annual Cost*

Information: Standard Form—$1,681,370, Classification Form—none
Professional, Scientific, and Technical Services: Standard Form—$5,927,002, Classification Form—$189,156
Management of Companies and Enterprises: Standard Form—$645,983, Classification Form—none
Administrative and Support and Waste Management and Remediation Services: Standard Form—$2,669,387, Classification Form—$188,773
Educational Services: Standard Form—$168,122, Classification Form—$21,356
Health Care and Social Assistance: Standard Form—$5,826,027, Classification Form—$139,718
Arts, Entertainment, and Recreation: Standard Form—$1,002,234, Classification Form—$30,180
Other Services (Except Public Administration): Standard Form—$4,030,462, Classification Form—$180,990
Total: $22,700,760

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, U.S.C., Sections 131 and 224.

**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 through 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 2, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–3170 Filed 2–6–01; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Census Bureau

### 2002 Economic Census Covering the Utilities, Transportation and Warehousing, Finance and Insurance, and Real Estate and Rental and Leasing Sectors

**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 Steven Roman, U.S. Census Bureau, Room 2665, Building 3, Washington DC 20233–0001 (301–457–2824 or via the Internet at *sroman@census.gov*).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The economic census, conducted under authority of Title 13, United States Code (USC), is the primary source of facts about the structure and functioning of the Nation's economy. Economic statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The 2002 Economic Census covering the Utilities, Transportation and Warehousing, Finance and Insurance, and Real Estate and Rental and Leasing sectors (as defined by the North American Industry Classification System (NAICS)) will measure the economic activity of more than 987,000 establishments. However, approximately fifteen percent of establishments will not be required to file separate reports because they will be included in consolidated company reports; for explanation see selection procedure for establishments of multi-establishment firms below. The information collected will produce basic statistics by kind of business on the number of establishments, revenue, payroll, and employment. It will also yield a variety of subject statistics, including revenue lines by kind of business, and other industry-specific measures. Primary strategies for reducing burden in Census Bureau economic data collections are to increase electronic reporting through broader use of computerized self-administered census questionnaires, on-line questionnaires, and other electronic data collection methods.

## II. Method of Collection

*A. Mail Selection Procedures*

The Utilities, Transportation and Warehousing, Finance and Insurance, and Real Estate and Rental and Leasing sectors of the economic census will select establishments for their mail canvasses from the Census Bureau's Business Register. To be eligible for selection, an establishment will be required to satisfy the following conditions: (i) It must be classified in one of the Utilities, Transportation and Warehousing, Finance and Insurance, or Real Estate and Rental and Leasing sectors; (ii) it must be an active operating establishment of a multi-establishment firm (i.e., a firm that operates at more than one physical location), or it must be a single-establishment firm with payroll (i.e., a firm operating at only one physical location); and (iii) it must be located in one of the 50 states or the District of Columbia. Mail selection procedures will distinguish the following groups of establishments:

1. Establishments of Multi-Establishment Firms

Selection procedures will assign all eligible establishments of multi-establishment firms to the mail component of the potential respondent universe, except for those in selected industries in utilities, and finance and insurance. In these selected industries, where revenue and certain other operating data are not easily attributable to individual establishments, division- or firm-level organizations are asked to report kind of activity, payroll, and employment for several establishments, and other required data at a more aggregate level on a consolidated report form.

We estimate that the census mail canvass for 2002 will include approximately 215,400 establishment and consolidated reports for multi-establishment firms in these sectors.

2. Single-Establishment Firms With Payroll

As an initial step in the selection process, we will conduct a study of the potential respondent universe. This study will produce a set of industry-specific payroll cutoffs that we will use to distinguish large versus small single-establishment firms within each industry or kind of business. This payroll size distinction will affect selection as follows:

(a) *Large Single-Establishment Firms.* Selection procedures will assign single-establishment firms having annualized payroll (from Federal administrative records) that equals or exceeds the cutoff for their industry to the mail component of the potential respondent universe. We estimate that the 2002 Economic Census mail canvasses for Utilities, Transportation and Warehousing, Finance and Insurance, and Real Estate and Rental and Leasing sectors will include approximately 400,300 large single-establishment firms.

(b) *Small Single-Establishment Firms.* Selection procedures will assign a sample of single-establishment firms having annualized payroll below the cutoff for their industry to the mail component of the potential respondent universe. Sampling strata and corresponding probabilities of selection will be determined by a study of the potential respondent universe conducted shortly before mail selection operations begin. We estimate that the 2002 Economic Census mail canvasses for the Utilities, Transportation and Warehousing, Finance and Insurance, and Real Estate and Rental and Leasing sectors will include approximately 37,000 small single-establishment firms selected in this sample.

All remaining single-establishment firms with payroll will be represented in the census by data from Federal administrative records. Generally, we will not include these small employers in the census mail canvasses. However, administrative records sometimes have fundamental industry classification deficiencies that make them unsuitable for use in producing detailed industry statistics by geographic area. When we find such a deficiency, we will mail the firm a census classification form. We estimate that the 2002 Economic Census mail canvasses for Utilities, Transportation and Warehousing, Finance and Insurance, and Real Estate and Rental and Leasing sectors will include approximately 227,000 small single-establishment firms that receive these forms.

## III. Data

*OMB Number:* Not available.

*Form Number:* The 30 standard and five classification forms used to collect information from businesses in these sectors of the Economic census are tailored to specific business practices and are too numerous to list separately in this notice. Requests for information on the proposed content of the forms should be directed to Steven Roman, U.S. Census Bureau, Room 2665, Building 3, Washington DC 20233–0001 (301–457–2824 or via the Internet at *sroman@census.gov*).

*Type of Review:* Regular review.

*Affected Public:* State or local governments, businesses, or other for profit or non-profit institutions or organizations.

*Estimated Number of Respondents*

Utilities (Standard form)—7,700
Utilities (Short form)—(none)
Transportation (Standard form)—168,000
Transportation (Short form)—51,000
Finance and Insurance (Standard form)—240,000
Finance and Insurance (Short form)—83,000
Real Estate, Rental and Leasing (Standard form)—237,000
Real Estate, Rental and Leasing (Short form)—93,000
Estimated total number of respondents for these four sectors: 879,700

*Estimated Time Per Response*

Utilities (Standard form)—1.9 hours
Utilities (Short form)—(none)
Transportation (Standard form)—1.1 hours
Transportation (Short form)—0.2 hours
Finance and Insurance (Standard form)—1.4 hours
Finance and Insurance (Short form)—0.2 hours
Real Estate, Rental and Leasing (Standard form)—1.1 hours
Real Estate, Rental and Leasing (Short form)—0.2 hours

*Estimated Total Burden Hours*

Utilities (Standard form)—14,630
Utilities (Short form)—(none)
Transportation (Standard form)—184,800
Transportation (Short form)—10,200
Finance and Insurance (Standard form)—336,000
Finance and Insurance (Short form)—16,600
Real Estate, Rental and Leasing (Standard form)—260,700
Real Estate, Rental and Leasing (Short form)—18,600
Estimated total burden hours for these four sectors: 841,530

*Estimated Total Annual Cost*

Utilities (Standard form)—$266,266
Utilities (Short form)—(none)
Transportation (Standard form)—$3,363,360
Transportation (Short form)—$185,640
Finance and Insurance (Standard form)—$6,115,200
Finance and Insurance (Short form)—$302,120
Real Estate, Rental and Leasing (Standard form)—$4,744,740
Real Estate, Rental and Leasing (Short form)—$338,520

*Respondent's Obligation:* Mandatory
*Legal Authority:* Title 13, U.S.C., Sections 131 and 224.

### 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 through 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 2, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–3171 Filed 2–6–01; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 083000A]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Oil and Gas Exploration Drilling Activities in the Beaufort Sea

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

**ACTION:** Notice of issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals by harassment incidental to conducting exploration drilling activities during the winter in the U.S. Beaufort Sea, offshore Prudhoe Bay, has been issued to Phillips Alaska, Inc. (Phillips).

**DATES:** Effective from February 1, 2001, until August 1, 2001.

**ADDRESSES:** The application, authorization, monitoring plan, and a list of references used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, ext. 128, or Brad Smith, Western Alaska Field Office, NMFS, (907) 271-5006.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters, including requirements for peer-review of a monitoring program and a plan of cooperation between the applicant and affected subsistence users. For additional information on the procedures to be followed for this authorization, please refer to that document.

#### Summary of Request

On August 1, 2000, NMFS received an application from Phillips requesting a 1-year authorization for the possible harassment of small numbers of marine mammals incidental to constructing an ice road and an ice island at the McCovey Prospect Area and incidental to drilling one or more oil exploration wells at that location during the winter,

2000/2001. The drilling location at McCovey is approximately 14 mi (22.5 kilometers (km)) north of East Dock at Prudhoe Bay, 7 mi (11.3 km) northwest of Cross Island, and 12 mi (19.3 km) east of the Northstar Unit.

The purpose of the operation is to evaluate the oil and gas potential of Phillips' operated leases in the McCovey area. The well will be drilled from an ice island constructed at the beginning of the winter drilling season. Some equipment may be staged on Reindeer Island prior to freeze-up; however, a majority of the equipment will be staged using the ice road.

Ice island construction is expected to begin when ice conditions are thick enough to allow heavy equipment to be transported to the location via the ice road (approximately December 2000). One well is planned to be drilled from a surface location in Outer Continental Shelf Lease Block Y-1577. Depending on the results found from this well, well tests may be performed and a sidetrack may be drilled as length of season permits. All drilling and well-testing operations will be performed only during the 2000-2001 winter drilling season and will be discontinued in May 2001 before ice break-up (which usually occurs in late June or July). Drilling and testing operations will not be conducted in broken ice or open water periods. The McCovey exploration well will be plugged and abandoned regardless of any commercial value demonstrated during well testing and reservoir evaluation. The exploration well is expected to be moved back down the ice road after operations are completed. This is expected to occur between approximately April 20 and May 2.

Prior to freeze-up in late October, 2000, materials will be barged to Reindeer Island for staging. This includes pumps, rolligons and diesel fuel in storage tanks. The storage tanks will be in a containment capable of holding 110 percent of the capacity of the tanks. An ice pad will be constructed at Reindeer Island. A 12 to 14 mi (19.3 to 22.5 km) ice road will be constructed from either West Dock or East Dock in Prudhoe Bay out to the McCovey location. The actual location and length of the ice road will depend on ice conditions prior to commencing operations. The ice road will then be used to transport the ice island construction equipment and the drilling rig out to the McCovey location.

The ice roads are expected to be completed and ready for heavy traffic by mid-February. Following construction, the road will be maintained using graders with snow wings and front-end loaders with snow blowers until ice-road travel is no longer possible, typically in mid-May.

The McCovey Ice Island will be located in 37 ft (11.2 m) of water. Pumps will be used to spray seawater into the cold air to form ice-crystals. The sprayed seawater is first used to thicken the ice at the island location to 2 to 3 m (6.6 to 9.8 ft). Then the water will be redirected to the center of the island to ground the island core. The ice island diameter is expected to be 950 ft (290 m) at the waterline and 700 ft (213.4 m) at the working surface above the water.

After completion of the ice road and island, a land-based drilling rig will be transported to the location. The support camp will be located on an ice pad constructed on Reindeer Island throughout the drilling operations. Reindeer Island is approximately 4.5 mi (7.2 km) from the ice island location. All drilling materials will be transported to the ice island by ice road and staged on the ice island. Muds and cuttings will be discharged to the sea ice in accordance with the General Offshore National Pollution Discharge Elimination System permit requirements.

A more detailed description of the work planned is contained in the application (Phillips, 2000) and is available upon request (see **ADDRESSES**).

**Comments and Responses**

On October 11, 2000 (65 FR 60407), NMFS published a notice of receipt and a 30-day public comment period was provided on the application and proposed authorization. During the 30-day public comment period, comments were received from the Marine Mammal Commission (MMC), the Alaska Eskimo Whaling Commission (AEWC) and Phillips. In addition, Phillips provided technical data to assist NMFS in its response to certain technical comments. Finally, on November 8 and 9, 2000, NMFS convened a peer review workshop in Seattle, WA, to discuss appropriate monitoring for marine mammals by the oil and gas industry during the winter season in the Beaufort Sea. The recommendations of that workshop are reflected in the requirements for Phillips' monitoring its activity's impact on marine mammals. This monitoring is discussed later in this document.

*Comment 1*: Phillips notes that the proposed activity has been modified in the following aspects. First, because Reindeer Island has eroded, Phillips plans to locate the support camp during ice road and island construction at the Prudhoe Bay West Dock Staging Pad instead of the ice pad at Reindeer Island. The ice pad at Reindeer Island will still be used for staging equipment. Second, the diameter of the ice island work surface has been increased from 600 ft (182.9 m) to 700 ft (213.4 m). Although this increases the diameter of the island at the water line from 850 ft (259.1 m) to 950 ft (290 m), this increase in size (.005 km2 ( mi2)) does not change the original estimate of the number of ringed seals that may potentially be harassed. Also, Phillips has now obtained a Letter of Authorization (LOA) from the U.S. Fish and Wildlife Service (USFWS) for the unintentional taking of polar bears incidental to its proposed activity.

*Response*: Thank you for updating the status of your activity. These modifications have been noted in this document. NMFS believes that these amendments will not result in any increase or decrease in the number of seals potentially impacted by the proposed exploratory drilling project.

*Comment 2*: Phillips expresses concern that NMFS has stated that it may suspend or terminate the IHA if it determines that dogs are available but are not used by Phillips. Phillips states that IHAs can only be suspended after notice and opportunity for public comment, except in an emergency where a ''significant risk to the well-being of the species or stocks of marine mammals concerned'' exists. Given the expected low density of ringed seals and the unlikelihood of a biologically significant take, an ''emergency'' of this sort is unlikely. Second, the intent behind the suspension clause is to protect marine mammals (50 CFR 216.107(f))- it would seem inappropriate to suspend an IHA merely because one monitoring method was used over another, as regulations do not require the use of dogs and when our operations are not expected to have any biological significance on ringed seals.

*Response*: Phillips is correct that suspension or termination of an IHA requires public notice and opportunity for comment, unless an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals involved. However, failure to comply with the conditions and/or the requirements of an authorization, such as monitoring, taking unauthorized marine mammals, or taking marine mammals in a manner not authorized, may result not only in a modification, suspension or termination of an authorization (after public notice and opportunity for comment), it may also result in subjecting affected individuals to the penalties provided under the MMPA (50 CFR 216.107(h)). Employing alternative monitoring, especially monitoring

identified as being less effective, without either verbal or written approval by NMFS, and, steps being taken by NMFS to modify the IHA (if the monitoring requirement is in the IHA), is viewed by NMFS as a violation of the permit conditions.

*Comment 3*: The MMC notes that the discussion of harassment in the proposed authorization document (65 FR 60407, October 11, 2000), does not accurately reflect the statutory definition of that term. Currently there is nothing in the definition of Level B harassment that requires a determination of behavioral significance for any disruption of behavioral patterns that may occur to constitute a taking. In fact, it was precisely the lack of a significance threshold that led the Administration to propose amending the definition (of harassment in the MMPA) earlier this year. While the MMC agrees that the element of significance (e.g., effects on reproductive success) is appropriate to consider in making a negligible impact determination, the MMC does not believe that using it as the threshold for determining whether there is the potential for taking by harassment comports with the statutory definition. The MMC recommends that NMFS correct this misinterpretation of the statute in future documents.

*Response*: Although the statutory definition of Level B harassment does not contain an explicit significance threshold, NMFS believes that there is a minimum significance level inherent in the definition, which only prohibits actions with the potential to ''caus[e] disruption of marine mammal behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering.'' In other words, a simple change in a marine mammal's actions does not always rise to the level of disruption of its behavioral patterns. If an activity that is not directed at a marine mammal has the potential to incidentally cause a disruption in one of these patterns, the participants should either modify the activity so that it doesn't disrupt that behavioral pattern, or apply for a small take exemption. If the only reaction to the activity on the part of the marine mammal is within the normal repertoire of actions that are required to carry out that behavioral pattern, NMFS considers the activity not to have caused a disruption of the behavioral pattern, provided the animal's reaction is not otherwise significant enough to be considered disruptive due to length or severity. Therefore, for example, a short-term change in breathing rates or a somewhat shortened or lengthened dive sequence that are within the animal's normal range and that do not have any biological significance (i.e., do not disrupt the animal's overall behavioral pattern of breathing under the circumstances), do not rise to a level requiring a small take authorization. Under the current action, NMFS noted that neither simply hearing a noise from ice road construction (and not having a reaction) nor having a minor startle reaction such as looking toward the sound source (but no other behavioral response) to the noise from ice road construction or operation rise to a level to be considered a disruption of a behavioral pattern and therefore constitute harassment.

The National Research Council (NRC, 2000) states that NMFS should promulgate uniform regulations based on their potential for a biologically significant impact on marine mammals. NMFS concurs and that is precisely the reason NMFS and other Federal agencies, including the MMC, proposed amending the definition of harassment currently found in the MMPA.

*Comment 4*: The AEWC states that the McCovey Prospect is in an area known for heavy ice conditions, near the ''shear zone'' of the arctic ice pack. While Phillips' drilling operations are proposed for the winter and early spring months, unprecedented arctic weather and ice conditions in recent years have reduced the reliability of any projections regarding the behavior of arctic sea ice during this time. Fast-moving ice, driven by a combination of ocean currents and winds, is a powerful and common force in the Beaufort Sea. Any of the elements individually has the capacity to start the ''ice override conditions'' that frequently occur offshore in the Arctic. Such events can occur at any time when ice is present, subjecting all human activities in the vicinity to great danger.

*Response*: The Minerals Management Service (MMS) has statutory authority over the McCovey Ice Island to ensure the safety of personnel and protection of the environment. The applicant is required to design, install and maintain the ice island to insure island structural integrity, against environmental conditions at the island location, for the duration of the exploration activities.

Phillips submitted the McCovey Ice Island design to the MMS and the MMS Certified Verification Agent (CVA) for review and comment. The CVA is an independent third-party expert that reviews the applicant's design, provides quality assurance and verification during island construction and monitoring during drilling. Of particular concern is the island's ability to withstand the forces from sea ice pushing against the island and sea ice overriding the island working surface. All critical equipment, fuel storage, structures, etc. will be setback at least 50 feet (15 m) from the edge of working surface of the island. The MMS, CVA and Phillips must all agree on the island design, construction and monitoring before the MMS will approve the island. It is NMFS' understanding that the McCovey Ice Island design has been approved by MMS.

Phillips explains that ice override occurs when a thick sea ice sheet moves landward across the shore zone, such as Cross Island, as an unbroken sheet. Ice override is not a condition seen when ice moves against ice; instead this results in pressure ridges and rubble fields. Once the McCovey Ice Island is constructed and grounded, it will be a large solid mass of ice weighing about 370 million lbs (135,080,000 kg). Therefore, if sea ice should move, it will not move across the island, instead, because the outer perimeter is constructed of ice, the sea ice will produce ''rubbling.'' The more rubbling that occurs, the better protected the island will be against future movements.

*Comment 5*: The AEWC believes that, because the McCovey Prospect is an exploration well, the risk of an uncontrolled release of oil is even greater than the risk created by a production site like Northstar. The AEWC is especially concerned that an oil spill at the McCovey Prospect, even during the winter and early spring, could threaten the availability of bowhead whales and other marine resources for subsistence use.

*Response*: When making a determination that an activity will have no more than a negligible impact on a species or stock of marine mammal and that the taking will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, NMFS may find that these determinations are appropriate, if the probability of a take occurring is low even though the potential effects may be significant should that event occur. In these cases, NMFS must balance the probability of occurrence of impacts with the potential severity of harm both to the species or stock of marine mammal affected, and to the Inupiat communities that depend upon the bowhead whale to meet its subsistence needs (see 54 FR 40338, September 29, 1989). Such determinations must be made based on the best scientific information available.

NMFS recognizes that, while there is considerable disagreement as to the effects of an oil spill on bowhead

whales and other marine mammals in the Alaskan Beaufort Sea, to date no blowouts have occurred during drilling exploratory wells in Alaskan waters. The MMS uses an Oil Spill Risk Analysis to estimate the probability of an oil spill on bowhead whales and other marine mammals and concluded that, for the base-case the probability for an oil spill of 1,000 barrels or more to occur and contacting bowhead whale habitat when bowhead whales were present, from all activities associated with Lease Sale 124 (both exploration and potential development) was low. Because this probability is based on a significant amount of activity, the potential for an individual activity must be considered even less. However, some data on the anatomy and migratory behavior of bowhead whales suggest that impacts from a large oil spill could pose a threat to this species, especially if substantial amounts of oil got into the lead system during the spring migration (Albert 1981, Shotts *et al.* 1990). However, using the information provided in MMS' Final Environmental Impact Statement for Lease Sale 124 (MMS, 1990), which fully describes this scenario, NMFS does not find evidence that there would be more than a minimum potential for an oil spill to occur as a result of a single exploratory well and even less potential for that spill to reach the bowhead whale spring or fall migrations. This supports NMFS' conclusion that the activity will not have more than a negligible impact on marine mammals, including the bowhead whale, inhabiting the Beaufort Sea.

*Comment 6*: The AEWC strongly opposes the issuance of a small take authorization to Phillips for exploratory drilling at the McCovey Prospect at this time, since there are no measures in place to mitigate the impacts to Native Alaskan subsistence hunting if an oil spill were to occur as a result of the proposed activities. The AEWC also believes that, because only a small number of exploratory wells (possibly only two) have ever been drilled from ice islands in the Beaufort Sea, the AEWC's confidence is further reduced that Phillips and its contractors have the experience or the capability to address the potential risks that would be created by the proposed activity. Finally, the AEWC believes that Phillips does not have a plan to expeditiously complete a relief well to control a blowout at the McCovey site.

*Response*: Bugno *et al.* (1990) indicate that, as of 1988, 34 exploratory wells have been drilled in the Beaufort Sea using floating ice platforms and two using grounded ice platforms. Apparently, few have been drilled since that time. However, Phillips has provided an Oil Discharge Prevention and Contingency Plan (ODPCP) to the MMS. The ODPCP is an extensive document that addresses oil spill response, logistics, several spill scenarios, cleanup activities, and numerous other aspects of oil spill prevention and response. It is NMFS' understanding that the ODPCP has been approved by MMS and that the ODPCP contains a plan to expeditiously complete a relief well.

In addition, as noted in Phillips application, the North Slope operators and several other firms have jointly formed an oil spill response cooperative (ACS), which is based in Deadhorse, AK. ACS is contractually obligated to provide response services for the McCovey operations. ACS maintains one of the world's largest inventories of spill contaminant and cleanup equipment there for use by all members. ACS also has a full time staff trained in operation and maintenance of the cooperative's spill equipment. Additionally, Phillips has its own inventory of spill response equipment on the North Slope in each current or soon-to-be producing sites, such as Kuparuk and Alpine, as part of its development field operations. Other oilfield operators also have spill response equipment located at their field and are available to provide support pursuant to a Mutual Aid Agreement between all North Slope operators. This equipment can be mobilized for spill response as needed. Finally, the Deadhorse, AK service contractors maintain a crew of personnel trained in oil spill response activities that can be utilized as needed.

While NMFS recognizes the difficulties in responding to an oil spill under the ice or in broken ice, as demonstrated recently at the Northstar test, because, as mentioned in response to comment 5, the potential is low for (1) an oil spill to occur from a single exploratory well, (2) any of that spilled oil to either reach the offshore spring leads, or (3) spilled oil to remain in the area to intercept the westward migrating bowheads several months later, NMFS is unable to concur with the AEWC that the drilling one or more exploratory wells during the winter, 2000/2001 will have an unmitigable adverse impact (as defined in 50 CFR 216.103) on the availability of the marine mammals species or stock for subsistence uses. This, NMFS believes, is further supported by: (1) the issuance of a land use permit to Phillips by the North Slope Borough (NSB) to conduct this activity and (2) the lack of concern expressed by NSB that Phillips and the NSB had not concluded a Conflict Avoidance Agreement (CAA). NMFS notes that the NSB has, in the past, either denied permits, or amended the scope of work through a CAA, when it determined that the activity had a potential to affect the subsistence harvest.

*Comment 7*: The AEWC notes that since the OCS tract containing the McCovey prospect was leased, the MMS and the State of Alaska have recognized the unacceptable level of risk created by proposed development in the area of Cross Island. As a result, both agencies have created lease sale stipulations that prohibit the siting of production facilities within a 10-mile (16-km) radius of Cross Island, unless the lessee demonstrates to the satisfaction of the MMS Regional Director, in consultation with the NSB and the AEWC, that the development will not preclude reasonable subsistence access to bowhead whales.

*Response*: NMFS understands that the MMS did not find there was an unacceptable risk from development in the Cross Island area. For Lease Sale 170, MMS considered both a lease stipulation to minimize effects to whales from noise and space use conflicts (subsistence activities) and a deferral area (remove the area from any leasing). The MMS opted to adopt the lease stipulation, as noted in the AEWC comment, which prohibits permanent production facilities within a 10-mile (16-km) radius of Cross island, unless the lessee can demonstrate to the satisfaction of the MMS Regional Director, in consultation with the NSB and the AEWC, that the development would not preclude reasonable subsistence access to the whales. If McCovey is a commercial discovery, MMS would do a full environmental review (likely an environmental impact statement) and would further evaluate these issues based on a project specific development plan. The stipulation, however, is directed only at permanent production facilities, not temporary exploratory activities, such as McCovey. According to the MMS, the driving issue was noise and space use conflicts, not oil spills.

*Comment 8*: The AEWC recommends that NMFS not issue the IHA to Phillips while meetings are ongoing to develop mitigation measures to help address adverse impacts to coastal subsistence communities in the event of an offshore oil spill or an event with similar effects on subsistence lifestyle.

*Response*: The meetings between the oil industry and the AEWC/NSB concern long-term mitigation

agreements for offshore oil development activities, not, in particular, the offshore oil exploration industry. Considering that the last meeting of the group was held in Anchorage, AK in July, 2000, and that no meetings are currently planned, NMFS cannot accept this recommendation. NMFS believes that the principal mitigation measures proposed for this activity, which are: (1) the activity will be conducted in winter time to avoid impacts to the fall bowhead whale hunt, (2) an approved ODPCP to address oil spill response and cleanup activities and will be in place, and (3) the ACS has been established to respond to an oil spill, is sufficient for NMFS to determine that the oil exploration activity at McCovey will not have an unmitigable adverse impact on subsistence needs for bowhead whales or other marine mammal species.

*Comment 9*: The MMC believes not only that the use of trained dogs to locate ringed seal lairs and other structures is the preferred method, it is the only reliable method for doing so. The MMC, therefore, supports NMFS' proposal to condition the requested IHA to require the use of dogs for monitoring.

*Response*: Thank you for the comment.

*Comment 10*: Phillips notes that its proposed monitoring plan includes the use of trained dogs to locate seal structures due to discussions at the 1999 on-ice workshop and the subsequent LOAs that were issued that year. However, the proposal to use dogs does not reflect Phillips' support for this monitoring method. Phillips notes that the use of dogs to locate seal structures may cause harm to ringed seals. Phillips states that a study was recently published which indicates that dogs may transmit disease to ringed seals, and that at least one Alaskan island has banished dogs for this very reason. Also, it is likely that a ringed seal would consider a dog to be a predator, and a predator's approach to a ringed seal's lair could result in a behavioral response that may have biological significance on the part of the animal. While Phillips is committed to reducing any impact of its operations on ringed seals, for these reasons it would prefer not to use trained dogs in the future.

*Response*: NMFS recognizes Phillips' reluctance to using dogs on the ice and in that context, strongly recommends the oil industry promote research on alternate, effective, means to locate ringed seal structures. However, as noted in the previous comment, the use of trained dogs to locate seal structures is the only reliable method known at this time to accurately locate seal structures in the Beaufort Sea. While domestic dogs carry some diseases (e.g., canine distemper) which have been found in seals, and there have been some who have hypothesized that dogs transmit these diseases to seals, other carnivores also carry these diseases, so it is not clear whether dogs were actually the vector. In addition, the trained Labrador retrievers used in this monitoring program are routinely vaccinated for the types of diseases which are of the greatest concern. While dogs have been prohibited on the Pribilof Islands for many years, this prohibition is to prevent the harassment, injury and mortality of the northern fur seals on the Islands. Since the Arctic fox, which is indigenous to these Islands, is also a vector for transmission of disease to marine mammals, prohibiting dogs for this reason would not have any beneficial value.

*Comment 11*: Phillips is concerned because NMFS notes that it intends to continue to require applicants to use dogs ''until such time as NMFS has clear evidence that ice roads and other activities taking place during the winter are not having a cumulative impact on ringed seals... .'' Phillips states that NMFS recently stated that it does not have statutory or regulatory authority to require applicants to monitor for cumulative impacts. Thus, Phillips believes that it is inappropriate to require it to use dogs to determine whether cumulative impacts are occurring.

*Response*: Trained dogs will be required as part of the IHA issued to Phillips for work at McCovey. Since an IHA is valid for no more than a single year, NMFS cannot require monitoring for a period of time after expiration of the IHA. However, NMFS can require monitoring be designed and implemented to detect cumulative impacts if a project is either proposed to take place over several years (such as the Northstar oil production facility) or when an individual activity is receiving an annual IHA for conducting essentially the same activity every year, such as seismic work in the Beaufort Sea. At this time, it is the opinion of the scientists attending the November 6-9, 2000, Beaufort Sea Marine Mammal Monitoring Workshop in Seattle, WA that site specific monitoring efforts are critical components of any cumulative impacts monitoring program.

*Comment 12*: Phillips notes that monitoring requirements on the industry have only increased over the years, despite a lack of a more-than-negligible effect on ringed seals and other marine mammals. Under these circumstances, Phillips believes that it is more reasonable to decrease the monitoring burdens imposed on it than to continually increase them.

*Response*: NMFS disagrees that monitoring has increased significantly for the oil and gas exploration industry conducting winter operations. Since neither Phillips nor its predecessor have applied for IHAs for constructing ice roads and an ice island previously, NMFS questions its concern that monitoring requirements on it be reduced. Prior to 1999, ice-road construction authorizations simply required the use of biologically trained, on-site individual(s), approved in advance by NMFS, to conduct on-ice searches for ringed seal lairs. Marine mammal scientists determined that such monitoring was ineffective in locating seal structures. That type of monitoring has been replaced by the use of trained dogs to locate seal structures. Although all indications to date are that on-ice activities are not having more than a negligible impact on ringed seal populations, monitoring and research to conclusively verify or refute this assumption has not been designed or implemented. Requiring the use of trained dogs to monitor impacts on ringed seal structures, is a first step to obtaining that information.

*Comment 13*: The MMC recommends that NMFS should not accept human monitoring (i.e., without the use of trained dogs) until it has been demonstrated that such monitoring is as effective as that carried out using dogs.

*Response*: NMFS notes that there are only a limited number of dogs trained to locate seal structures currently available in Alaska. These dogs are mostly used in conducting scientific research. In addition, some industry components are proposing to use dogs trained in Canada, but even those are limited in number and periods of availability. With increasing levels of activity in the Beaufort Sea, for which NMFS is requiring trained dogs to monitor for ringed seal structures, NMFS needs to reserve the right to waive this form of monitoring, if dogs are not available. NMFS prefers to return to requiring human searches using avalanche probes prior to either not requiring any monitoring, or worse, allowing the use of untrained dogs (which would have the potential to increase the level of ringed seal disturbance).

**Description of Habitat and Marine Mammals Affected by the Activity**

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several

documents (Corps of Engineers, 1999; Minerals Management Service (MMS), 1990, 1992, 1996; NMFS, 1997).

**Marine Mammals**

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species, as well as others, can be found in several other documents (Hill *et al.*, 1999; Hill and DeMaster, 1999, 1998; NMFS, 1997). Please refer to those documents for information on the biology, distribution and abundance of these species. However, because the proposed oil exploration activity will take place only during the winter, only ringed seals and, possibly, a few bearded seals have any potential to be impacted by the project. A description of the biology and abundance of these two seal species are addressed in NMFS' Environmental Assessment (EA) on Winter Seismic Activities (NMFS, 1998). The documents mentioned here and in other parts of this document are considered part of this decision-making process.

In addition to the species mentioned in the preceding paragraph, polar bears (Ursus maritimus) also have the potential to be taken incidental to the proposed activity. This species is under the jurisdiction of the USFWS. As a result, Phillips has applied for a LOA from the USFWS for the taking of this species incidental to the McCovey drilling project.

**Potential Impacts on Marine Mammals**

Disturbance by noise is the principal means for potential takings by harassment by this activity. The marine mammal most likely to be impacted by construction of the ice road and ice island is the ringed seal. A slight possibility exists to impact bearded seals. While the applicant noted that there is a chance that a ringed seal could be killed during ice road construction (and ice island construction), NMFS believes that noise from road and island construction activity, the timing of the construction in December, and the monitoring described later in this document will make the injury or mortality of ringed seals very unlikely. However, the ice island location cannot be moved due to the engineering required for ice island design and construction. As a result, breathing holes or structures located within the footprint of the island will be covered by ice and the seals would need to relocate. However, constructing the island in December will mitigate the potential for damage to birthing lairs since most ringed seal birth lairs are not built until later in the winter, pups are not born until mid-March in this area, and several structures would be available for each seal by that time for use as birthing and pupping lairs.

Site specific ringed seal survey work was conducted by Western Geophysical at the McCovey location during April 2000 (Coltrane and Williams, 2000). A total of 22 seal structures were found in the core survey area and the surrounding 1 km (0.62 mi) monitoring zone. An additional 21 structures were found in the transit survey route. Seventeen of the structures were breathing holes, 20 were lairs, and 6 were unidentified; none of the identified lairs were birthing lairs. Coltrane and Williams (2000) reported that 28 structures were revisited later. The remaining 15 structures were not rechecked as these structures were either of unknown status or frozen at the time of the initial search. Four breathing holes were found to be abandoned since the initial search (one was abandoned due to research, not industrial activity). The total abandonment rate of active seal structures after shallow hazards survey operations was 11 percent (3 of 28). In addition, the initial survey revealed that 19 percent (8 of 43) of the structures located had already been abandoned prior to any industrial searches. Coltrane and Williams (2000) believe that this natural abandonment rate was comparably higher than the abandonment rate after industrial activities in the area (19 percent compared to 11 percent). As noted at the 2000 Seattle On-Ice Workshop however, others believe that these rates cannot be compared because the periods during which the holes could have become abandoned are drastically different. Therefore, it may be unknown whether abandonment rate due to shallow hazard survey is the same as the natural abandonment rate (Angliss, pers. comm., 2001).

Aerial surveys of seal density and abundance, conducted in 1997 in support of the Northstar project (which is approximately 9 miles (14.5 km) to the west from the proposed McCovey Prospect), indicated an average density over the area (including the McCovey Prospect area) of 0.43 ringed seals/km$^2$. The overall observed density on landfast ice, over water depths of 5-20 m (16.4-65.6 ft), was 0.42 ringed seals/km$^2$ (Miller *et al.*, 1998). Surveys conducted in 1999 by Richardson and Williams (2000) indicated an overall observed density of 0.56 seals/km2. Excluding waters less than 3 m (9.8 ft) deep where ringed seals were rarely seen, the overall observed density was 0.63 seals/km$^2$. The overall observed density in areas greater than 3 m (9.8 ft) deep was higher in 1999 than in either 1997 or 1998 (0.39 seals/km$^2$).

Based on the methodology for assessing ringed seal takes by industrial activities at Northstar (see BP Exploration (Alaska), 1998), Phillips estimates that less than 31 ringed seals may be within an area where harassment takings might potentially occur. This estimate is based on the assumptions that any ringed seals within 0.4 mi (0.644 km) of the ice road and within 2.3 mi (3.7 km) of the ice island may be able to hear the noise associated with the McCovey Prospect. This estimate is based on the density recorded during the 1997 aerial survey of 0.42 seals/km$^2$ (Miller *et al.* 1998). Phillips believes that this estimate of take is very conservative since the noise associated with ice island construction should be less than the noise associated with construction of the gravel island at Northstar. The 2.3 mi (3.7 km) was based on noise measurements made by Greene (1983) for construction of Seal Island in 1982. Also, the estimated ''take'' is based on the entire ice road length of 12.5 miles (20.12 km) with no deduction for areas where the ice road may cross grounded ice (with no ringed seal presence).

Bearded seals are not expected to be in the area except in very small numbers and, therefore, should not be affected by the activity. Bearded seal preference for open water further limits the potential for their being in this area at this time of the year.

Therefore, based on the preceding discussion, NMFS concludes that the taking by noise harassment incidental to construction of the ice road and ice island will result in no more than a few dozen harassment takings by this activity.

**Potential Effects on Subsistence Needs**

NMFS has not identified any unmitigable adverse impacts by this activity that are likely to occur and thereby affect the availability of marine mammals for subsistence needs. While there is a potential for a significant impact on the availability of bowhead whales for subsistence needs should a large oil spill occur and not be cleaned up prior to either reaching the spring leads or remaining in the area all summer to intercept the westward migrating bowheads, the potential for that occurring from a single activity is considered remote.

**Potential Effect on Habitat**

The ice island will be a temporary structure on the winter ice. The temporary loss of this area is negligible when compared with the size of the nearshore Beaufort Sea. When drilling and well-testing operations are completed, the well will be plugged and abandoned in accordance with MMS and Alaska Oil and Gas Conservation Commission regulations. This abandonment will leave the project area in essentially an unmodified condition since no wellhead or other structures will remain above the ocean floor.

In the unlikely event that there is an oil spill, Phillips has prepared an oil discharge prevention and contingency plan (ODPCP) specifically for this activity. The ODPCP is an extensive document that addresses spill response, several spill scenarios, cleanup activities, and numerous other aspects of oil spill prevention and response. Oil spill response teams are located in Deadhorse, AK. Phillips and other operators have oil spill response equipment available in each current or soon-to-be oil-producing area on the North Slope.

**Mitigation**

Several mitigation measures to reduce the potential for marine mammal harassment will be implemented by Phillips as part of its proposed activity. These include:

(1) Conducting a winter drilling program using a land-based rig instead of using the Concrete Island Drilling System platform, a floating platform, or a semisubmersible platform. The latter two platforms would require the need for icebreaker vessels;

(2) Conducting drilling operations during winter months instead of during the open water season, and

(3) Constructing the ice road and ice island in December before seal structures are made into fully developed lairs and especially before ringed seals birthings begin in mid-March.

**Marine Mammal Monitoring**

Phillips will utilize trained dogs and visual observations to assess the level of take of, and impact to, ringed seals during project activities. Prior to commencing ice road or ice island construction, trained dogs will be used to locate seal breathing holes and lairs along the proposed footprint of the ice road route and ice island pad. An adjacent 150-m (492-ft) buffer along the ice road route and a 1-km (0.62-mi) buffer around the ice island will also be surveyed by dogs. Although Phillips has arranged for trained dogs to be available for this activity, in the event that these dogs are not available for the survey (incapacitated, ill, etc), after review and approval by NMFS, Phillips would be allowed to employ a visual survey prior to onset of construction activities. The visual survey would involve searching the designated area for breathing holes and examining pressure ridges, ice hummocks, and deep ice cracks for lairs. Attempts will be made to confirm the presence of lairs by using an aluminum rod to locate the breathing hole or lair access hole where practical. Success in visually locating lairs will be limited by the relatively low density of ringed seals combined with the difficulty of finding breathing holes or lairs on snow-covered ice during winter conditions. A professional marine mammal biologist and an Inupiat hunter would be conducting the visual survey.

In order to obtain an indication of ringed seal response to Phillips' operations, a second seal structure survey will be conducted near the end of the McCovey project activities. The second survey will be conducted by biologists on snow machines using Differential Global Positioning System units to relocate and determine the presence or absence of seals in lairs identified during the first survey. Any new holes would also be noted.

Once drilling begins, a designated polar bear watch (typically an Inupiat hunter) will also look for and record seal activities. Because of the low expectation of interactions during the winter with marine mammals that are under the jurisdiction of NMFS, dedicated observers are not considered necessary on the ice island. As a result, NMFS is requiring, as part of the IHA, that Phillips instruct the polar bear watchperson to maintain a sightings-and-behavior log for seals that is separate from the Polar Bear Sightings Log. This latter reporting requirement is mandated by 50 CFR 18.27. Failure to use dogs when available may be in violation of the IHA and may result in suspension or termination of that IHA.

**Reporting**

The IHA requires Phillips to submit one report under this proposed authorization. This report will be required 90 days after completion of activities authorized for marine mammal takings. That report will be reviewed by NMFS prior to formal acceptance and modifications may be required to that report as a result of its review.

**National Environmental Policy Act**

The activity proposed by Phillips was the subject of a Final Environmental Impact Statement prepared by MMS in conjunction with Lease Sale 124 (MMS, 1990).

**Endangered Species Act (ESA)**

No species listed as either threatened or endangered under section 4 of the ESA are likely to be taken as a result of either the activity described in this document or the issuance of an IHA under section 101(a)(5)(D) of the MMPA.

**Conclusions**

Based upon the information contained in the application, in this document, and in supplemental documentation, NMFS has determined that the short-term impact of exploration drilling and related activities in the U.S. Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species of marine mammals to avoid the resultant noise from ice road and ice island construction, or from the transportation of the oil rig and supplies on the ice road, or from drilling activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the activity area, the number of potential harassment takings is estimated to be small. In addition, no take by injury or death is anticipated, and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Since NMFS is assured that the taking would not result in more than the incidental harassment (as defined by the MMPA Amendments of 1994) of small numbers of certain species of marine mammals, would have only a negligible impact on these stocks, would not have an unmitigable adverse impact on the availability of these stocks for subsistence uses, and would result in the least practicable impact on the stocks, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

**Authorization**

Accordingly, NMFS issued an IHA on the date of this document to Phillips for

the possible harassment of small numbers of ringed seals and bearded seals incidental to constructing an ice road and ice island and drilling an oil exploration well at the McCovey Prospect during the winter 2000/01, provided the previously mentioned mitigation, monitoring, and reporting requirements are carried out.

Dated: February 1, 2001.

**Wanda Cain,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 01–3182 Filed 2–6–01; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**ACTION:** Cancellation of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Options for Acquisition of the Advanced Targeting Pod and Advanced Technology FLIR Pod (ATP/ATFLIR) meeting scheduled for January 26, 2001, was not held.

Dated: February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–3138 Filed 2–6–01; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**ACTION:** Meeting date change of advisory committee meeting.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Systems Technology for the Future U.S. Strategic Posture closed meeting scheduled for February 13–14, 2001, has been changed to February 7–8, 2001. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–3139 Filed 2–6–01; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Threat Reduction Advisory Committee

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** On December 29, 2000 (65 FR 82984), the Department of Defense published an announcement of a closed Threat Reduction Advisory Committee meeting to be held on February 15, 2001. The meeting is hereby postponed until a later date. A new notice announcing will be published in the future.

**FOR FURTHER INFORMATION CONTACT:** Major Don Culp 703–767–5717.

Dated: February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01–3140 Filed 2–06–01; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Army is amending five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on March 9, 2001 unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

February 1, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0027 DAJA**

**SYSTEM NAME:**

Civil Process Case Files (July 15, 1997, 62 FR 37891).

**CHANGES:**

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Add to entry ''E.O. 9397 (SSN)''.

* * * * *

**STORAGE:**

Delete entry and replace with 'Paper records and cards in file cabinets and electronic storage media.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Disposition pending (until NARA disposition is approved, treat as permanent)'.

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Commander, Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09104–0007.''

* * * * *

**A0027 DAJA**

**SYSTEM NAME:**

Civil Process Case Files.

**SYSTEM LOCATION:**

Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09014–0007.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military members of the Armed Forces, civilian employees of the U.S. Government, and their dependents upon whom service is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish

civil liability, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings summonses and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between U.S. Government authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO Status of Forces Supplementary Agreement); and E.O. 9397 (SSN).

**PURPOSE(S):**

To ensure that U.S. Forces obligations under the North Atlantic Treaty Organization Status of Forces Agreement are honored and the rights of U.S. Government employees are protected by making legal assistance available.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements regulating the stationing and status in Federal Republic of Germany of Defense military and civilian personnel.

Information disclosed to authorities of the Federal Republic of Germany may be further disclosed by them to claimants, creditors or their attorneys.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and cards in file cabinets and electronic storage media.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

All information is maintained in areas accessible only to designated individuals having official need therefor in the performance of their duties. Records are housed in buildings protected by military police or security guards.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09104–0007.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09104–0007.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to record about themselves contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09104–0007.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; German authorities; Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0195–6 USACIDC**

**SYSTEM NAME:**

Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files (July 7, 1997, 62 FR 36269).

**CHANGES:**

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Add to entry ''and staff'' before ''credentials''.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Add to entry ''Army Regulation 195–6, Department of the Army Polygraph Activities''.

* * * * *

**STORAGE:**

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

**RETRIEVABILITY:**

Delete ''polygraph certificate number''.

**RETENTION AND DISPOSAL:**

Delete from entry ''Polygraph examination report information is retained for 3 years following closure or completion of the pertinent investigative report. Records of approved polygraph examiner certifications are retained at the CRC for 10 years after the examiner retires or is released from active duty, then destroyed by shredding or burning. Records of disapproved polygraph examiner certifications are retained at the CRC for 1 year, then destroyed by shredding or burning.''

* * * * *

**A0195–6 USACIDC**

**SYSTEM NAME:**

Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

**SYSTEM LOCATION:**

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506. Information concerning polygraph examiners is located at the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585, and subsequently at the Washington National Records Center, GSA, 4205 Suitland Road, Suitland, MD 20746–8001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Applicants for entry into the USACIDC program as an apprentice special agent, a polygraph examiner, for supervisory and staff credentials, for the USACIDC officer specialty program or

warrant officer appointments; or for laboratory technician credentials.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's application, statement of personal history, personal identifiers, photographs, fingerprint cards, qualifications record, biography, information pertaining to assignment capability or limitation, letters of recommendation, educational institutional documents, character investigation data, reclassification actions, reassignment orders, commander's inquiry data, reports of investigation, reasons for withdrawal from program, reason for denying application, date of acceptance into program, date appointed, date of accreditation, badge number, credential number, polygraph certificate number, agent sequence number, assignment, date assigned, marital status, and other data pertinent to the accreditation function, physical profile, date of last physical, assignment preference, transfer restrictions, job title, security clearance data, date of last background investigation, foreign language proficiency, special qualifications, service agreement, spouse's place of birth and citizenship, agent's place of birth, private licenses, hobbies, and last 10 assignments.

Polygraph examiner performance and evaluation data maintained at the Crime Records Center (CRC) include individual's name, personal history statement, certificate number, polygraph examination history, year of polygraph report, report of investigation or CRC cross reference number, type of examination, and monitor's comments.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 195–6, Department of the Army Polygraph Activities; and E.O. 9397 (SSN).

**PURPOSE(S):**

To determine applicant's acceptance into or rejection from the USACIDC program; continuing eligibility, placement or standing therein; and to manage and evaluate polygraph examination performance.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

By individual's surname, agent sequence number, Social Security Number, badge/credential number.

**SAFEGUARDS:**

All records are maintained in buildings protected by security guards or a locked wire enclosure; information is accessed only by designated individuals having official need therefor in the performance of assigned duties.

**RETENTION AND DISPOSAL:**

Records of accepted applicants are retained until the individual retires, is released from active duty, or is removed from the USACIDC program; at that time, files are placed in inactive storage at HQ USACIDC for 2 additional years and then stored at the Washington National Records Center for an additional 8 years before being destroyed by shredding. Records of rejected applicants are retained at HQ USACIDC for 1 year, then destroyed by shredding or burning. Information on Criminal Investigation Program Data Cards is maintained permanently. Information in automated media is retained for 90 days following termination of investigator's active status.

**SYSTEM MANAGER(S) AND ADDRESS:**

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individual should provide the full name, Social Security Number, date and place of birth, current address, telephone numbers, date of application to the program, sufficient details to locate the record, and signature.

**RECORD ACCESS PROCEDURES:**

Individual seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individual should provide the full name, Social Security Number, date and place of birth, current address, telephone numbers, date of application to the program, sufficient details to locate the record, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, individual's previous or present employers, financial institutions, relatives and former spouses, educational institutions, trade or fraternal organizations, neighbors past and present, work associates, social acquaintances, churches, public records, law enforcement and investigative agencies, Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identify of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32

CFR part 505. For additional information contact the system manager.

**A0351 USAREUR**

**SYSTEM NAME:**

Individual Academic Record Files (February 22, 1993, 58 FR 10002).

**CHANGES:**

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**SYSTEM LOCATION:**

Delete entry and replace with ''Commander, Combined Arms Training Center, Unit 28038, APO AE 09112–0100.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''Military or civilian personnel admitted as a student at a course of instruction conducted by the Combined Arms Training Center.''

* * * * *

**STORAGE:**

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

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**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Disposition pending (until NARA disposition is approved, treat as permanent).''

**A0351 USAREUR**

**SYSTEM NAME:**

Individual Academic Record Files.

**SYSTEM LOCATION:**

Commander, Combined Arms Training Center, Unit 28038, APO AE 09112–0100.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military or civilian personnel admitted as a student at a course of instruction conducted by the Combined Arms Training Center.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Student's name, Social Security Number, race, unit of assignment, course quota status, roster number, applicable Army Classification Battery Scores, eligibility for course attendance, academic achievements, awards, and similar relevant data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army and E.O. 9397 (SSN).

**PURPOSE(S):**

To determine eligibility for enrollment/attendance, monitor student progress, and record accomplishments for management studies and reports.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

By student's Social Security Number, surname, course/class number.

**SAFEGUARDS:**

Records are maintained in locked rooms, accessible only to designated persons authorized to use in the performance of official duties.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09014–0100.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Combined Arms Training Center, Unit 28038, APO AE 09112–0100.

Individuals should provide their Social Security Number, full name, course and class dates of attendance, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Combined Arms Training Center, Unit 28038, APO AE 09112–0100.

Individuals should provide their Social Security Number, full name, course and class dates of attendance, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; his/her commander; instructors; Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0600 USAREUR**

**SYSTEM NAME:**

USAREUR Community Automation System (UCAS) (December 23, 1997, 62 FR 67055).

**CHANGES:**

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**SYSTEM LOCATION:**

Delete entry and replace with 'United States Army Europe and Seventh Army, APO AE 09014–0100, and each United States Army Europe Community. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.'

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**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8, Military Personnel Management; and E.O. 9397 (SSN)'.

**STORAGE:**

Delete entry and replace with 'Electronic storage media and computer printouts.'

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**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Disposition pending (until NARA disposition is approved, treat as permanent)'.

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**A0600 USAREUR**

**SYSTEM NAME:**

USAREUR Community Automation System (UCAS).

**SYSTEM LOCATION:**

United States Army Europe and Seventh Army, APO AE 09014–0100, and each United States Army Europe Community. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

U.S. Army Europe (USAREUR) and Seventh Army military and civilian members and their dependents.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number, command and unit of assignment, military occupational skill, sex, date of birth, date eligible to return from overseas, basic active service date, pay entry basic date, expiration term of service, date of rank, rank/grade, promotion status, citizenship, marital status, spouse's Social Security Number (For military spouse), insurance and beneficiary data for Department of Defense Form 93 (Record of Emergency Data) and Department of Veterans Affairs Form 29–8286 (Serviceman's Group Life Insurance Election) completion in an automated format (DD Form 93–E and SGLV Form 8286–E), address, work and home telephone numbers, type of tour, dependent status and relationships, marriage data, type and date of cost of living allowance, port call date, departure date and order number, exceptional family member status, household goods/hold baggage, vehicle-shipment dates/destinations/weights.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8, Military Personnel Management; and E.O. 9397 (SSN).

**PURPOSE(S):**

The primary purpose of UCAS is to provide a central database containing all information required to in-process or out-process individuals within a USAREUR community. This data base is shared among five community work centers that need information on arriving and departing personnel. These work centers, the Central Processing Facility, Personnel Services Company, Finance Office, Housing Office and the Transportation Office, have access to certain portions of the UCAS data base. Data base information updates made by each work center are shared by all work centers that need the information. The centralized data base reduces in-processing and out-processing time since individuals no longer need to furnish the same information at each work centers.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media and computer printouts.

**RETRIEVABILITY:**

By Social Security Number, name, or other individual or group identifier.

**SAFEGUARDS:**

Physical security devices, computer hardware and software security features, and personnel clearances for individuals working with the system. Automated media and equipment are protected by controlled access to computer rooms.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, 2d Signal Brigade, USAREUR Community Automation System Project Manager, Unit 29227, APO AE 09024–0100.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, 2d Signal Brigade, USAREUR Community Automation System Project Manager, Unit 29227, APO AE 09024–0100.

Individuals should provide sufficient details to permit locating pertinent records, such as full name, Social Security Number, and current address. Request must be signed by individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records themselves contained in this record about system should address written inquiries to the Commander, 2d Signal Brigade, USAREUR Community Automation System Project Manager, Unit 29227, APO AE 09024–0100.

Individual should provide sufficient details to permit locating pertinent records, such as full name, Social Security Number, and current address. Request must be signed by individual.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records, reports and other official documents; Army Standard Automated Management Information Systems.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0600–8 USFK**

**SYSTEM NAME:**

Command Unique Personnel Information Data System (CUPIDS) (February 22, 1993, 58 FR 10002).

**CHANGES:**

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**STORAGE:**

Delete entry and replace with ''Electronic storage media, microfiche, and computer/paper printouts.''

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**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Disposition pending (until NARA disposition is approved, treat as permanent).''

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**A0600–8 USFK**

**SYSTEM NAME:**

Command Unique Personnel Information Data System (CUPIDS).

**SYSTEM LOCATION:**

Headquarters, U.S. Forces, Korea/Eighth U.S. Army, APO AP 96205–0010.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of U.S. Forces, Korea and Eighth U.S. Army, their dependents, U.S. Embassy employees, contract personnel, technical representatives, and individuals who are assigned to or under the jurisdiction or administrative control of the U.S. Army who make purchases of controlled items from authorized resale activities in Korea.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number, date and place of birth, sex, citizenship, date arrived in and previous tours in the Republic of Korea, rotation date, service component, pay grade/position, marital status, dependency status, selected skill specialties; sales slips and control sheets used in sales of controlled items by U.S. Forces; overspending/over purchase printouts produced by central computer facilities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Status of Forces Agreement, United States of America and the Republic of Korea; and E.O. 9397 (SSN).

**PURPOSE(S):**

Information is used for personnel management, strength accounting, manpower management, and contingency planning and operations; to assist commanders and U.S. Armed Forces investigative agents in monitoring purchases of controlled items; to produce ration control plates for authorized users; to maintain record of selected controlled items purchases at retail facilities and suspected violators of the system; and to comply with Joint Service black-market monitoring control policy.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: Information required for noncombatant evacuating planning and statistical studies by U.S. Forces Korea; to provide a source document for production of ration control plate. The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media, microfiche, and computer/paper printouts.

**RETRIEVABILITY:**

By surname of noncombatants; by Social Security Number of all others.

**SAFEGUARDS:**

Records are accessible only to authorized personnel. During non-duty hours, the facility is locked and secured.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Forces Korea/ Eighth U.S. Army, APO AP 96205–0010.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Forces Korea/Eighth U.S. Army, APO AP 96205–0010.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Forces Korea/Eighth U.S. Army, APO AP 96205–0010.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 01–3141 Filed 2–6–01; 8:45 am]
BILLING CODE 5001–10–U

## DEPARTMENT OF DEFENSE

### Department of the Army

### Final Draft Integrated Total Army Personnel Data Base (ITAPDB) Data Element Standard Version 1.0 (V1.0)

**AGENCY:** Deputy Chief of Staff for Personnel, U.S. Army, DoD.

**ACTION:** Notice (Request for Comments).

**SUMMARY:** The Department of the Army, Office of the Deputy Chief of Staff for Personnel, in coordination with the U.S. Army Reserves and the Army National Guard, announce the Final Draft Integrated Total Army Personnel Data Base (ITAPDB) Data Element Standard Version 1.0 (V1.0), dated November 9, 2000. Comments are invited on ways to: (a) Enhance the quality and clarity of the information contained therein; and (b) continue the establishment of a common set of data element standard that will enable the Army to eliminate redundant data, ensure commonality of information, reduce data conversion cost, and align with DoD development initiatives.

**DATES:** Consideration will be given to all comments received by March 9, 2001. All comments received within 30 days of publication of this notice will be considered for inclusion into Draft ITAPDB Data Element Standard V2.0.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Director, Information Systems, Office of the Deputy Chief of Staff for Personnel, ATTN: DAPE–ZXI (Ms. Golden Giddings/Ms. Angela McCoy), 300 Army Pentagon, Washington, DC 20310. Consideration will be given to all comments received within 30 days of the date of publication of this notice. E-mail address for Ms. Giddings is giddigl@hqda.army.mil and for Ms. McCoy is mccoyak@hqda.army.mil

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Oestreich, (703) 325–8877, oestreip@hoffman.army.mil

**SUPPLEMENTARY INFORMATION:** The ITAPDB establishes data element standard that will be shared among Army information systems horizontally between Army communities and vertically between field level and DA human resource information systems. Establishing a common set of data element standards enables the Army to eliminate redundant data, ensure commonality of information, reduce data conversion costs, and align with DoD development initiatives. As ITAPDB Data Element Standard evolves, it will apply to intelligence, operations, fire support, logistics, safety, transportation, human resource, military police, medical, dental, finance, chaplain, legal, post operation, civilian personnel, moral and welfare, recreation, force management, education center, inspector general and contractor support mission areas as it pertains to people related exchange of information or data.

This standard is essential to achieve effective and efficient system interoperability among systems that support all Army human resources—soldier, civilian, or contractor in active or retired status.

Individuals desiring a copy of the Final Draft ITAPDB Data Element Standard Version 1.0 should e-mail or write to Ms. Giddings or Mr. Oestreich at the above addresses.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 01–3169 Filed 2–6–01; 8:45 am]
BILLING CODE 3710–08–U

## DEPARTMENT OF EDUCATION

### Advisory Committee on Student Financial Assistance; Meeting

**AGENCY:** Advisory Committee on Student Financial Assistance, Education.

**ACTION:** Notice of upcoming meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Advisory Committee on Student Financial Assistance which is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–708–7439 or via e-mail at hope_gray@ed.gov no later than Wednesday, February 14, 2001. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

**DATES AND TIMES:** Tuesday, February 20, 2001, beginning at 8:30 a.m. and ending at approximately 5 p.m.; and Wednesday, February 21, 2001, beginning at 8:30 a.m. and ending at approximately 2 p.m.

**ADDRESSESS:** The Radisson Barcelo Hotel, the Phillips Ballroom, 2121 P Street, NW., Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW., Suite 601, Washington, DC 20202–7582 (202) 708–7439.

**SUPPLEMENTARY INFORMATION:** The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and mimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as Performance-based Organization (PBO); Modernization; Technology; Simplication of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committe to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes: (a) Unveiling the Committee's findings on the condition and access to higher education for low-income students and its policy priorities for the new administration, (b) discussion sessions on the condition of access today and the implications of strong demographic trends already underway, (c) the realignment of policy priorities required to respond effectively to today's and tomorrow's challenges, and (d) the Committee's plan for the remainder of fiscal year 2001. In addition, other Committee business will be addressed. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at ADV_COMSFA@ED.gov or Tracy_Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Wednesday, February 14, 2001.

The Advisory Committee will meet in Washington, DC. on Tuesday, February 20, 2001, from 8:30 a.m. until approximately 5 p.m., and on Wednesday, February 21, from 8:30 a.m. until approximately 2 p.m.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW., Suite 601, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: February 1, 2001.

**Dr. Brian K. Fitzerald,**

*Staff Director, Advisory Committee on Student Financial Assistance.*

[FR Doc. 01–3111 Filed 2–6–01; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 01–22; Integrated Assessment of Global Climate Change Research

**AGENCY:** U.S. Department of Energy (DOE)

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces interest in receiving applications for the Integrated Assessment of Global Climate Change Program. This notice is a follow on to six previous notices published in the **Federal Register**. The program funds research that contributes to integrated assessment of global climate change, in particular, research to develop and improve methods and tools that focus on specialized topics of special importance to integrated assessments. The research program supports the Department's Global Change Research Program, the U.S. Global Change Research Program, and the Administration's goals to understand, model, and assess the effects of increasing greenhouse gas levels in the atmosphere and within that framework to evaluate the economic costs and predicted responses to options that

would mitigate the long term rise in greenhouse gases.

**DATES:** Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. Early submission of preapplications is suggested to allow time for meaningful dialogue.

The deadline for receipt of formal applications is 4:30 p.m., E.D.T., April 3, 2001, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001 and early Fiscal Year 2002.

**ADDRESSES:** Preapplications, referencing Program Notice 01–22, should be sent E-mail to john.houghton@science.doe.gov.

Formal applications, referencing Program Notice 01–22, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–22. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Houghton, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, E-mail: john.houghton@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 01–22 is available via the World Wide Web using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

**SUPPLEMENTARY INFORMATION:** Integrated assessment of global climate change is defined here as the analysis, including costs and benefits, of the consequences of climate change and the actions to mitigate it from the cause, such as greenhouse gas emissions, through impacts, such as altered hydrologic regimes and changed energy requirements for space conditioning due to temperature changes. Integrated assessment is sometimes, but not always, implemented as a computer model.

A description of integrated assessment may be found in Chapter 10: ''Integrated Assessment of Climate Change: An Overview and Comparison of Approaches and Results,'' in Climate Change 1995: Economic and Social Dimensions of Climate Change, edited by Bruce, James P.; Lee, Hoesung; and Haites, Erik F., Cambridge University Press, 1996. A Special Issue of The Energy Journal entitled ''The Costs of the Kyoto Protocol: A Multi-Model Evaluation'', 1999, presents analyses from several integrated assessment models of predicted costs to meet various target emission scenarios. The Pew Center for Global Climate Change posts a collection of papers on the economics of global climate change at *http://www.pewclimate.org/projects/index* that reflect some of the research results supported by this program. The web site for the Energy Modeling Forum *(http://www.stanford.edu/group/EMF/home/index.htm)* contains further background information.

The results of research in integrated assessment of global climate change help the U.S. Global Climate Change Research Program (USGCRP) in several ways. First, the integrated assessment models may be used outside the USGCRP by the policy community to evaluate specific options. The research described in this notice is intended to provide a sound scientific foundation for analyzing benefits and costs, some of which are not necessarily measured monetarily. The research supported as a result of this solicitation will be judged in part on its potential to improve and/or support the analytical basis for policy development. Policy analysis will not be funded. Second, results from integrated assessments can be used to identify high priority research needs of the rest of the USGCRP. A representation of the salient aspects of climate change, from emissions through impacts, is able to provide useful information regarding the degree to which underlying uncertainty in specific topics influence the results. And third, this program sponsors research on selected topics that focus on the connection of two or more different aspects of the entire analysis of global climate change. This research can lead to insights that would be otherwise unavailable if investigating a more narrowly focused aspect of climate change.

The program is narrowly focused and will concentrate support on the topics described below. Applications that involve development of analytical models and computer codes will be judged partly on the basis of proposed tasks to prepare documentation and to make the models and codes available to other groups. The following is a list of topics that are high priority. Topics proposed by principal investigators that fall outside this list will need strong justification.

### *A. Technology Innovation and Diffusion*

This category has been a primary focus of the Integrated Assessment of Global Climate Change Program since its inception. The research in this element is not a stand-alone activity. Its purpose is to fill critical gaps in current integrated assessment modeling.

Assumptions regarding the effects of technology innovation and diffusion of greenhouse gas emissions are some of the most important contributors to uncertainty in integrated assessment models for the prediction of greenhouse emissions over long time scales. Making good predictions and being consistent across different modules of the models are crucial to good modeling. The representation of backstop technologies; resource depletion; labor and capital productivity improvements; capital, labor and energy substitutability, and adaptation are all based on technology assumptions. Technology innovation and diffusion affects energy sector consumption and technology characteristics, carbon emissions, economic growth, and many other factors in integrated assessment.

There is a need to identify and separate the driving forces behind the prediction of future changes in greenhouse gas emissions. Information on the driving forces, such as GDP (gross domestic product), productivity, energy mix, and invention, innovation, and diffusion are important for integrated assessment. The improvement in the ability of the integrated assessment models to represent technological change as a function of variables that are determined by the model (''endogenizing technological change'') is a key thrust.

The rate and nature of technology diffusion from the OECD (Organization for Economic Cooperation and Development) countries to developing countries is not well understood. Predicting economic structural change in developing countries is also problematical. Much of the uncertainty in integrated assessment models comes from the difficulty in predicting the response of the energy sector and greenhouse gas emissions in developing countries to both regulation and technological innovations in OECD nations. How should integrated assessment models treat the transfer of technology from OECD countries to developing countries?

This research would help provide tools to address other policy-relevant questions such as the following, as they relate to greenhouse gas emissions:

What effect would various policy options have on ''carbon leakage'', the movement of emissions of greenhouse gases away from relatively regulated countries to relatively unregulated countries?

How can research and development accelerate the speed of moving innovations

that would mitigate climate change to the manufacturing production line? How can the linkages and connections between R&D and manufacturing efficiency, invention, innovation, and adoption be simulated and modeled quantitatively?

How do innovation and/or diffusion relate to measurable parameters of research and development, such as public and private research and development, investments, or regulations?

*B. Develop Consistent International Data*

Certain data sets are important to collect and distribute to the integrated assessment community so they can be used by several researchers. The focus of this research would be to fill in important integrated assessment data gaps. Past data collection projects funded by this program include (a) providing an energy quantity flow data base and assembling fossil fuel resource estimates compatible with the GTAP data base, (b) statistics on non-market energy sources in developing countries, and (c) carbon dioxide emissions and land use changes by country.

*C. Supply Curves for Non-Carbon Dioxide Greenhouse Gases*

Carbon dioxide provides about two-thirds of the total atmospheric forcing potential of anthropogenic greenhouse gases. The remainder results from such gases as methane, nitrous oxide, and the halocarbons. The emission scenarios for the other greenhouse gases and particularly the cost of reducing those emissions are much more poorly understood than those for carbon dioxide. This research topic would provide costs of reducing emissions of the other greenhouse gases under business-as-usual scenarios as well as under plausible policy actions.

*D. Representation of Anthropogenic Release or Sequestration of Carbon Dioxide Through Land Use Changes and Carbon Sequestration Technologies*

Integrated Assessment models do not represent with desirable accuracy forecasts of carbon dioxide release or sequestration through anthropogenic activities such as land use changes and carbon sequestration. Research in this element is not a stand-alone activity. Proposed research will be judged on the basis of the potential utility of these research results in integrated assessment models.

Research is ongoing that will improve our understanding and ability to develop innovative carbon sequestration technologies and procedures that will help reduce levels of carbon dioxide in the atmosphere. Such developments may rely on the continued use of fossil fuels with the sequestration of carbon in the terrestrial biosphere, in underground formations, and in the ocean. Research in this topic would identify and quantify the costs and likely responses to various carbon sequestration policy options, in a way that can be adopted by the integrated assessment models. Research funded under this topic might also develop new information on global carbon dioxide emissions from various land use change and land use management scenarios, including forests and agricultural lands. The emphasis is on global scale estimates, perhaps regionally disaggregated. What potential is there for enhancing carbon sequestration? What changes in the global carbon balance could be expected from policy options to enhance sequestration?

**Program Funding**

It is anticipated that up to $800,000 will be available for multiple awards to be made in Fiscal Year 2001 and early Fiscal Year 2002 in the categories described above, contingent on the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs. Annual budgets are expected to range from $30,000 to $150,000 total costs. Funds for this research primarily will come from the Integrated Assessment Research program; some funds for research on Topic D will come from the Carbon Management Science program.

**Collaboration**

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/Colab.html.*

**Preapplications**

A brief preapplication is strongly encouraged but not required prior to submission of a full application. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Integrated Assessment of Global Climate Change Research Program. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

**Merit Review**

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. All collaborators should be listed with the abstract or summary. On the grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address.

Attachments include curriculum vitae, a listing of all current and pending federal support and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: *http://www.nsf.gov/bfa/cpo/gpg/fkit.htm#forms-9.*

*Related Funding Opportunities:* Investigators may wish to obtain information about the following related funding opportunities:

**National Oceanic and Atmospheric Administration**

Within the context of its Human Dimensions of Global Change Research Program, the Office of Global Programs of the National Oceanic and Atmospheric Administration will support research that identifies and analyzes how social and economic systems are currently influenced by fluctuations in climate, and how human behavior can be (or why it may not be) affected based on information about variability in the climate system. The program is particularly interested in learning how advanced climate information on seasonal to yearly time scales, as well as an improved understanding of current coping mechanisms, could be used for reducing vulnerability and providing for more efficient adjustment to these variations. Notice of this program is included in the Program Announcement for NOAA's Climate and Global Change Program, which is published each spring in the **Federal Register**. The deadline for proposals to be considered in Fiscal Year 2002 is expected to be in late summer 2001. For further information, contact: Caitlin Simpson; Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Ave., Suite 1225; Silver Spring, MD 20910; telephone: (301) 427–2089, ext. 152; Internet: simpson@ogp.noaa.gov.

**National Science Foundation**

Starting in FY 2001, NSF will support research and related activities associated with the dynamics of coupled natural and human systems through its Biocomplexity special competition. The Biocomplexity 2001 announcement can be accessed at *http://www.nsf.gov/cgi-bin/getpub?nsf0134.* The deadline for submission of proposals for the FY 2001 competition is March 16, 2001. NSF staff expect the competition to continue in future fiscal years, although deadlines may be earlier in the fiscal year and the focus may change somewhat. Potential applicants should regularly consult the NSF Web site for updates.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 01–3189 Filed 2–6–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Science

### Basic Energy Sciences Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, February 26, 2001, 8:00 a.m. to 5:00 p.m., and Tuesday, February 27, 2001, 8:00 a.m. to 12:00 noon.

**ADDRESSES:** Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

**FOR FURTHER INFORMATION CONTACT:** Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–5565.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

*Tentative Agenda:* Agenda will include discussions of the following:

Monday, February 26, 2001

- Welcome and Introduction
- Remarks from Director, Office of Science
- News from Basic Energy Sciences
- Update on the Intense Pulsed Neutron Source (IPNS) and the Manuel Lujan, Jr. Neutron Scattering Center (MLNSC) Subpanel Report

Tuesday, February 27, 2001

- Update on Future BESAC Activities
- Brief Overviews of Basic Energy Sciences Divisions

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or sharon.long@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on February 1, 2001.

**Carol Anne Kennedy,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01–3185 Filed 2–6–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Los Alamos

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, February 28, 2001; 6:00 p.m.–9:00 p.m.

**ADDRESSES:** Joseph Montoya Building, Northern New Mexico Community College, 921 Pasco de Oñate, Española, NM.

**FOR FURTHER INFORMATION CONTACT:** Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989–1662; fax (505) 989–1752 or e-mail: *adubois@doeal.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

1. Opening Activities—6:00–6:30 p.m.
2. Public Comments 6:30–7:00 p.m.
3. Reports—7:00–9:00 p.m.
   LANL's RCRA Permit, Part B—James Bearzi, Chief of Hazardous Waste Division, New Mexico Environment Department
4. Committee Reports:
   Waste Management
   Environmental Restoration
   Monitoring and Surveillance
   Community Outreach
   Budget
5. Other Board business will be conducted as necessary

This agenda is subject to change at least one day in advance of the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9:00 a.m.–4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC on February 1, 2001.

**Carol Anne Kennedy,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01–3183 Filed 2–6–01; 8:45 am]

**BILLING CODE 6405–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Pantex

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, February 27, 2001; 1:00 p.m.–5:00 p.m.

**ADDRESSES:** Carson County Squarehouse Museum, Fifth & Elsie Streets, Panhandle, Texas 79068.

**FOR FURTHER INFORMATION CONTACT:** Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806) 477–5896 or e-mail *jjohnson@pantex.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

*Tentative Agenda*

1:00 Agenda Review/Approval of Minutes
1:15 Co-Chair Comments
1:30 Task Force/Subcommittee Reports
2:00 Ex-Officio Reports
2:15 Break
2:30 Updates—Occurrence Reports—DOE
3:00 Presentation (To Be Announced)/ 24 hour information line: (806) 372–1945
4:00 Questions, Public Question/ Comments
5:00 Adjourn

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m. Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on February 1, 2001.

**Carol Anne Kennedy,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01–3187 Filed 2–6–01; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Science

### Fusion Energy Sciences Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, February 27, 2001, 9:00 a.m. to 6:00 p.m.; Wednesday, February 28, 2001, 9:00 a.m. to 12:00 p.m.

**ADDRESSES:** Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–4927.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The major purpose of this meeting is for the full committee to hear status reports from its two subpanels, one dealing with the

burning plasma physics charge and the other dealing with reviewing the theory activities.

*Tentative Agenda*

Tuesday, February 27, 2001

- Office of Science Perspective
- OFES Perspective
- Report on the Fusion Materials Program
- Report on the Workshop on Burning Plasma
- Status Report on the Activities of Burning Plasma Physics Subpanel
- Status Report on the Activities of Theory Program Review Subpanel

Wednesday, February 28, 2001

- Plans for the Compact Stellarator Program
- Report on NSF Physics Frontier Centers
- Public Comments
- Adjourn

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or albert.opdenaker@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 1, 2001.

**Carol Anne Kennedy,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01–3186 Filed 2–6–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Science

### High Energy Physics Advisory Panel

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, March 26, 2001; 9:00 a.m. to 6:00 p.m. and Tuesday, March 27, 2001; 8:30 a.m. to 4:00 p.m.

**ADDRESSES:** Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

**FOR FURTHER INFORMATION CONTACT:** Glen Crawford, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–9458

**SUPPLEMENTARY INFORMATION:** *Purpose of Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

*Tentative Agenda:* Agenda will include discussions of the following:

Monday, March 26, 2001, and Tuesday, March 27, 2001

- Discussion of Department of Energy High Energy Physics Programs
- Discussion of National Science Foundation Elementary Particle Physics Program
- Discussion of High Energy Physics University Programs
- Reports on and Discussion of U.S. Large Hadron Collider Activities
- Reports on and Discussions of Topics of General Interest in High Energy Physics
- Public Comment (10-minute rule)

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Glen Crawford, 301–903–9458 or Glen.Crawford@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 1, 2001.

**Carol Anne Kennedy,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01–3184 Filed 2–6–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–70–000]**

### Columbia Gas Transmission Corporation; Notice of Application

February 1, 2001.

Take notice that Columbia Gas Transmission Corporation (Columbia), a Delaware Corporation, having its principal place of business at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed on January 23, 2001, an abbreviated application pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA), as amended, for a certificate of public convenience and necessity to perform certain facility enhancements. Columbia states that it has agreed to provide firm transportation service for up to 140,000 Dth/d (40 MDth/d annually and an additional 100MDth/d from June 31 through August 31 annually) to Northeast Ohio Natural Gas Corporation for redelivery to First Energy Trading Services, Inc., both wholly owned subsidiaries of First Energy Corp., all as more fully described in the application.

In this connection, Columbia requests NGA section 7(c) and 7(b) authorization for the following:

- Increase the MAOP of its entire Line L–2542 from 400 psig to 630 psig and a portion of its Line V from 500 psig to 550 psig and to operate the pipelines at the higher pressures. The location of this portion of the project is Wayne, Lucas, and Holmes Counties, Ohio.
- Construct two 4,500 hp electric driven compressor units, a building and appurtenances at its existing Wellington Compressor Station located in Lorain County, Ohio.
- Abandon by replacement seven existing compressor units with a combined horsepower of 4,320, four existing gas coolers, an existing building and appurtenances at Wellington Compressor Station.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before February 22, 2001 file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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*.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–3153 Filed 2–6–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–215–000]**

## El Paso Natural Gas Company: Notice of Proposed Changes in FERC Gas Tariff

February 1, 2001.

Take notice that on January 29, 2001, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, with an effective date of March 1, 2001:

Sixth Revised Sheet No. 118

El Paso states that the tariff sheet is being filed to transfer the Billing Determinants associated with Cyprus Miami Mining Corporation and Cyprus Christmas Mine Corporation to Phelps Dodge Corporation. The tendered tariff sheet is proposed to become effective March 1, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.24 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–3146 Filed 2–6–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT01–9–000]**

## Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff and Filing of Non-Conforming Amendment to Service Agreement

February 1, 2001.

Take notice that on January 26, 2001, Kern River Gas Transmission Company (Kern River) tendered for filing and acceptance a non-conforming amendment to a service agreement. Kern River also tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective February 26, 2001:

Sheet Nos. 427–489 (reserved)
First Revised Sheet No. 490

Kern River states that the purpose of this filing is to submit a transportation service agreement amendment between Union Pacific Resources Company and

Kern River that contains non-conforming provisions and that the tariff sheet is submitted to add such amendment to the list of non-conforming service agreements contained in Kern River's tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–3148 Filed 2–6–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–214–000]**

## Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2001.

Take notice that on January 26, 2001, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective February 26, 2001.

Second Revised Sheet No. 254
Third Revised Sheet No. 255
Third Revised Sheet No. 256

Northwest states that the purpose of this filing is to propose changes to Northwest's tariff provisions related to facilities reimbursement procedures associated with the construction of laterals.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–3143 Filed 2–6–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–173–001]**

## Questar Pipeline Company; Notice of Compliance Filing

February 1, 2001.

Take notice that on January 30, 2001, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective December 22, 2000:

Substitute Fifth Revised Sheet No. 52
Substitute Fourth Revised Sheet No. 56
Substitute First Revised Sheet No. 56A

Questar stated that the purpose of this filing is to comply with the Commission's January 4 order, wherein the Commission approved and rejected certain tariff sheets and requested clarification of approved Fourth Revised Sheet No. 56 and First Revised Sheet No. 56A. Therefore, these sheets have been modified to include proposed language in order to clarify its intent.

Questar states that in addition, Substitute Fifth Revised Sheet No. 52 is being submitted to be consistent with what Questar believes the Commission intended to approve in its January 4 order. The tariff sheet is now consistent with what the Commission approved on Sheet No. 52A, which allows for a bid period with two rounds of competing bids instead of three.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instruction on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–3149 Filed 2–6–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–175–002]**

## Total Peaking Services, L.L.C.; Notice of Compliance Filing

February 1, 2001.

Take notice that on January 30, 2001, Total Peaking Services, L.L.C. (Total Peaking), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 64, with an effective date of December 19, 2000.

Total Peaking states that the Revised Sheets remove language from Total Peaking's Tariff that currently subjects customers to imbalance penalties.

Total Peaking states that copies of the filing has been served on all parties on the office of Service List of Docket No. RP01–175–000 and the Connecticut Department of Utility Control.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–3145 Filed 2–6–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–213–000]**

## Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

February 1, 2001.

Take notice that on January 25, 2001 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirty Second Revised Sheet No. 50, with an effective date of January 1, 2001.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under Section 4 of the Transco's Rate Schedule FT–NT.

Transco states that included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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. 01–3147 Filed 2–6–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP01–64–000]**

## Trailblazer Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Trailblazer Expansion Project and Request for Comments on Environmental Issues

February 2, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Trailblazer Expansion Project involving construction and operation of facilities by Trailblazer Pipeline Company (Trailblazer) in Logan County, Colorado and Lincoln and Kearney Counties, Nebraska.[1] These facilities would consist of 54,800 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Trailblazer provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

### Summary of the Proposed Project

Trailblazer wants to expand the capacity of its facilities in Colorado and Nebraska to transport an additional 324,000 million British thermal units per day of natural gas to two other pipeline companies—Natural Gas Pipeline Company of America and Northern Natural Gas Pipeline Company to serve six shippers. Trailblazer seeks authority to construct and operate:

- A new Compressor Station 601, consisting of two 10,000 hp gas-fired compressors in Logan County, Colorado;
- Increase the horsepower of an electric motor-driven compressor from 5,200 hp to 10,000 hp and install one new 10,000 hp electric unit at Compressor Station 602 in Lincoln County, Nebraska; and
- Construct a new Compressor Station 603, consisting of two 10,000 hp electric motor driven compressors in Kearney County, Nebraska.

In addition, 13 miles of nonjursidictional 69 kilovolt electric power line would be constructed in Kearney County, Nebraska by Southern Power District, to supply electricity for

[1] Trailblazer's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

Compressor Station 603. Southern Power District has not yet started work on the power line. An electric substation would also be constructed at Compressor Station 603.

The location of the project facilities is shown on maps in Appendix 1.

**Land Requirements for Construction**

Construction of the proposed facilities would require up to 113 acres of land. Compressor Station 601 would be built on a 40-acre portion of an 80-acre site. There is a VHF radio building and tower, a warehouse, and a small utility building on the 40-acre site. The additional compressor facilities at existing Compressor Station 602 would be built on a 33-acre portion of the 73-acre site south of the 36-inch-diameter Trailblazer Pipeline. Existing facilities at the station include an office building, compressor building, garage, and weld shop, meter building, and a VHF radio building and tower. Compressor Station 603 would be built on a 40-acre portion of an 80-acre site. In addition to the 36-inch-diameter pipeline, other structures at the site include a VHF radio building and tower, a warehouse, and a small utility building. Following construction, no more than 113 acres would be maintained as new aboveground facility sites. All construction would be located on property owned by Trailblazer.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- vegetation and wildlife
- air quality and noise
- endangered and threatened species
- land use
- cultural resources
- hazardous waste

No impacts to water resources, fisheries and wetlands are expected. An off-site wetland area is located approximately 75 feet from the northwest corner and 25 feet from the north-central property boundary of Compressor Station 603. However, no wetland areas exist on the Compressor Station 603 property. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Trailblazer. This preliminary list of issues may be changed based on your comments and our analysis.

- Federally listed endangered or threatened species may occur in the proposed project area.
- Residents in the vicinity of the project may be affected by operational noise from the compressor stations.
- Potential environmental impacts may result from the construction of 13 miles of nonjurisdictional 69 kilovolt electric power line that would be constructed by Southern Power District.

Also, we have made a preliminary decision to address the environmental impacts of the nonjurisdictional electric power line facilities to the extent the information is available. The two preliminary routes proposed for the power line are shown on the maps attached (see Appendix 1), but the final route may change. However, our staff will not make any recommendations on route changes for the electric power line. Also, under Nebraska State laws, Southern Power District must follow a public notice procedure to notify landowners. After the public notice is issued for the power line, landowners would be contacted about the route by Southern Power District. Therefore, this NOI is not being sent to any landowners on the electric power line route. We believe the State of Nebraska notification procedure to landowners should be adequate.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 2.
- Reference Docket No. CP01–64–000.
- Mail your comments so that they will be received in Washington, DC on or before March 5, 2001.

Comments may also 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* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–3144 Filed 2–6–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

February 1, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.*: DI01–5–000.

c. *Date Filed:* December 26, 2000.

d. *Applicant:* Northern Illinois Hydropower.

e. *Name of Project:* Dresden Island Hydropower Plant.

f. *Location:* On the Illinois waterway, near Channahon, Grundy County, Illinois.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dennis Cohil, 801 Oakland Avenue, Joliet, Il 60435, telephone (185) 723–6314, FAX (815) 725–5687, E-mail *damonzdunich@aol.*

i. *FERC Contact:* Any questions on this notice should be addressed to Patricia W. Gillis (202) 208–0735, or E-mail address: *patricia.gillis@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* March 8, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments and protests may be filed electronically via the Internet in lieu on 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*

Please include the docket number (DI01–5–000) on any comments or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) a powerhouse, located next to the U.S. Army Corps of Engineer's existing Dresden Island Lock and Dam, tentatively containing eight generating units with a total installed capacity of 18MW; and (2) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–3150 Filed 2–6–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

February 1, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2280–005.

c. *Date Filed:* December 29, 2000.

d. *Applicants:* The Cleveland Electric Illuminating Company (CEI) and FirstEnergy Generation Corp. (FEGC).

e. *Name of Project:* Seneca Pumped Storage Station.

f. *Location:* On the Allegheny River in Warren County, Pennsylvania, at the U.S. Army Corps of Engineers Kinzua Dam and Reservoir. The project occupies federal lands within Allegheny National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. section 8.

h. *Applicant Contacts:* For CEI: Mr. Brian J. McManus, Jones, Day, Reavis & Pogue, 51 Louisiana Ave, NW., Washington, DC 20001–2113 (202) 879–5492. For FEGC: Mr. Dennis J. Fuster, FirstEnergy Corp., 76 South Main Street, Akron, OH 44308 (330) 761–4324.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell at (202) 219–2806.

j. *Deadline for filing comments and/or motions:* March 8, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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.

Please include the project number (P–2280–005) on any comments or motions filed.

k. *Description of Proposal:* CEI seeks to transfer the project to FEGC as part of a corporate restructuring resulting from Ohio state laws mandating competitive electric services.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at httpwww.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–3151 Filed 2–6–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing with the Commission and Soliciting Additional Study Requests

February 1, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Exemption for a small existing hydroelectric power project that has an installed capacity of 5 megawatts or less, from licensing under the Federal Power Act and

b. *Project No.:* P–11870–000.

c. *Date filed:* January 8, 2001.

d. *Applicant:* Goodrich Falls Hydro Electric Company.

e. *Name of Project:* Goodrich Falls Project.

f. *Location:* On the Ellis River, in the Town of Bartlett, Carroll County, New Hampshire. The project would not use federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 USC 2705 and 2708.

h. *Applicant Contact:* Ms. Maureen Winters, Project Manager, Kleinschmidt Associates, Energy & Water Resources Consultants 75 Main Street, Pittsfield Maine 04967, (207) 487–3328.

i. *FERC Contact:* John Ramer, (202) 219–2833, John.Ramer@ferc.fed.us.

j. *Deadline for filing additional study requests:* March 29, 2001.

All documents (original and eight copies) should be filed with: David P. Boerger, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy to the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

1. *Project Description:* The Goodrich Falls Project consists of: (1) An existing 157-foot-long and 25-foot-high dam with

an integrated 18 foot by 23 foot concrete intake; (2) a 4.5-foot-diameter, 150-foot-long steel penstock; (3) an existing 2.1-acre, 920-foot-long by 100-foot-wide reservoir with an average 5 foot and a maximum gross storage capacity of 2.1-acre-feet; (4) a 25-foot by 30 foot concrete powerhouse containing one generating unit with a total installed capacity of 550 kilowatts; (5) an existing 250-foot-long transmission line; and (6) apurtenant facilities. The project is estimated to generate an average of 2 million kilowatthours annually. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–3152 Filed 2–6–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Southwestern Power Administration

### Proposed Rate Schedule Changes

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of rate schedule changes for public review and comment.

**SUMMARY:** The Administrator, Southwestern Power Administration (Southwestern), has determined that changes to the use of the energy imbalance service in the current Rate Schedule NFTS–98C and the power factor penalty formula in Rate Schedules P–98C and NFTS–98C are needed. In addition, an Interconnection Facilities Service Charge is being established in the revised NFTS–98C rate schedule. This charge will provide compensation to Southwestern when other entities use facilities of the Federal government through interconnections for which no other benefits are being received. Other areas within the rate schedules have been modified for clarity or eliminated if no longer applicable. Since the proposed changes to the rate schedules are associated with the terms and conditions of current service and the establishment of a new charge for which Southwestern currently has no contractual arrangements, there is no immediate impact on the previously established revenue requirements for Southwestern's Integrated System. Consequently, the net result of the revenue requirements projected in the 1997 Integrated System Power Repayment Studies, which provided the basis for the existing rate schedules, is not changed.

**DATES:** Written comments on the proposed rate schedule changes are due on or before March 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, (918) 595–6696, reeves@swpa.gov.

**SUPPLEMENTARY INFORMATION:** The names of the rate schedules will be changed from P–98C and NFTS–98C to P–98D and NFTS–98D, respectively, in order to reflect the fact that changes have been made. These rate schedules are being changed at this time to address, prior to the summer electrical peak period, previously unforeseen problems that have arisen as a result of the time differential in the price of power. The provisions of the rate schedules being changed are: (1) The Limitations on Energy Imbalance Service; (2) the Power Factor Penalty; (3) the addition of an Interconnection Facilities Service Charge; and, (4) modifications to enhance clarity within the rate schedules. The proposed changes are described below:

The Limitations on Energy Imbalance Service in the proposed NFTS–98D rate schedule has been changed to better clarify the hours and circumstances in which energy within the authorized bandwidth is to be returned to the providing party. The current rate schedule provided for energy within the authorized bandwidth to be returned to Southwestern ''in like hours and similar circumstances.'' The lack of definition in this language provided an opportunity for customers to use the bandwidth during high-value peak demand periods and to return the energy during low-value off-peak demand periods. The need to be more explicit regarding the like hours and circumstances for return of the energy is important, particularly during summer peak periods when the value of energy is high and the capability of Southwestern to provide such energy during those times is typically low.

The Power Factor Penalty is being changed in the proposed P–98D and NFTS–98D rate schedules to more accurately charge for the reactive kilovolt amperes (rkVA or VARs) taken from the System of Southwestern during any particular hour which contribute to power factors less than 95 percent, rather than the current process which charges for the customer's peak demand in kilowatts for the month in which a low power factor was calculated. This revised penalty more closely ties the provision to the actual VARs taken from the System of Southwestern. In addition, Southwestern has expanded the application of this penalty to provide for a charge at interconnections that could also experience a low power factor.

Southwestern is adding a new provision to the NFTS–98D rate schedule for an Interconnection Facilities Service Charge. This charge will be applicable to those customers who request an interconnection on the System of Southwestern that does not provide commensurate transmission system support benefits or compensation to Southwestern for the use of Federal facilities. In order for Southwestern to provide an interconnection on its system, Southwestern has historically and must continue to secure commensurate benefits for the use of its facilities to assure that the Federal Government is compensated for the use of such facilities, thereby recovering its costs, and to assure that all customers are charged the same for the same type of service. The charge for this service has been set at $0.69 per kilowatt per month, which represents the cost of Southwestern's facilities being used.

Redlined versions of the revised rate schedules P–98D and NFTS–98D are available upon request. To request a copy, please contact Barbara Otte at 918–595–6674 or at otte@swpa.gov or Tracey Hannon at 918–595–6677 or at hannon@swpa.gov.

The Administrator has determined that written comments will provide adequate opportunity for public participation in the rate schedule revision process. Therefore, an opportunity is presented for interested parties to submit written comments on the proposed rate schedule changes. Written comments are due no later than thirty (30) days following publication of this notice in the **Federal Register**. Five copies of written comments should be submitted to: Forrest E. Reeves, Assistant Administrator, Southwestern Power Administration, One West Third Street, Suite 1400, Tulsa, OK 74103.

Following review and consideration of written comments, the Administrator will finalize and submit the proposed rate schedules to the Deputy Secretary of Energy for approval on an interim basis. The Deputy Secretary will then

forward the proposed rate schedules to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Tulsa, Oklahoma this 24th day of January 2001.

**Michael A. Deihl,**

*Administrator.*

[FR Doc. 01–3188 Filed 2–6–01; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–64054 FRL–6765–9]**

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 9, 2001 unless indicated otherwise.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 266A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail address: hollins.james@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person*. Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephone number (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays.

### II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in four pesticide registrations. These registrations are listed in the following Table 1 by registration number, product name, active ingredient and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Registration No. | Product | Chemical Name | Delete From Label |
|---|---|---|---|
| 003125–00158 | Di-Syston 68% Concentrate | Disulfoton | Corn, oats, pecans, and tomatoes |
| 003125–00172 | Di-Syston 15% | Disulfoton | Corn, oats, pecans, and tomatoes |
| 003125–00307 | Di-Syston 8 | Disulfoton | Corn, oats, pecans, and tomatoes |
| 030573–00002 | Pyrellin E.C. | Pyrethrins; Rotenone; Cube Resins other than rotenone | Barns, milking parlors, milk rooms, dairies, poultry houses, harvested tomatoes, fruit, grain |

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before March 9, 2001 unless indicated otherwise, to discuss withdrawal of the application for amendment. This 30–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company No. | Company Name and Address |
|---|---|
| 003125 | Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120. |
| 030573 | Wright Webb Corp., PO Box 1572, Fort Myers, FL 33902. |

### III. What is the Agency Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

### IV. How and to Whom Do I Submit Withdrawal Requests?

1. *By mail:* Registrants who choose to withdraw a request for use deletion must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked March 9, 2001.

2. *In Person or by courier*: Deliver your withdrawal request to: Document Processing Desk (DPD), Information

Services Branch, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 266A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. The DPD is open from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The DPD telephone number is (703) 305–5263.

3. *Electronically*. You may submit your withdrawal request electronically by e-mail to: hollins.james@epa.gov. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format.

### V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations

Dated: January 22, 2001.

**Richard D. Schmitt,**

*Associate Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc. 01–3166 Filed 2–6–01; 8:45 a.m.]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30505; FRL–6754–9]**

## Pesticide Products; Registration Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket control number OPP–30505, must be received on or before March 9, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30505 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Sharlene Matten, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703)605–0514; e-mail address: matten.sharlene@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30505. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30505 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be

CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30505. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Registration Applications**

EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the applications.

*Products Containing an Active Ingredient Not Included in Any Previously Registered Products*

1. File Symbol: 34704–IEU. Applicant: Platte Chemical Company, 419 18th St., Greeley, CO 80632–0667. Product Name: Smolder G. Product type: Biological herbicide. Active ingredient: *Alternaria destruens* at 4.40%. Proposed classification/Use: Control of dodder (*Cuscuta spp.*).

2. File Symbol: 34704–IEL. Applicant: Platte Chemical Company. Product Name: Smolder WP. Biological herbicide. Active ingredient: *Alternaria destruens* at 4.10%. Proposed classification/Use: Control of dodder (*Cuscuta spp.*).

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: January 5, 2001.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 01–3165 Filed 2–6–01; 8:45 am]
**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–995; FRL–6765–6]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–995, must be received on or before March 9, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–995 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: tompkins.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–995. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–995 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–995. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 2001.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### Aventis CropScience

*0F6161*

EPA has received a pesticide petition (0F6161) from Aventis CropScience USA LP, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of 2-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl] amino] sulfonyl]-4-(formylamino)-*N*, *N*-dimethylbenzamide (CAS #173159–57–4)(foramsulfuron, company code AE F130360) in or on the raw agricultural commodities (RAC) corn grain at 0.02 parts per million (ppm), and corn forage and corn stover at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of foramsulfuron in corn has been investigated and is understood. Two primary routes of degradation occur for foramsulfuron. One pathway involves the hydrolysis of the sulfonylurea bridge, resulting in AE F153745 (4-formylamino-*N*, *N*-dimethyl-2-sulfamoylbenzamide) and AE F092944 (2-amino-4,6-dimethoxypyrimidine). Foramsulfuron also hydrolyzes at the formamide moiety on the phenyl ring to produce AE F130619 (4-amino-2-[3-(4,6-dimethoxypyrimidin-2-yl)ureidosulfonyl]-*N*, *N*-dimethylbenzamide). All these metabolites are subjected to further degradation leading to the formation of highly polar, water soluble components. The two metabolites resulting from cleavage of the sulfonylurea bridge, namely AE F153745 and AE F092944 were found in the extractable residue of the forage and stover. Only traces of AE F130619 (from hydrolysis of the formamide moiety) were found also in the forage and stover. The major metabolite detected in plants (AE F153745) was also identified in the rat and livestock metabolism studies.

2. *Analytical method*. Based on the results of the metabolism studies, the analytical targets selected were parent compound (AE F130360) and the metabolite AE F153745. Extractable residues of foramsulfuron and AE F153745 are removed from the crop matrix by blending with aqueous acetonitrile. After filtration, the extract is rotary evaporated down to a reduced volume. The aqueous/organic extract is transferred to a separatory funnel and washed with hexane. After the hexane wash, the extract is cleaned up via special column chromatography then analyzed by high performance liquid chromotography/mass spectrometry (HPLC/MS).

3. *Magnitude of residues*. The metabolism studies with $^{14}C$–labelled foramsulfuron in corn using exaggerated application rates (over 2.5–fold the normal rate) demonstrated that in general, low residues were detected in the plant samples. These results have been confirmed in a total of 29 North American residue field trials using a water dispersible granule (WG) formulation containing 50% weight/weight (w/w) foramsulfuron. The preparation was applied in split applications. The predominant regimen was 30 gram/health advisories (g/ha) followed by 60 g/ha or alternatively, 2 times 45 g/ha. Pre-harvest intervals (PHI) were between 37 and 67 days, 60 and 121 days or 67 and 151 days respectively for forage, grain, or stover. Grain, stover, and forage of field corn did not contain residues of foramsulfuron at or above the respective limits of quantification (LOQ) of 0.01, 0.05, and 0.05 milligram/kilogram (mg/kg). Also no residues of the metabolite AE F153745 were found in corn grain, stover, or forage at harvest above the respective LOQ of 0.02, 0.05, and 0.05 mg/kg. Residues trials included testing the effects of adding typical non-ionic surfactants, esterified seed oils, or crop oil concentrates to the spray mix. In no case were residues above the LOQ observed. Although AE F153745 was the major metabolite detected in the corn metabolism study, it did not exceed 10% of the total formasulfuron-derived residue in grain, stover, or forage at harvest. It is proposed, therefore, that AE F153745 is not included in the tolerance expression as field trials confirmed its lack of formation at levels above the LOQ. Tolerances of foramsulfuron are proposed at twice the LOQ of the analytical method, namely 0.02, 0.1, and 0.1 mg/kg in grain, stover, and forage, respectively. In a corn processing study, no residues of AE F130360 above 0.01 mg/kg or AE F153745 above 0.02 mg/kg were observed in corn grain following treatment of the crop at the nominal rate of 150 followed by 300 g/ha. This exaggerated rate is approximately five times the maximum proposed label rate. Since no residues were observed in the RAC, neither analysis of the processed commodities nor tolerances are required. Although corn grain is fed to cattle, and poultry and cattle may be grazed on forage, or fed stover, tolerances in meat, milk, or eggs are not necessary because none of these commodities contained foramsulfuron or its metabolite.

*B. Toxicological Profile*

1. *Acute toxicity*. Foramsulfuron has been shown to have very low acute toxicity to mammals irrespective of the route of exposure. Only non-specific clinical signs were seen after oral administration of 5,000 mg/kg to rats and after inhalation exposure of rats to 5.04 milligram/liter (mg/L). These signs had completely resolved 4 days following oral treatment and by day 1 after inhalation exposure. There was no evidence of systemic toxicity following acute dermal exposure to 2,000 mg/kg foramsulfuron. It was not irritant to rabbit skin and only mildly irritating to rabbit eyes. Foramsulfuron did not induce delayed contact hypersensitivity (skin sensitization) in a Magnusson and Kligman maximization test. Based on these results, foramsulfuron would be classified as EPA category III for dermal toxicity and eye irritation, and EPA category IV for skin irritation, oral, and inhalation toxicity.

2. *Genotoxicity*. Genotoxic potential was evaluated in a battery of tests which examined gene mutation in bacteria and mammalian cells, chromosome damage *in vitro* and *in vivo* and DNA damage in mammalian cells *in vivo*. The only finding was weak evidence *in vitro* of chromosome aberrations in human lymphocytes in the absence of metabolic activation. The increases in incidences occurred only at the highest dose level tested, 2,400 µg/mL, and were only just outside the historical control range. However, there was no evidence of chromosome damage *in vivo*, no effects in the *in vivo* assay for unscheduled DNA synthesis and no oncogenic activity or developmental toxicity. Thus, the overall weight of evidence indicates that foramsulfuron does not possess significant genotoxic activity.

3. *Reproductive and developmental toxicity*. A 2–generation reproduction study in rats evaluated continuous dietary dose levels of 0, 100, 1,225, and 15,000 ppm of technical foramsulfuron. No treatment-related effects were observed, including no effects on reproductive parameters (fertility, mating, gestation, parturition, litter size sex ratios), parental toxicity, neonatal toxicity, or on markers of endocrine function (oestrous cycling, balanopreputial separation, vaginal opening, spermatogenetic function and capacity). Therefore, the no observed adverse effect level (NOAEL) was 15,000 ppm, equivalent to a mean daily intake of 1,038 mg/kg foramsulfuron body weight (bwt) for $F_0$ and $F_1$ males and 1,430 mg/kg/day for $F_0$ and $F_1$ females combined (about 1,234 mg/kg/day for the study overall).

A rat developmental toxicity (teratogenicity) study was conducted with dose levels of 0, 5, 71, and 1,000 mg/kg foramsulfuron bwt/day. There was no evidence of any maternal or embryo foetal toxicity up to and including the 1,000 mg/kg dose level, the international limit dose for this type of study. Therefore the NOAEL for both maternal and embryofetal toxicity was 1,000 mg/kg. Foramsulfuron was not teratogenic in rats.

The rabbit developmental toxicity (teratogenicity) study was conducted with dose levels of 0, 5, 50, and 500 mg/kg foramsulfuron bwt/day. Maternal toxicity was seen at the high dose of 500 mg/kg/day, as evidenced by reduced body weight gain and slightly decreased food consumption during the treatment period. There was no embryofetal toxicity at any dose level. The NOAEL

for maternal toxicity was 50 mg/kg and 500 mg/kg for developmental toxicity (teratogenicity). Foramsulfuron was not teratogenic in the rabbit.

Results of the 2–generation and the developmental toxicity (teratogenicity) studies, show that foramsulfuron gives no evidence of reproductive, embryofetal, or neonatal toxicity. Parental (maternal) toxicity was only seen in the rabbit at 1,000 mg/kg, the international limit dose.

Therefore, foramsulfuron was of very low reproductive toxicity.

4. *Subchronic toxicity*. In a 90–day rat feeding study, groups of 10 male, and 10 female Sprague Dawley rats were fed diets containing either 0, 20, 200, 500, or 20,000 ppm of foramsulfuron. There was no treatment-related mortalities or effects seen at any dose level. The NOAEL for this study was considered to be 20,000 ppm (approximately 1,677 mg/kg/day which is in excess of the 1,000 mg/kg/day international limit dose).

In a 90–day feeding study in mice, foramsulfuron was administered at dietary concentrations of 64, 3,200, and 6,400 ppm. There was no treatment-related deaths or effects found in mice at any dose level. The NOAEL for this study was 6,400 ppm (equivalent to 1,002 mg/kg/day for males and 1,178 mg/kg/day for females).

Groups of 4 males and 4 females Beagle dogs were administered foramsulfuron at dietary concentrations of 0, 10, 250, and 1,000 mg/kg/ bwt/day for 13 consecutive weeks. There were no mortalities, and no clinical signs directly related to treatment at any dose level. The NOAEL for both sexes was 1,000 mg/kg/day, the international limit dose.

5. *Chronic toxicity*. The oncogenic potential of foramsulfuron was examined in bioassays with rats and mice with dietary exposure periods of 2 years and 18 months, respectively.

In rats, dietary administration of up to 20,000 ppm of foramsulfuron for 2 years, equivalent to achieved intakes of 849 and 1,135 mg/kg/day for males and females, respectively, did not yield any evidence of toxicity or oncogenicity. The mean daily intakes over the 1–year period were 976 and 1,305 mg/kg/day for males and females, respectively. Thus this dose level approximated to the international regulatory limit dose of 1,000 mg/kg/day.

Similarly in mice, no oncogenic activity was found after dietary treatment with up to 8,000 ppm (equating to 1,115 and 1,358 mg/kg/day in males and females, respectively) for 18 months, which was slightly in excess of the international limit dose.

Based on the achieved intakes, the rat is the most sensitive species in these long-term studies and the overall lowest NOAEL was 849 mg/kg foramsulfuron body weight/day. Given the absence of any carcinogenicity, significant genotoxicity, reproduction toxicity, developmental toxicity or any other special hazard potential, and taking into consideration the low toxicity profile, poor absorption and rapid excretion (predominantly of parent compound), a safety factor of 100 is considered appropriate. Therefore the proposed reference dose (RfD) is 8.5 mg/kg bwt/day.

Aventis CropScience believes foramsulfuron should be classified as a ''not likely'' carcinogen based on the lack of carcinogenicity in rats and mice.

6. *Animal metabolism*. Following a single oral administration of either 10 or 1,000 mg/kg to rats, 91.5% of the dose was found in the excreta between 0 and 24 hours post-dosing. There were no sex-specific differences in the route of excretion, and tissue residues were generally low. The metabolism of foramsulfuron showed that at both dose rates the main excretion product was unchanged foramsulfuron, excreted mainly in the faeces. Two metabolic routes were identified leading to the formation of metabolites also detected in plants: AE F130619, an amine formed via hydrolysis at the formamide moiety on the phenyl and the cleavage product AE F153745, as minor metabolites. A number of unidentified, minor (<4%), polar metabolites formed from both the phenyl or pyrimidyl ring-labelled compound were also excreted.

Six laying hens were orally dosed with (U–$^{14}$C-phenyl)-foramsulfuron for 14 consecutive days with a mean daily dose of 1.50 mg per bird per day, equivalent to approximately 10 ppm in the diet. The levels of radioactive residues in the hen tissues at necropsy were low, with the highest concentration being found in the liver (0.023 µg equivalents/g). The residues in the muscle, fat, and skin were all found to be 0.003 µg equivalents/g or less, which is below the concentration requiring further analysis. The unchanged parent compound and the cleavage product AE F153745 were the only metabolites identified in the edible tissues, eggs and excreta, which are also significant in the cow and rat.

A dairy cow was orally dosed with (U–$^{14}$C-phenyl)-foramsulfuron for 7 consecutive days with a mean daily dose of 187.4 mg, equivalent to 16 ppm in the diet. Radioactive residues were detectable in all edible tissues at very low levels between 0.004 and 0.036 µg equivalents/g tissue at necropsy. The major metabolites identified in all tissues were unchanged foramsulfuron and AE F153745. Some very minor metabolites were also seen in the liver and fat but were not identified. The results show that foramsulfuron is poorly absorbed and is excreted mainly in the faeces. The only identifiable metabolic product of foramsulfuron detected in the tissues and excreta of the dairy cow was AE F153745, which is also the principal metabolite identified in the hen, rat, and corn.

7. *Endocrine disruption*. No special studies have been conducted to investigate the potential of foramsulfuron to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the standard toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

*C. Aggregate Exposure*

1. *Dietary exposure*. Foramsulfuron is proposed for use as an herbicide on corn. No non-agricultural uses are anticipated. The potential sources of exposure would consist of any potential residues in food and drinking water. As indicated above, there are no acute toxicity concerns and thus only chronic exposure has been evaluated.

i. *Food*. Chronic dietary analysis was conducted to estimate exposure to potential foramsulfuron residues in/on corn. A Tier 1 analysis was conducted using the dietary exposure evaluation system (DEEM™) software and the 1994–1996 CSFII food consumption data. It was assumed that residues were at tolerance levels of 0.02 ppm (twice the LOQ) in grain and that 100% of the crop was treated. Additionally, based on the results from appropriate studies, it was assumed that there was no concentration into processed commodities and that contributions from residues in meat, milk, or eggs are not required. A chronic RfD of 8.5 mg/kg/day is derived from the male rat NOAEL of 849 mg/kg/day. Using these inputs the chronic dietary exposure estimate from residues of foramsulfuron for the U.S. population was 0.000032 mg/kg/day or <0.001% of its RfD. For the sub-population with the highest exposure, non-nursing infants, the chronic dietary exposure estimate from residues of foramsulfuron was 0.000080 mg/kg/day, again <0.001% of its RfD. These values are highly conservative, having been based on worst case assumptions of tolerance level residues and 100% of the crop treated.

ii. *Drinking water*. Unites States EPA's standard operating procedure (SOP) for drinking water exposure and risk assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct a screening level drinking water assessment. These tools include water models such as screening concentration ground water (SCI-GROW), generic expected environmental concentration (GENEEC), EPA's pesticide root zone model (PRZMS)/EXAMS, and monitoring data. If monitoring data is not available then the models are used to predict potential residues in surface and ground water and the highest value is assumed to be the potential drinking water residue. In the case of foramsulfuron monitoring data do not exist therefore model calculations were used to estimate a water residue. The calculated drinking water levels of concern (DWLOC) for chronic exposures for adults is 297,498 (ppb) parts per billion (297 ppm). The chronic DWLOC for children/toddlers is 84,999 ppb (84 ppm). The worst case chronic drinking water estimated concentration (DWEC) is 0.225 ppb based on a PRZM/EXAMS simulation of runoff into surface water in a standard EPA exposure assessment scenario for corn (MLRA 111, Ohio). The calculated DWLOCs for chronic exposures for all adults and children therefore greatly exceed the DWECs from the models.

2. *Non-dietary exposure*. Exposure to foramsulfuron for the mixer/loader/ground boom/aerial applicator was calculated using the pesticide handlers exposure data base (PHED). It was assumed that the product would be applied to a maximum of 50 hectares per day (125 A/day) by ground boom applicatior and 140 hectares per day (350 A/day) by aerial applicator at a maximum use rate of 45 grams a.i./ha. Normal work attire consisting of long-sleeved shirt, long pants, and protective gloves was assumed in the PHED assessment. Margins of exposure (MOEs) for a 70 kg operator were calculated utilizing a dermal NOAEL of 1,000 mg/kg bwt/day from the rat dermal toxicity study and an inhalation NOAEL of 50 mg/kg bwt/day based on an oral administration, developmental toxicity study in the rabbit. There were no signs of developmental toxicity in the rabbit developmental toxicity study. The combined MOE (inhalation plus dermal) for foramsulfuron was 126,000 for a ground operator undertaking mixing, loading, and spraying. For aerial application where the mixer/loader was assumed to be a different operator from the pilot combined MOEs were 60,400 for the mixer/loader and 1,425,000 for the pilot. The results indicate that large margins of safety exist for the proposed use of foramsulfuron.

The timing of foramsulfuron application to corn is such that field reentry shortly after spraying is atypical. Therefore estimations of worker reentry exposure were not considered necessary.

*D. Cumulative Effects*

There is no available data at this time to determine whether foramsulfuron has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Therefore a cumulative assessment was not done for this chemical.

*E. Safety Determination*

1. *U.S. population*. Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure, in this case food only, to the proposed uses of foramsulfuron will utilize <0.001% of the reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. DWLOC based on the dietary exposure are much greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) to foramsulfuron.

2. *Infants and children*. No evidence of increased sensitivity to fetuses was noted in developmental toxicity studies in rats or rabbits. There has been no indication of reproductive effects or indication of increased sensitivity to the offspring in the 2–generation rat reproduction study. No additional safety factor to protect infants and children is necessary as there is no evidence of increased sensitivity in infants and children.

Using the conservative assumptions described in the exposure section above, the percent of the reference dose that will be used for exposure to residues of foramsulfuron in food for non-nursing infants (the most highly exposed sub group) is <0.001%. The children (1–6) exposure uses are also <0.001% of the reference dose. As in the adult situation, DWLOC are much higher than the worst case DWEC and are expected to use well below 100% of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of foramsulfuron.

*F. International Tolerances*

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRLs) established for residues of foramsulfuron.

[FR Doc. 01–3093 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–994; FRL–6764–8]**

## Notice of Filing Pesticide Petitions to Establish Tolerances for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–994, must be received on or before March 9, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–994 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–994. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–994 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–994. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on the petitions.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 2001.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

### Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as

required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represent the view of the petitioner. EPA is publishing the petitioner's summaries verbatim without editing it in any way. The petitioner's summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Elf Atochem North America**

*PP 7F4867 and 7F4868*

EPA has received pesticide petitions PP 7F4867 and PP 7F4868 from Elf Atochem North America, 2000 Market Street, Philadelphia, PA 19103 proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of endothall in or on the raw agricultural commodities cottonseed ((RAC) seed and processed seed) at 2.0 parts per million (ppm) and apples at 0.05 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

*1. PP 7F4867*

*A. Residue Chemistry*

1. *Plant metabolism*. Acala cotton was treated by a single foliar application with $^{14}$C-endothall formulated as the dipotassium salt. The study identified 84– >100% of the radioactivity in/on cotton calyx, forage, and lint. Endothall accounted for ca. 94% and 83% of total radioactive residue (TRR) in calyx and lint, respectively, harvested 4 days following application at 1x, and for ca. 99%, 102%, and 95% of TRR in calyx, forage and lint, respectively, harvested 14 days post-treatment. No other metabolites were identified in calyx and forage. The monomethyl and dimethyl ester of endothall were minor (< 10% TRR) metabolites in lint. No metabolites were identified in seed.

2. *Analytical method*. The analytical method for endothall in water is EPA/ORD method 548, ''Determination of Endothall in Drinking Water by Aqueous Derivatization, Liquid-Solid Extraction and Gas Chromatography with Electron-Capture Detection.'' The limit of detection (LOD) for this method is 0.015 ppm.

3. *Magnitude of residues*. Endothall was applied to cotton at a rate of 0.85 lb./acre with a 3–day pre-harvest interval (PHI). Residues in RAC seed were 0.46 ppm (0.071 to 1.1 ppm) and residues in RAC gin trash were 21 ppm (6.6 to 59 ppm).

*B. Toxicological Profile*

1. *Acute toxicity*. Endothall acid and the dipotassium salt of endothall are moderately toxic by oral ingestion and inhalation (toxicity category II), slightly toxic by dermal exposure (toxicity category III) and severely irritating to the eye. The diamine salt of endothall is moderately toxic by oral, dermal, and inhalation routes of exposure (toxicity category II) and is severely irritating to the eyes and skin.

2. *Genotoxicity*. A full battery of genetic toxicology studies were conducted for endothall. Endothall was not mutagenic.

3. *Reproductive and developmental toxicity*. In a teratology and postnatal behavioral study, pregnant Sprague Dawley rats were dose via oral gavage on gestation days 6 through 15 with endothall doses of 0, 10, 20, or 30 milligram/kilogram (mg/kg)/day. The maternal no observed adverse effect level (NOAEL) was 20 mg/kg/day due to mortality seen at 30 mg/kg/day. The developmental NOAEL was 30 mg/kg/day. In a subsequent developmental toxicity study, pregnant Sprague Dawley rats were orally dosed with 0, 6.25, 12.5, or 25.0 mg/kg/day from gestation day 6 through 15. The NOAEL for maternal toxicity was 12.5 mg/kg/day. The developmental NOAEL was 25.0 mg/kg/day.

A developmental toxicity study was conducted in female CD–1 mice. Groups of pregnant mice were orally dosed with 0, 5, 20, or 40 mg/kg/day on days 6 to 16 of gestation. The NOAEL for maternal toxicity was 5 mg/kg/day based on mortality seen at 20 mg/kg/day. The developmental NOAEL was 20 mg/kg/day. Developmental changes seen at 40 mg/kg/day were related to the severe maternal toxicity at that dose. A developmental toxicity study was conducted in New Zealand white rabbits by oral exposure. Preliminary studies indicated that the rabbit was extremely sensitive to endothall. Groups of pregnant rabbits were dose with 0, 0.3, 1.0, or 3.0 mg/kg/day on gestation days 6 through 19. The fetal and maternal toxicity NOAELs were 1.0 mg/kg/day. A 2–generation reproduction study was conducted in rats. In this study, groups of rats received dietary doses of 0, 30, 150, and 900 ppm (0, 1.9, 9.5, or 58.8 mg/kg/day for male and 0, 1.9–3.4, 9.6–18.5, or 59.0–106.5 mg/kg/day for female $F_0$ animals; 0, 2.1, 10.9, or 77.1 for male and 0, 1.8–3.1, 9.5–17.3, or 63.5–107.7 for female $F_1$ animals). The NOAEL for parental effects was 30 ppm based on dose related body weight effects. The NOAEL for reproductive toxicity was 900 ppm.

4. *Subchronic toxicity*. Male and female Sprague Dawley rats were exposed dermally to 0, 30, 100, and 300 mg/kg/day for 21 days. The lowest observed effect level (LOAEL) was 30 mg/kg/day based on decreased body weight gain and dermal irritation. A NOAEL was not established. Male and female Sprague Dawley rats were exposed to oral concentrations of 0, 150, 600, or 1,800 ppm (0, 10, 39, or 118 mg/kg/day for males; 0, 12, 51, or 153 mg/kg/day for females respectively) for 13 weeks. The LOAEL was 1,800 ppm based on decreases in body weight gain and food intake. The NOAEL was 600 ppm. Male and female Beagle dogs were exposed to oral concentrations of 0, 100, 400, or 1,000 ppm (0, 3.2, 11.7, or 27.5 mg/kg/day for males and 0, 3.2, 13.0, or 28.9 mg/kg/day for females respectively) for 13 weeks. The LOAEL was 1,000 ppm based on decreases in body weight gain and food intake. The NOAEL was 400 ppm.

5. *Chronic toxicity*. In a combined chronic toxicity and oncogenicity study, male and female Sprague Dawley rats were fed endothall dietary concentrations of 0, 150, 300, 900, and 1,800 ppm for 104 weeks. No evidence of carcinogenicity was seen in this study. The NOAEL was 150 ppm. The incidence of acanthosis and hyperkeratosis of the stomach was slightly higher than control for the 150 ppm males. This finding was not considered an adverse effect since the incidence of this finding in the 300 ppm males was similar to control. Beagle dogs were fed diets containing 0, 100, 300, or 800 ppm disodium endothall (equivalent to 0, 2, 6, or 16 mg/kg/day endothall) for 24 months. No clinical signs of toxicity were seen at any dose level. The 100 ppm dietary concentration (2 mg/kg/day) was the NOAEL.

In a 52–week oral toxicity study, groups of 4 male and 4 female Beagle dogs were fed diets containing 0, 150, 450, or 1,350/1,000 ppm (0, 5.7, 17.1, and 35.8 mg/kg/day for males; 0, 6.4, 18.8, and 36 mg/kg/day for females). The 1,350 ppm dietary level had to be 1,000 ppm after 6 weeks of treatment due to marked reductions in body weight, food consumption, and subsequent sacrifice of 5 animals from this group. Minimal to very mild gastric epithelial effects were seen in some of the dogs receiving 150 ppm. This effect

was considered as a low grade reaction to chronic epithelial irritation and 150 ppm is considered a NOAEL. In an 18–month oncogenicity study, Swiss Albino mice were fed in the diet at concentrations of 0, 50, 100, and 300 ppm (0, 8.1, 16.7, and 50 mg/kg/day for males; 0, 10.8, 22.4, and 68 mg/kg/day for females) for 92 weeks. The systemic NOAEL was 100 ppm based on decreased mean body weight in 300 ppm males. No evidence of carcinogenicity was seen in this study.

In a second 18–month dietary oncogenicity study, groups of 50 male and 50 female Swiss Albino mice were fed the disodium salt of endothall at dietary concentrations of 0, 750, and 1,500 ppm (0, 122, and 258 mg/kg/day for males; 0, 152, and 319 mg/kg/day for females). Toxicity results for the 1,500 ppm dietary level clearly shows that the maximum tolerance dose (MTD) was exceeded. At 750 ppm, compound-related effects consisted of decreased body weight gain, rectal prolapse and an increase in the incidence and severity of mucosal hyperplasia of the glandular stomach. Endothall was not considered carcinogenic in this study.

6. *Animal metabolism*. Following a single oral administration of $^{14}C$-endothall to males and female rats, the majority of the radioactivity was excreted within 24 hours. The majority of the radioactivity was found in the feces. Chromatographic analysis of extracts of the urine, feces, cecum, and large intestine of both male and female rats gave a single radioactive component corresponding to unchanged endothall.

7. *Endocrine disruption*. Evaluation of the results from the 2–generation reproduction studies do not demonstrate any effects suggestive of disruption of hormonal stasis in the rat. Further, histopathologic evaluation of hormone sensitive tissues from chronically exposed rats, mice, and dogs did not reveal any changes suggestive of an endocrine-related effect.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. Endothall exposure via the diet will occur from treated apples, sugar beets, potatoes, cotton, and hops (adults). Secondary residues are expected in meat, milk, and eggs as well as shellfish, fish, catfish, and crayfish.

ii. *Drinking water*. Drinking water exposure to endothall may be expected. However this exposure is not considered to be significant due to the seasonal intermittent use of the product for aquatic weed control, its low mobility in surface waters and rapid degradation.

2. *Non-dietary exposure*. There are no registered and proposed uses for endothall products which would result in non-occupational exposure.

*D. Cumulative Effects*

Elf Atochem has reviewed chemical structure data to determine if any other pesticide products are chemically similar to endothall and produce gastrointestinal changes specific to endothall. Endothall appears to be chemically and toxicologically dissimilar to existing chemical substances. Therefore, cumulative risk should not be an issue for this chemical.

*E. Safety Determination*

1. *U.S. population*. For chronic dietary risk, two scenarios were used. Scenario 1 used tolerance values on all registered and proposed crops, as well as secondary residues in meat, milk, and eggs, shellfish, fish, catfish, and crayfish. Under this scenario, less than 5% of the reference dose (RfD) for the total U.S. population was utilized. Because of the high milk consumption by children ages 1–6, this group represents the highest exposed subgroup. For children ages 1–6, approximately 12.4% of the RfD is utilized. In the second scenario which included the above food exposure from above plus tap water and non-food based water, 28.3% of the RfD was utilized for the total U.S. population. Because of high water consumption likely from reconstituted formula, all infants utilized 103.7% of the RfD and non-nursing infants utilized 130.7% of the RfD. This scenario, however, is not considered a realistic estimate of risk. It is unlikely that endothall residues would be significant in water considering its intermittent and seasonal use pattern, lack of movement in surface water, rapid degradation and label restriction for application within 600 feet of a potable water intake. The acute dietary risk analysis has been performed using TAS-Exposure software which gives a distributional analysis of exposure. For the total U.S. population, children aged 7–12, and women aged 13 to 50 all margins of exposure (MOE) exceeded 1,000 at the 95$^{th}$ percentile of exposure for the first scenario (excluding water). Under this scenario, all Infants, non-nursing infants < 1–year and children ages 1–6 had MOEs of 935, 852, and 988, respectively. When tap water and non-food based water are included in the analysis at tolerance level (0.2 ppm), the highest exposed subpopulation is again non-nursing infants with a MOE of 98 at the 95$^{th}$ percentile of exposure. For the total U.S. population the 95$^{th}$ percentile of exposure results in an MOE of 373. This analysis included all commodities, including water, at theoretical ''worst case'' levels resulting in an extreme over estimation of acute risk from dietary exposure to potential endothall residues. This analysis has not included estimates of anticipated residues, percent of crop treated, or the likelihood of residues in water accounting for endothall's use pattern, movement and degradation. Additionally, processing effects on residue levels have not been considered. Despite all of the worst case assumptions, the dietary exposure analysis for the U.S. population, and all population subgroups except all infants and non-nursing infants <1 year results in acceptable MOE, i.e., >100. The MOE for all infants and non-nursing infants <1 year were 99 and 98, respectively. Clearly these MOEs in this worst case assessment would exceed 100 if adjustments described above were applied.

2. *Infants and children*. The exposure to infants and children has been calculated in both the acute and chronic dietary assessments. In all cases, and all age groups of infants and children, the MOE is sufficient to protect the health of infants and children.

*F. International Tolerances*

No international tolerances have been established for endothall.

*2. PP 7F4868*

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of endothall was examined in three crops types: alfalfa, cotton, and sugarbeet. All three studies were conducted using C–2 and C–3–($^{14}C$) endothall and showed the same pattern of metabolic breakdown. The parent compound endothall accounted for the majority of the total radioactive residue (85–110%), with the monomethyl and dimethyl esters of endothall present as minor metabolites (<10%).

2. *Analytical method*. The analytical method for endothall in water is EPA/ORD method 548, ''Determination of Endothall in Drinking Water by Aqueous Derivatization, Liquid-Solid Extraction and Gas Chromatography with Electron-Capture Detection.'' The limit of detection LOD for this method is 0.015 ppm.

3. *Magnitude of residues*. Residue trials in apples showed residue levels in the RAC of 0.0086 ppm (residue range of 0.005–0.023 ppm), 0.015 ppm (0.012–0.020 ppm) for the processed RAC, 0.019 ppm (0.012–0.026 ppm) for apple pomace, and 0.019 ppm (0.071–1.1 ppm) for apple juice.

*B. Toxicological Profile*

1. *Acute toxicity*. Endothall acid and the dipotassium salt of endothall are moderately toxic by oral ingestion and inhalation (toxicity category II), slightly toxic by dermal exposure (toxicity category III) and severely irritating to the eye. The diamine salt of endothall is moderately toxic by oral, dermal, and inhalation routes of exposure (toxicity category II) and is severely irritating to the eyes and skin.

2. *Genotoxicity*. A full battery of genetic toxicology studies were conducted for endothall. Endothall was not mutagenic.

3. *Reproductive and developmental toxicity*. In a teratology and postnatal behavioral study, pregnant Sprague Dawley rats were dose via oral gavage on gestation days 6 through 15 with endothall doses of 0, 10, 20, or 30 mg/kg/day. The maternal NOAEL was 20 mg/kg/day due to mortality seen at 30 mg/kg/day. The developmental NOAEL was 30 mg/kg/day. In a subsequent developmental toxicity study, pregnant Sprague Dawley rats were orally dosed with 0, 6.25, 12.5, or 25.0 mg/kg/day from gestation day 6 through 15. The NOAEL for maternal toxicity was 12.5 mg/kg/day. The developmental NOAEL was 25.0 mg/kg/day.

A developmental toxicity study was conducted in female CD–1 mice. Groups of pregnant mice were orally dosed with 0, 5, 20, or 40 mg/kg/day on days 6 to 16 of gestation. The NOAEL for maternal toxicity was 5 mg/kg/day based on mortality seen at 20 mg/kg/day. The developmental NOAEL was 20 mg/kg/day. Developmental changes seen at 40 mg/kg/day were related to the severe maternal toxicity at that dose. A developmental toxicity study was conducted in New Zealand white rabbits by oral exposure. Preliminary studies indicated that the rabbit was extremely sensitive to endothall. Groups of pregnant rabbits were dosed with 0, 0.3, 1.0, or 3.0 mg/kg/day on gestation days 6 through 19. The fetal and maternal toxicity NOAELs were 1.0 mg/kg/day. A 2–generation reproduction study was conducted in rats. In this study, groups of rats received dietary doses of 0, 30, 150, and 900 ppm (0, 1.9, 9.5, or 58.8 mg/kg/day for male and 0, 1.9–3.4, 9.6–18.5, or 59.0–106.5 mg/kg/day for female $F_0$ animals; 0, 2.1, 10.9, or 77.1 for male, and 0, 1.8–3.1, 9.5–17.3, or 63.5–107.7 for female $F_1$animals). The NOAEL for parental effects was 30 ppm based on dose related body weight effects. The NOAEL for reproductive toxicity was 900 ppm.

4. *Subchronic toxicity*. Male and female Sprague Dawley rats were exposed dermally to 0, 30, 100, and 300 mg/kg/day for 21 days. The LOAEL was 30 mg/kg/day based on decreased body weight gain and dermal irritation. A NOAEL was not established. Male and female Sprague Dawley rats were exposed to oral concentrations of 0, 150, 600, or 1,800 ppm (0, 10, 39, or 118 mg/kg/day for males; 0, 12, 51, or 153 mg/kg/day for female respectively) for 13 weeks. The LOAEL was 1,800 ppm based on decreases in body weight gain, and food intake. The NOAEL was 600 ppm. Male and female Beagle dogs were exposed to oral concentrations of 0, 100, 400, or 1,000 ppm (0, 3.2, 11.7, or 27.5 mg/kg/day for males and 0, 3.2, 13.0, or 28.9 mg/kg/day for females respectively) for 13 weeks. The LOAEL was 1,000 ppm based on decreases in body weight gain and food intake. The NOAEL was 400 ppm.

5. *Chronic toxicity*. In a combined chronic toxicity and oncogenicity study, male and female Sprague Dawley rats were fed endothall dietary concentrations of 0, 150, 300, 900, and 1,800 ppm for 104 weeks. No evidence of carcinogenicity was seen in this study. The NOAEL was 150 ppm. The incidence of acanthosis and hyperkeratosis of the stomach was slightly higher than control for the 150 ppm males. This finding was not considered an adverse effect since the incidence of this finding in the 300 ppm males was similar to control. Beagle dogs were fed diets containing 0, 100, 300, or 800 ppm disodium endothall (equivalent to 0, 2, 6, or 16 mg/kg/day endothall) for 24 months. No clinical signs of toxicity were seen at any dose level. The 100 ppm dietary concentration (2 mg/kg/day) was the NOAEL. In a 52–week oral toxicity study, groups of 4 male and 4 female Beagle dogs were fed diets containing 0, 150, 450, or 1,350/1,000 ppm (0, 5.7, 17.1, and 35.8 mg/kg/day for males; 0, 6.4, 18.8, and 36 mg/kg/day for females). The 1,350 ppm dietary level had to be 1,000 ppm after 6 weeks of treatment due to marked reductions in body weight and food consumption and subsequent sacrifice of 5 animals from this group. Minimal to very mild gastric epithelial effects were seen in some of the dogs receiving 150 ppm. This effect was considered as a low grade reaction to chronic epithelial irritation and 150 ppm is considered a NOAEL. In an 18–month oncogenicity study, Swiss Albino mice were fed in the diet at concentrations of 0, 50, 100, and 300 ppm (0, 8.1, 16.7, and 50 mg/kg/day for males; 0, 10.8, 22.4, and 68 mg/kg/day for females) for 92 weeks. The systemic NOAEL was 100 ppm based on decreased mean body weight in 300 ppm males. No evidence of carcinogenicity was seen in this study.

In a second 18–month dietary oncogenicity study, groups of 50 male and 50 female Swiss Albino mice were fed the disodium salt of endothall at dietary concentrations of 0, 750, and 1,500 ppm (0, 122, and 258 mg/kg/day for males; 0, 152, and 319 mg/kg/day for females). Toxicity results for the 1,500 ppm dietary level clearly shows that the MTD was exceeded. At 750 ppm, compound-related effects consisted of decreased body weight gain, rectal prolapse and an increase in the incidence and severity of mucosal hyperplasia of the glandular stomach. Endothall was not considered carcinogenic in this study.

6. *Animal metabolism*. Following a single oral administration of $^{14}C$-endothall to males and female rats, the majority of the radioactivity was excreted within 24 hours. The majority of the radioactivity was found in the feces. Chromatographic analysis of extracts of the urine, feces, cecum and large intestine of both male and female rats gave a single radioactive component corresponding to unchanged endothall.

7. *Endocrine disruption*. Evaluation of the results from the 2–generation reproduction studies do not demonstrate any effects suggestive of disruption of hormonal stasis in the rat. Further, histopathologic evaluation of hormone sensitive tissues from chronically exposed rats, mice, and dogs did not reveal any changes suggestive of an endocrine-related effect.

*C. Aggregate Exposure*

1. *Dietary exposure*— i. *Food*. Endothall exposure via the diet will occur from treated apples, sugar beets, potatoes, cotton, and hops (adults). Secondary residues are expected in meat, milk, and eggs as well as shellfish, fish, catfish,and crayfish.

ii. *Drinking water*. Drinking water exposure to endothall may be expected. However this exposure is not considered to be significant due to the seasonal intermittent use of the product for aquatic weed control, its low mobility in surface waters and rapid degradation.

2. *Non-dietary exposure*. There are no registered and proposed uses for endothall products which would result in non-occupational exposure.

*D. Cumulative Effects*

Elf Atochem has reviewed chemical structure data to determine if any other pesticide products are chemically similar to endothall and produce gastrointestinal changes specific to

endothall. Endothall appears to be chemically and toxicologically dissimilar to existing chemical substances. Therefore, cumulative risk should not be an issue for this chemical.

*E. Safety Determination*

1. *U.S. population*. For chronic dietary risk, two scenarios were used. Scenario 1 used tolerance values on all registered and proposed crops, as well as secondary residues in meat, milk, and eggs, shellfish, fish, catfish, and crayfish. Under this scenario, less than 5% of the RfD for the total U.S. population was utilized. Because of the high milk consumption by children ages 1–6, this group represents the highest exposed subgroup. For children ages 1–6, approximately 12.4% of the RfD is utilized. In the second scenario which included the above food exposure from above plus tap water and non-food based water, 28.3% of the RfD was utilized for the total U.S. population. Because of high water consumption likely from reconstituted formula, all infants utilized 103.7% of the RfD and non-nursing infants utilized 130.7% of the RfD. This scenario, however, is not considered a realistic estimate of risk. It is unlikely that endothall residues would be significant in water considering its intermittent and seasonal use pattern, lack of movement in surface water, rapid degradation and label restriction for application within 600 feet of a potable water intake. The acute dietary risk analysis has been performed using TAS-Exposure software which gives a distributional analysis of exposure. For the total U.S. population, children ages 7–12, and women ages 13 to 50 all MOEs exceeded 1,000 at the 95th percentile of exposure for the first scenario (excluding water). Under this scenario, all infants, non-nursing infants <1–year and children ages 1–6 had MOEs of 935, 852, and 988, respectively. When tap water and non-food based water are included in the analysis at tolerance level (0.2 ppm), the highest exposed subpopulation is again non-nursing infants with an MOE of 98 at the 95th percentile of exposure. For the total U.S. population the 95th percentile of exposure results in an MOE of 373. This analysis included all commodities, including water, at theoretical ''worst case'' levels resulting in an extreme over estimation of acute risk from dietary exposure to potential endothall residues. This analysis has not included estimates of anticipated residues, percent of crop treated, or the likelihood of residues in water accounting for endothall's use pattern, movement and degradation. Additionally, processing effects on residue levels have not been considered. Despite all of the worst case assumptions, the dietary exposure analysis for the U.S. population, and all population subgroups except all infants and non-nursing infants <1–year results in acceptable MOE, i.e., >100. The MOE for all infants and non-nursing infants <1–year were 99 and 98, respectively. Clearly these MOEs in this worst case assessment would exceed 100 if adjustments described above were applied.

2. *Infants and children*. The exposure to infants and children has been calculated in both the acute and chronic dietary assessments. In all cases and all age groups of infants and children, the margins of exposure are sufficient to protect the health of infants and children.

*F. International Tolerances*

No international tolerances have been established for endothall.

[FR Doc. 01–3092 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00697; FRL–6765–5]**

## Acute Toxicity Data Requirements For Granular Pesticide Products, Including those with Granular Fertilizers in the Product; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA is announcing the availability of guidance whichintends to streamline the acute toxicity review and classification process for certain granular pesticide products, including those products that contain granular fertilizers. The policies should achieve the following objectives: Significantly reduce the number of animals subject to testing; reduce the use of Agency resources while maintaining protection of the public health and environment, and decrease the time required to register qualifyinggranular pesticide products. Pesticide Registration (PR) Notice 2001–2 is effective now, but comments will be accepted for 30 days, after which the Agency may revise the notice.

**DATES:** Comments, identified by docket control number OPP–00697, must be received on or before March 9, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00697 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: John Redden,Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–1969; fax number: (703) 308–9382; e-mail address: redden.john@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also godirectly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax–on–demand*. You may request a faxed copy of the PR Notice titled, ''Acute Toxicity Data Requirements For Granular Pesticide Products, Including those with Granular Fertilizers in the Product,'' by using a faxphone to call (202) 401–0527 andselecting item 6136. You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00697. The official record consists of the documents specifically referenced

in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includesthe documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, isavailable for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00697 inthe subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00697. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version ofthe comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support yourviews.

4. If you estimate potential burden or costs, explain how you arrived at the estimatethat you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control numberassigned to this action in the subject line on the first page of your response. You may alsoprovide the name, date, and **Federal Register** citation.

## II. Background

*A. What Guidance Does This PR Notice Provide?*

This Pesticide Registration (PR) Notice provides a policy intended to streamline the acute toxicity review and classification process for certain granular pesticide products, including those products thatcontain granular fertilizers. The policies should achieve the following objectives: Significantly reduce the number of animals subject to testing; reduce the use of Agency resources while maintaining protection of the public health and environment, and decrease the time required to register qualifying granular pesticide products. This guidance is supported by a large toxicology data base and involves the application of sound scientific principles. This notice is effective immediately, but comments will be accepted for 30 days,after which the Agency may revise the notice.

*B. PR Notices are Guidance Documents*

The PR Notice discussed in this notice provides guidance to EPA personnel and decision makers and to pesticide registrants. This notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

### List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 22, 2001.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 01–2772 Filed 2–6–01; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–51961; FRL–6763–9]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish

periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 22, 2000 to December 6, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51961 and the specific PMN number in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51961. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the manufacturer/importer and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51961 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51961 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and

comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from November 22, 2000 to December 6, 2000, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

### III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I. 23 PREMANUFACTURE NOTICES RECEIVED FROM: 11/22/00 TO 12/06/00

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–01–0134 | 11/22/00 | 02/20/01 | 3m company | (S) Moisture-curing hot melt adhesive | (G) Polyurethane prepolymer |
| P–01–0135 | 11/22/00 | 02/20/01 | 3m company | (S) Moisture-curing hot melt adhesive | (G) Polyester pre-polymer |
| P–01–0136 | 11/24/00 | 02/22/01 | Sekisui america corporation | (S) Copier and printer toner | (S) 2-propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, polymer with butyl 2-propenoate, ethenylbenzene and methyl 2-methyl-2-propenoate, 2,2'-azobis[2-methylbutanenitrile]-initiated |
| P–01–0137 | 11/24/00 | 02/22/01 | CBI | (G) Inorganic metallic compound for catalytic application | (G) Inorganic metallic salt |
| P–01–0138 | 11/24/00 | 02/22/01 | CBI | (G) Additive, open, non-dispersive use | (G) Alkylolammonium salt of an acidic polymer |
| P–01–0139 | 11/24/00 | 02/22/01 | CBI | (G) Additive, open, non-dispersive use | (G) N-alkyl modified polyisocyanate, reaction products with diamine |
| P–01–0140 | 11/27/00 | 02/25/01 | Solutia Inc. | (S) Binder for industrial printing inks | (G) Modified natural resin |
| P–01–0141 | 11/27/00 | 02/25/01 | CBI | (G) Component of foam | (G) Polyester polyol |
| P–01–0142 | 11/27/00 | 02/25/01 | CBI | (G) Component of foam | (G) Polyester polyol |
| P–01–0143 | 11/28/00 | 02/26/01 | Samsung information systems america | (G) Compound in color dispersion | (G) Acrylate copolymer |
| P–01–0144 | 11/28/00 | 02/26/01 | CBI | (G) Organic stripper additive | (S) Propanamide, n-(2-hydroxyethyl)-3-methoxy- |
| P–01–0145 | 11/28/00 | 02/26/01 | CBI | (S) Industrial maintenance coatings | (G) Toluene diisocyanate polyurethane prepolymer |
| P–01–0146 | 11/29/00 | 02/27/01 | E.I. du pont de nemours & Company, Inc. (dupont) | (G) Intermediate | (G) Aliphatic amine salt of aromatic polyamic acid |
| P–01–0147 | 11/30/00 | 02/28/01 | CBI | (G) Modifier for electronic material | (G) Epoxylated nitrile rubber |
| P–01–0148 | 12/04/00 | 03/04/01 | Atofina chemicals, Inc. | (S) Oil and gas well fracturing fluid | (G) Styrene maleic anhydride copolymer, partial alkyl ester |
| P–01–0149 | 12/01/00 | 03/01/01 | Rhodia, Inc. | (S) Component in surfactant/foaming agent for leather processing | (S) Sulfuric acid, mono-c9–11-alkyl esters, sodium salts;sulfuric acid, mono-c12–16-alkyl esters, sodium salts |
| P–01–0150 | 12/05/00 | 03/05/01 | Aoc, llc | (S) A)polyester component for gelcoat resin for spray up of fiberglass reinforced & non-reinforced plastic parts b) polyester component for laminating of reinforced plastic parts c) polyester component for inorganic filled non-reinforced plastic parts | (S) 1,3-benzenedicarboxylic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione and 1,2-propanediol, 2-ethylhexyl ester |
| P–01–0151 | 12/05/00 | 03/05/01 | Ciba Specialty Chem. Corp., colors division | (G) Textile dye | (G) Cobaltate(5-), bis[4-[[6-[(substituted-1,3,5-triazin-2-yl)amino]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-substituted-1-naphthalenesulfonato(4-)]-, pentasodium |
| P–01–0152 | 12/06/00 | 03/06/01 | Esco Company Limited Partnership | (S) Color former intermediate | (G) 4-alkoxy-alkyl-substituted-diphenylamine |
| P–01–0153 | 12/06/00 | 03/06/01 | CBI | (G) Chemical intermediate | (G) Hydrocarbyl zirconium substance |
| P–01–0154 | 12/06/00 | 03/06/01 | CBI | (G) Catalyst | (G) Organic transition metal complex |

TABLE I. 23 PREMANUFACTURE NOTICES RECEIVED FROM: 11/22/00 TO 12/06/00—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–01–0155 | 12/06/00 | 03/06/01 | CBI | (G) Catalyst | (G) Organic transition metal complex |
| P–01–0156 | 12/06/00 | 03/06/01 | Reichhold, Inc. | (G) Adhesive | (G) Isocyanate functional polyether polyester urethane polymer |

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE II. 22 NOTICES OF COMMENCEMENT FROM: 11/022/00 TO 12/06/00

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–00–0067 | 11/22/00 | 09/27/00 | (G) Substituted alkyl heteropolycycle |
| P–00–0489 | 12/05/00 | 11/27/00 | (G) Aqueous solution of polyamide-amine |
| P–00–0628 | 11/29/00 | 10/27/00 | (G) Alkyl methacrylate copolymer |
| P–00–0683 | 11/24/00 | 11/03/00 | (G) 2-propenoic acid, polymer with butyl 2-propenoate, *n*-(1,1-dimethyl-3-oxobutyl)-2-propenamide, 2-methoxy-2-substituted-ethyl 2-propenoate and methyl 2-methyl-2-propenoate |
| P–00–0691 | 11/27/00 | 11/13/00 | (G) Modified polyamidecarboxylic acid |
| P–00–0704 | 11/27/00 | 11/09/00 | (G) Alkyldiamine, reaction products with halogenated heterocycle, amino-hydroxy-sulfonatedpolycycle, and trisubstituted heterocycle, compd. with substituted alkanoic acid |
| P–00–0806 | 12/06/00 | 11/20/00 | (G) 1,3,6-naphthalenetrisulfonic acid, 7-[[2-[(substituted)amino]-4-[[4-[[2-[2-[substituted]ethyl]amino]-6-fluoro-1,3,5-triazin-2- yl]amino]phenyl]azo]-, trisodium salt |
| P–00–0872 | 12/04/00 | 09/13/00 | (G) Fluoroelastomer |
| P–00–0889 | 11/27/00 | 11/06/00 | (S) Fatty acids, c16–18 and c18-unsatd., triesters with polyethylene-polypropylene glycol ether and glycerol |
| P–00–0890 | 12/05/00 | 11/15/00 | (G) Cyclohexane, 1.1′methylenebis[4-isocyanato-polymer with 2-propenoic acid, 2-hydroxyethyl ester, 2-propenoic acid, 2-methyl-monoester with 1,2-propanediol, methyl oxirane and alkanol |
| P–00–0910 | 12/05/00 | 10/31/00 | (G) Cresol-blocked isocyanate |
| P–00–0918 | 12/05/00 | 11/09/00 | (G) Bisphenoxypolyalkylideneglycol |
| P–00–0966 | 12/05/00 | 11/15/00 | (G) Haloarylalkylketoester |
| P–00–0993 | 11/27/00 | 11/01/00 | (G) Substituted 6,6′-(1-methylethylidene)bis[3,4-dihydro-3-phenyl,1,3-benzoxazine] |
| P–00–1017 | 12/06/00 | 11/16/00 | (S) Cyclohexane, (ethenyloxy)- |
| P–00–1142 | 12/01/00 | 11/27/00 | (G) Aliphatic methacrylate urethane oligomer |
| P–96–1086 | 11/27/00 | 11/06/00 | (G) Organo silane ester |
| P–98–0509 | 12/05/00 | 11/21/00 | (S) Propanoic acid, z-methyl-1,7,7-trimethylbicyclo [2.2.1] hept-yl ester, exo- |
| P–98–1261 | 11/29/00 | 11/10/00 | (G) Acrylated urethane |
| P–99–0715 | 11/27/00 | 11/18/00 | (G) Branched hydrogen-functional polydimethysiloxane |
| P–99–0785 | 11/27/00 | 11/09/00 | (G) Aromatic polyester modified with an aliphatic epoxide |
| P–99–1075 | 12/04/00 | 11/21/00 | (G) Cyclodecane ester |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: January 9, 2001.

**Deborah A. Williams,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 01–3167 Filed 2–6–01; 8:45 am]

**BILLING CODE 6560–50–S**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Meetings

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice of meetings through June 2001.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Wednesday, February 21 and Thursday, February 22. The February 21st meeting will begin at 1 p.m. and conclude at 4 p.m. in room 6N30, 441 G Street, NW, Washington, DC. The February 22nd meeting will begin at 9 a.m. and conclude at 4:30 p.m. in room 7C13, 441 G Street, NW, Washington, DC.

The purpose of the meeting is to discuss issues related to:

- National Defense PP&E;
- Stewardship Reporting for Heritage Assets and Stewardship Land;
- Responses to the exposure draft amending SFFAS 7;
- Corrections of Errors through Period adjustment; and
- FASAB's Technical Agenda.

An Appointments Panel meeting will be held in conjunction with the Board meeting. A more detailed agenda can be

obtained from the FASAB website (*www.financenet.gov/fasab.htm* after February 14, 2001.

Following the February meeting, the schedule for the next two meetings of the Board is as follows:

- Thursday and Friday, April 26 and 27, 2001; and
- Monday and Tuesday, June 18 and 19, 2001.

The purpose of these meetings will be to discuss issues related to:

- Stewardship Reporting;
- National Defense Property, Plant & Equipment;
- Deletion of Paragraph 65.2—Material Revenue—Related Transaction Disclosures;
- Natural Resources;
- Correction of Errors Through Prior Period Adjustments;
- Codification of FASAB Standards;
- Accounting and Auditing Policy Committee issues; and
- Any other topics as needed.

A Steering Committee meeting of the Board's Principal Board members may be held in conjunction with each of the Board meetings. A more detailed agenda for each Board meeting can be seen on the FASAB website *www.financenet.gov/fasab.htm* one week prior to each meeting. The location of each meeting will be given in the website agenda.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. For the February meeting, please notify FASAB by February 20 of your planned attendance by calling 202–512–7350, and for the subsequent meetings one day prior to the respective meeting.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St., NW., Mailstop 6K17V, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: February 1, 2001.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 01–3133 Filed 2–6–01; 8:45 am]

**BILLING CODE 1610–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 30, 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 9, 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., Washington, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0625.

*Title:* Amendment of the Commission's Rules to Establish New Personal Communications Services under Part 24.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Individuals or households, business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 1,500.

*Estimated Time Per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirements, and recordkeeping requirements.

*Total Annual Burden:* 1,688 hours.

*Total Annual Cost:* $675,000.

*Needs and Uses:* This revised information collection adopts a number of modifications to the Commission's existing narrowband Personal Communications Services (PCA) rules. These include the use of Major Trading Areas (MTA's) for future licensing, the establishment of a ''substantial service'' alternative to the current construction benchmarks, and modifications to certain provisions of the narrowband PCS competitive bidding rules. The Commission also eliminates the narrowband PCS spectrum aggregation limit and adopts partitioning and disaggregation rules. The Commission believes that the rule modifications it adopts will improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition, and promote service to the largest feasible number of users.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–3118 Filed 2–6–01; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 31, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before April 9, 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 Commissions, 445 12th Street, S.W., Room 1–A804, 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 No.:* 3060–0971.

*Title:* Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200, & Second Further Notice of Proposed Rulemaking in CC Docket No. 99–200 (Second Report and Order).

*Form No.:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit; State, Local or Tribal government.

*Number of Respondents:* 50,500.

*Estimated Time Per Response:* .035 hrs (avg.).

*Total Annual Burden:* 14,000 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third party disclosure.

*Needs and Uses:* The Second Report and Order in CC Docket Nos.: 99–200 and 96–98, released December 29, 2000 requires that carriers that report forecast and utilization data semi-annually to the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator duplicate such data for state commissions upon request and that to request a ''for cause '' audit of a carrier, the NANPA, the Pooling Administrator or a state commission must draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation. The information will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of such data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

*OMB Approval No.:* 3060–0320.

*Title:* Section 73.1350 Transmission System Operation.

*Form No.:* n/a.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit, not-for-profit institutions.

*Number of Respondents:* 411.

*Estimated Hours Per Response:* 0.5 hours.

*Frequency of Response:* On occasion.

*Cost to Respondents:* $0.

*Estimated Total Annual Burden:* 206.

*Needs and Uses:* Section 73.1350(g) requires licensees to submit a notification to the FCC in Washington, D.C. whenever a transmission system control point is established at a location other than at the main studio or transmitter within 3 days of the initial use of that point. This notification is not required if responsible station personnel can be contacted at the transmitter or studio site during hours of operation. The data is used by FCC staff to maintain complete operating information regarding licensees to be used in the event that FCC field staff needs to contact the station about interference.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–3176 Filed 2–6–01; 8:45 am]

**BILLING CODE 6712–01–U**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

January 31, 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 April 9, 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 Commissions, Room 1 A–804, 445 Twelfth Street, S.W., 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 No.:* 3060–0968.

*Title:* Slamming Complaint form.

*Form No.:* FCC Form 478.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit.

*Number of Respondents:* 3600.

*Estimated Time Per Response:* 15 minutes (avg.)

*Total Annual Burden:* 900 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Needs and Uses:* The Commission adopted rules to protect consumers from slamming and to take the profit out of an illegal practice for unscrupulous companies. These rules provide a means for consumers who believe they have been slammed to file a complaint with the Commission. FCC Form 478 will significantly improve the Commission's ability to process complaints without delays. In particular, the complaint form will ensure that consumers have to file a complaint only once rather than seeking various avenues of redress. By requesting the precise information needed to process and resolve complaints, FCC Form 478 will provide the Commission with a more efficient means of handling slamming complaints and moving against the perpetrators.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–3177 Filed 2–6–01; 8:45 am]

**BILLING CODE 6712–01–U**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

January 30, 2001.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0971.

*Expiration Date:* 07/31/2001.

*Title:* Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96–98 and CC Docket 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99–200.

*Form No.:* N/A.

*Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Estimated Annual Burden:* 50,500 respondents; .035 hours per response (avg.); 14,000 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third party disclosure.

*Description:* In the Second Report and Order issued in CC Dockets 96–98 and 99–200, released December 29, 2000, the Commission continues to implement numbering resource optimization measures, using its authority under section 251(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In this proceeding, the Commission has adopted two new requirements. Carriers that report forecast and utilization data semi-annually to the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator must duplicate such data for state commissions upon request. Carriers will be denied numbering resources if they fail to comply with such state commissions' requests. In addition, to request a ''for cause'' audit of a carrier, the NANPA, the Pooling Administrator or a state commission must draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation. The information will be used by the FCC, state commissions, the NANPA and/or the Pooling Administrator to verify the validity and accuracy of such data and to assist state commission in carrying out their numbering responsibilities, such as area code relief. Obligation to respond: Required to obtain or retain benefits.

*OMB Control No.:* 3060–0782.

*Expiration Date:* 01/31/2004.

*Title:* Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 100 respondents; 8 hours per response (avg.).; 800 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Description:* In a Memorandum Opinion and Order issued in CC Docket No. 96–159, released July 27, 1997, the Commission provided voluntary guidelines for filing expanded local calling service (ELCS) requests. The guidelines ask that each ELCS request include the following information: (1) Type of proposed service; (2) direction of proposed service; (3) telephone exchanges involved; (4) names of affected carriers; (5) state commission approval; (6) number of access lines or customers; (7) usage data; (8) poll results if any; (9) community of interest statement; (10) a map showing exchanges and LATA boundary involved; and (11) any other pertinent information. The requested information is used by the Commission to determine whether the need for the proposed ELCS routes outweighs the risk of potential anti-competitive effects, and thus whether requests for limited modifications of LATA boundaries should be granted. Obligation to respond: Voluntary.

*OMB Control No.:* 3060–0786.

*Expiration Date:* 01/31/2004.

*Title:* Petitions for LATA Association Changes by Independent Telephone Companies.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 20 respondents; 6 hours per response (avg.).; 120 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Description:* In a Memorandum Opinion and Order issued in CC Docket No. 96–158, released August 6, 1997, the Commission pursuant to the provisions of the Communications Act of 1934, as amended requests that independent telephone companies (ITCs) and Bell Operating Companies (BOCs) provide certain information to the Commission regarding ITC requests for changes in local access and transport area association and modification of LATA boundaries to permit the change in association. The Commission provided voluntary guidelines to assist ITCs in filing petitions for changes in LATA association and connected modification of LATA boundaries. The guidelines ask that each LATA association change request include the following information: (1) Type of request; (2) exchange information; (3) number of access lines or customers; (4) public interest statement; (5) a map showing exchanges and LATA boundaries involved; (6) a list of extended local calling service routes between the independent exchange and the LATA with which it is currently associated; and (7) a BOC supplement requesting a modification of the LATA boundary. The requested information is used by the Commission to determine whether the need for the proposed changes in LATA association outweighs the risk of potential anti-competitive effects, and thus whether requests for changes in LATA association and connected modifications of LATA boundaries should be granted. Obligation to respond: Voluntary.

*OMB Control No.:* 3060–0895.

*Expiration Date:* 01/31/2004.

*Title:* Numbering Resource Optimization, CC Docket No. 99–200.

*Form No.:* FCC Form 502.

*Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Estimated Annual Burden:* 2780 respondents; 1–44.4 hours per response; 181,890 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $7,858,650.

*Frequency of Response:* On occasion; Semi-annually; One time; Recordkeeping; Third party disclosure.

*Description:* Under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, the Commission was given exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Pursuant to that authority the Commission conducted a rulemaking that among other things addressed regular reporting on numbering use by United States carriers. In its Report and Order in CC Docket No. 99–200, released March 31, 2000,

the Commission found that mandatory data collection is necessary to efficiently monitor and manage numbering use. Requirements adopted in the Report and Order include the following: (a) Utilization/Forecast Report—All carriers that receive numbering resources from the NANPA or that receive numbering resources from a Pooling Administrator in thousands-blocks must report forecast and utilization data semi-annually to the NANPA. Carriers that receive intermediate numbers must report forecast and utilization data semiannually to the NANPA. Carriers whose forecast and utilization data have not changed from the previous reporting period may simply re-file the prior submission and indicate that there has been no change since the last reporting, i.e., report ''no change.'' All carriers are required to file their data electronically via FCC Form 502. (No. of respondents: 2700; hours per response: 44.4 hours; total annual burden: 119,880 hours). (b) Application for Initial Numbering Resources—Applications for initial numbering resources must include documentation proof that (1) the applicant is authorized to provide service in the area for which the numbering resources are requested and (2) the applicant is or will be capable of providing service within 60 days of the numbering resources activation date. Specifically, carriers must provide, as part of the applications for initial numbering resources, evidence (e.g., state commission order or state certification to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resources. Carriers requesting initial numbering resources must also provide to the NANPA appropriate evidence (e.g., contracts for unbundled network elements, network information showing that equipment has been purchased and that it is operational or will be operational, business plans, or interconnection agreements) that its facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date. These requirements apply to carriers requesting an initial NXX code and those requesting an initial thousands-block. See 47 CFR 52.15(g). (No. respondents: 2730; hours per response: 2; total annual burden: 5460 hours). c. Application for Growth Numbering Resources—Applications for growth numbering resources must include a Months-To-Exhaust (MTE) worksheet. To ensure that carriers obtain numbering resources when and where they are needed to provide service, carriers are required to provide evidence that, given their current utilization and recent historical growth, they need additional numbering resources. Non-pooling carriers must satisfy a minimum utilization threshold before obtaining additional numbering resources. See 47 CFR 52.15(g). (No. of respondents: 1700; hours per response: 2 hours; total annual burden: 3400 hours). d. Recordkeeping Requirement—To facilitate auditing by the NANPA and by state commissions in the future, carriers are required to maintain detailed internal records of their number usage in categories more granular than the five for which they are required to report. Carriers are required to maintain internal records of their numbering resources for the following subcategories: soft dialtone numbers; ported-out numbers; dealer number pools; test numbers; employee/official numbers; Local Routing Numbers; Temporary Local Directory Numbers; and wireless E911 emergency services routing digits/key numbers. Carriers are required to maintain these data for a period of not less than 5 years. See also, Report and Order, para. 62. (No. of respondents: 2730; hours per response: 1 hour; total annual burden: 2730 hours). e. Notifications by State Commissions—State commissions may reduce the reporting frequency for NPAs in their states to annual. State commissions must notify the Common Carrier Bureau and the NANPA prior to exercising this delegated authority. See 47 CFR 52.15(g). (No. of respondents: 50; hours per response: 1 hour; total annual burden: 50 hours). f. Demonstration to State Commission—Carriers that open a clean thousands-block prior to utilizing in its entirety a previously-opened thousands-block should be prepared to demonstrate to the state commission: (1) a genuine request from a customer detailing the specific need for telephone numbers; (2) the inability on the part of the carrier to meet the specific customer request for telephone numbers from the supply of numbers within the carrier's currently activated thousands-block. See 47 CFR 52.15(j). (No. of respondents: 850; hours per response: 1 hour; total annual burden: 850 hours). g. Petitions for Additional Delegation of Numbering Authority—States requesting pooling authority from the FCC must include a showing of specific criteria in their petitions. Each petition must demonstrate that: (1) That an NPA in its state is in jeopardy, (2) the NPA in question has a remaining life span of at least a year, and (3) that NPA is in one of the largest 100 MSAs, or alternatively, the majority of wireline carriers in the NPA are LNP-capable. See also Report and Order, para. 170. (No. of respondents: 50; hours per response: 20 hours; total annual burden: 1000 hours). h. Cost Support Data—Carriers are requested to submit cost support data so that the Commission can determine the cost associated with thousands-block number pooling. Carriers should include an analysis of the differences between the shared industry costs associated with thousands-block number pooling and the shared industry costs, if any, associated with the current practices that result in more frequent area code changes. Carriers should provide cost studies that assign costs according to the following three categories: shared industry costs; carrier-specific costs directly related to thousands/block pooling; and carrier-specific costs not directly related to thousands-block number pooling. See Report and Order, paras. 215–226. (No. of respondents: 1213; hours per response: 40 hours; total annual burden: 48,520 hours). The data collected will be used by the FCC, state regulatory commissions, and the North American Numbering Plan administrator (NANPA) to monitor numbering resource utilization by all carriers using the resource and to project the dates of area code and North American Numbering Plan exhaust. Obligation to respond: Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–3174 Filed 2–6–01; 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 31, 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 9, 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:* 3060–0295.

*Title:* Supplemental information to be furnished by applicants for facilities under this subpart, 47 CFR 90.607(b)(1) and (c)(1).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; Not-for-profit institutions; State, local, or tribal governments.

*Number of Respondents:* 2,028.

*Estimated Time per Response:* 15 mins. (0.25 hrs.).

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 507 hours.

*Total Annual Costs:* None.

*Needs and Uses:* Applicants requesting 800 MHz facilities use FCC Form 601 to provide the FCC with a list of any other licensed facilities that they hold within 40 miles of the based station for which they have applied. The FCC uses this information to determine if an applicant's proposed system is necessary in light of the communications facilities that it already owns.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–3119 Filed 2–6–01; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2461]**

### Applications for Review of Action In Rulemaking Proceeding

January 31, 2000.

Applications for Review have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.115(a). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these applications must be filed by February 22, 2001. See section 97.15(b) of the Commission's rules (47 CFR 97.15(b)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Rules Governing the Amateur Radio Service (RM–8763).

*Number of Petitions Filed:* 2.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–3116 Filed 2–6–01; 8:45 am]

BILLING CODE 6712–01–M

## 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. 181(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 22, 2001.

**A. Federal Reserve Bank of Atlanta** (Cynthia C. Goodwin, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

*1. Donald Howard Kay, Jr.; Martha Andrews Kay; Kyle Andrews Kay; and Rance Howard Kay, all of Ocala, Florida*, to retain voting shares of ONB Financial Services, Inc., Ocala, Florida, and thereby indirectly retain voting shares of Ocala National Bank, Ocala, Florida.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Glasnapp Family Limited Partnership I,* Mission Hills, Kansas; to acquire voting shares of Bannister Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire voting shares of Bannister Bank & Trust, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, February 2, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–3197 Filed 2–6–01; 8:45 am]

BILLING CODE 6210–01–M

## 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 Kansas City**(D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. CCB Corporation*, Kansas City, Missouri; to acquire 11 percent of the voting shares of Acquisition Corporation, Leawood, Kansas, and thereby indirectly acquire voting shares of Midamerican Bank & Trust Company, Leavenworth, Kansas.

Board of Governors of the Federal Reserve System, February 1, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–3096 Filed 2–6–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 01-2031) published on page 7490 of the issue for Tuesday, January 23, 2001.

Under the Federal Reserve Bank of New York heading, the entry for Financial Institutions, Inc., Warsaw, New York, is revised to read as follows:

**A. Federal Reserve Bank of New York**(Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. Financial Institutions, Inc.*, Warsaw, New York; to acquire 100 percent of the voting shares of and merge with Bath National Corporation, Bath, New York, and thereby indirectly acquire Bath National Bank, Bath, New York. Applicant also has applied to exercise an option to purchase up to 13 percent of the voting shares of Bath National Bancorp, Bath, New York.

Comments on this application must be received by February 16, 2001.

Board of Governors of the Federal Reserve System, February 1, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–3097 Filed 2–6–00; 8:45 am]

BILLING CODE 6210–01–S

## 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 5, 2001.

**A. Federal Reserve Bank of Cleveland** (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

*1. Wesbanco, Inc.*, Wheeling, West Virginia; to merge with Freedom Bancshares, Inc., Belington, West Virginia, and thereby indirectly acquire voting shares of Belington Bank, Belington, West Virginia.. Wesbanco, Inc., Wheeling, West Virginia; also has applied to acquire an option for 19.9 percent of the voting shares of Freedom Bancshares, Inc.

*2. FBI Corporation*, Wheeling, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Bancshares, Inc., Belington, West Virginia, and thereby indirectly acquire voting shares of Belington Bank, Belington, West Virginia.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Bannister Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring 92.10 percent of the voting shares of Bannister Bank & Trust, Kansas City, Missouri.

*2. First Olathe Bancshares, Inc.*, Kansas City, Missouri; to acquire 34.05 percent of the voting shares of Bannister Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire voting shares of Bannister Bank & Trust, Kansas City, Missouri.

**C. Federal Reserve Bank of Dallas**(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Katy Bancshares, Inc.*, Katy, Texas, and Katy Bancshares of Delaware, Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Katy Bank, National Association, Katy, Texas.

Board of Governors of the Federal Reserve System, February 2, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–3198 Filed 2–6–01; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 10:00 a.m. (EST) February 12, 2001.

**PLACE:** 4th Floor, Conference Room 4506 1250 H Street, NW., Washington, DC.

**STATUS:** Open.

**ACTION:** Correction.

**SUMMARY:** In notice document, volume 66, number 23, page 8795, in the issue of Friday, February 2, 2001, make the following correction.

On page 8795, the room number was previously listed as Conference Room 4506. This should be changed to read Conference Room 4400.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabaucco, Director,

Office of External Affairs, (202) 942–1640.

Dated: February 2, 2001.

**Elizabeth S. Woodruff,**

*Secretary to the Board, Federal Retirement Thrift Investment Board.*

[FR Doc. 01–3233 Filed 2–2–01; 4:56 pm]

BILLING CODE 6760–01–M

## FEDERAL TRADE COMMISSION

### Public Workshop: The Information Marketplace: Merging and Exchanging Consumer Data

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice announcing public workshop.

**SUMMARY:** The Federal Trade Commission (''Commission'') has set Tuesday, March 13, 2001 as the date for a public workshop exploring how businesses merge and exchange detailed consumer information and how such information is used commercially.

**DATE & SCHEDULE:** The workshop will be held from 9:00 a.m. to 5:00 p.m. on March 13, 2001 in the Commission Meeting Room (432), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Public sign-in will begin at 8:00 a.m. The event is open to the public and no advance registration is required. There is no fee for attendance. In addition, the workshop will be audiocast live over the Internet. A detailed agenda and additional information on the workshop will be posted on the Commission's web site, *www.ftc.gov.* in advance of the workshop.

**FOR FURTHER INFORMATION:** For questions about the workshop, contact: Martha Landesberg, telephone 202–326–2825, e-mail *mlandesberg@ftc.gov*, or Allison Brown, telephone 202–326–3079, *aibrown@ftc.gov*. Both of the above staff can be reached by mail at: Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

#### Background and Workshop Goals

In reports to Congress in June and July 2000, the Commission examined the practices of third-party Internet advertising networks engaged in ''online profiling'' activities [1] These entities collect information about consumers as they surf across web sites to create detailed profiles which include information about consumers' surfing habits, and other personal and non-personal information, for the purpose of sending targeted online advertising messages to individual consumers.

Now, the Commission proposes to explore how detailed consumer profiles—*i.e.*, compilations of identifying information, preference information, purchasing habits, and other information relating to a particular consumer—are created and used by entities other than third-party Internet advertising networks. In particular, the Commission plans to consider whether and how consumer profiles are created through the merger and exchange of data between companies, regardless of whether the data at issue is collected or used online or offline, and how such profiles are used commercially. The goal of the upcoming workshop is to educate the Commission and the public about current business practices and emerging technologies.

#### Questions To Be Addressed

Among the questions that may be addressed at the workshop are the following:

- What kinds of consumer information do businesses purchase, sell or exchange to create profiles and what are the sources of that information?
- Are there new technologies or technical standards that may increase the sharing of detailed consumer information and do they include or facilitate privacy protections?
- How does the merger and exchange of detailed consumer data between companies affect consumers?
- What types of notice have businesses provided to consumers regarding various kinds of data merger and exchange activities?
- What business purposes are served by the creation of consumer profiles through the merger of a company's internal information about consumers with information obtained from third-parties?

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01–3194 Filed 2–6–01; 8:45 am]

BILLING CODE 6750–01–M

[1] *See* **Online Profiling:** A Report to Congress (June 2000) (issued by a vote of 5–0, with Commissioner Swindle concurring in part and dissenting in part), available at *http://www.ftc.gov/os/2000/06/onlineprofilingreportjune2000.pdf*; Online Profiling: A Report to Congress, Part 2 (July 2000) (issued by a vote of 4–1, with Commissioner Swindle dissenting and Commissioner Leary concurring in part and dissenting in part), available at *http://www.ftc.gov/os/2000/07/onlineprofiling.htm*.

## FEDERAL TRADE COMMISSION

**[File No. 001 0086]**

### El Paso Energy Corp., et al.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before February 28, 2001.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** William Vigdor or John Weber, FTC/S–2105, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3177 or 326–2829.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 29, 2001), on the World Wide Web, at *http://www.ftc.gov/os/2001/01/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Ave., NW., Washington, DC 20580, either in person or by calling (2020) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by 31/2 inch diskette containing, and electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rule of practice (16 CFR 4.9(b0(6)(ii)).

**Analysis of the Complaint and Proposed Consent Order to Aid Public Comment**

*I. Introduction*

The Federal Trade Commission (''Commission'') has accepted for public comment an Agreement Containing Consent Orders and a proposed Decision and Order (''proposed Order'') with El Paso Energy Corporation (''El Pasoa''), The Coastal Corporation (''Coastal''), and Dominion Resources, Inc. (''Dominion''). The proposed Order seeks to remedy the anticompetitive effects of El Paso's acquisition of Coastal by requiring El Paso and Coastal (''Respondents'') to divest their interests in ten pipelines and one pipeline yet to be constructed. The divestitures are in locations where the Respondents already own additional pipelines and their ownership of the pipelines to be divested would likely injure competition. Additionally, the proposed Order seeks to remedy competition by establishing a development fund to be made available to the purchaser of the Green Canyon and Tarpon pipelines for the purpose of paying to construct pipelines into a defined area of competitive concern.

*II. Description of the Parties and the Proposed Acquisition*

El Paso, a Delaware corporation, is engaged in the transportation, gathering, processing, and storage of natural gas; the marketing of natural gas, power, and other energy-related commodities; power generation; the development and operation of energy infrastructure facilities worldwide, and the domestic exploration and production of natural gas and oil. El Paso owns or has interests in more than 38,000 miles of intrastate and intrastate natural gas pipelines connecting the nation's principal natural gas supply to consuming regions. In 1999, El Paso had revenues of $106 billion and earnings of $191 million, before interest and taxes.

Coastal, a Delaware corporation, is a diversified energy and petroleum products company. Coastal explores for, produces, gathers, processes, transports, stores, markets and sells natural gas throughout the United States. It is also engaged in refining, marketing, and distributing petroleum products; coal mining; and marketing power. Coastal owns or has interest in more than 18,000 miles of natural gas pipelines that serve the Rocky Mountain area, the Midwest, the south central United States, New York State, and other areas of the northeastern United States. In 1999, Coastal reported revenues of $8.2 billion, and earnings of $996.1 million before interest and taxes.

El Paso will acquire all of Coastal's common stock and the former Coastal shareholders will, as a result, own approximately 53% of El Paso's voting securities (''proposed Acquisition''). The total dollar value of the transaction (which includes about $6 billion in debt and preferred securities) is estimated to be $16 billion. The Respondents will have an asset base of approximately $31.5 billion.

*III. The Complaint*

The Complaint alleges that the relevant line of commerce (*i.e.*, the product market) in which to analyze the proposed Acquisition is the transportation of natural gas via pipeline. For many end users, there are no substitutes for natural gas, and there is no practical alternative to pipeline transportation. The relevant market can be further delinated by focusing on long term firm transportation, which is a type of natural gas transportation service requiring the pipeline company to guarantee for one year or more that it will transport a specified daily quantity of natural gas from one destination to another, without interruption. Many natural gas users cannot bear the risk of interruption and, in areas where pipeline capacity is constrained periodically, these users must purchase long term firm transportation. For these customers, other pipeline services and periodic resales of transportation by holders of long term transportation rights are not reasonably interchangeable. Another relevant market in which to analyze the effects of the proposed Acquisition is the provision of tailored services. Tailored services allow users of natural gas to balance their changes in natural gas demand with their supply of natural gas and transportation. Tailored services include limited notice and no notice service, and are typically sold in conjunction with natural gas storage services.

The Complaint further alleges that the proposed Acquisition, if consummated, will eliminate and direct competition between the two companies in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the following 20 sections of the country (*i.e.*, the geographic markets): (a) Central Florida, (b) metropolitan areas of Buffalo, Rochester, Syracuse, and Albany, New York; (c) the metropolitan area of Milwaukee, Wisconsin; (d) the metropolitan area of Evansville, Indiana; and (e) 13 areas in the Gulf of Mexico. The Complaint alleges that each of these markets is highly concentrated, and the acquisition would substantially increase that concentration. In each of the relevant markets, pipelines owned by El Paso and Coastal are two of the most significant competitors. In some instances, El Paso and Coastal are the only two options available to customers, and in other instances, they represent two of three options. The merger not only eliminates existing competition between El Paso and Coastal pipelines but also threatens to forestall potential new competition as well. After the proposed acquisition, with the elimination of competition between El Paso and Coastal, it is likely that prices of transportation will increase and output of transportation will be reduced in the relevant markets, thereby increasing the cost of electricity and natural gas service.

The Complaint further alleges that new entry into the relevant geographic markets would not be likely, timely, or sufficient to prevent or counteract these anticompetitive effects and to prevent the Respondents from maintaining a price increase above pre-acquisition levels. There are substantial barriers to entering these markets, as building additional pipelines to natural gas production areas, to natural gas consuming areas, to natural gas storage fields, or outside the geographic market is expensive and would take more than two years. Major pipeline projects require approval from the Federal Energy Regulatory Commission, which is likely to take three or four years. In addition, it requires considerable time for a new entrant to secure rights of way, overcome landowner and environmental hurdles, secure sufficient advance commitments from customers, and obtain regulatory approvals in the face of opposition from competition.

*IV. Terms of the Proposed Order*

The proposed Order is designed to remedy the alleged anticompetitive effects of the proposed Acquisition. Under the terms of the proposed Order, the Respondents must, within twenty days from the date upon which the Commission places the proposed Order on the public record, divest their interests in: Gulfstream Natural Gas System to Duke Energy and Williams Gas Pipeline; the Empire pipeline to Westcoast Energy; the Green Canyon and Tarpon pipelines to Williams Field Services; the Manta Ray, Nautilus, and Nemo pipelines to Enterprise Products; and the Stingray pipeline to Shell Gas Transmission and Enterprise Products. The Respondents must also divest their interests in the Midwestern Gas

Transmission pipeline (''MGT'') within 120 days of the date upon which the Commission places the proposed Order on the public record, UTOS by April 1, 2001, and the Iroquois pipeline within 90 days of the date upon which the Commission places the proposed Order on the public record.

The Commission is satisfied that the acquirers identified in the proposed Order are well-qualified acquirers and will compete vigorously with the Respondents. The Commission will evalute additional proposed acquirers for assets to be divested under the proposed Order to make certain that such acquirers will not prevent competitive problems.

In connection with the divestiture of their interests in the Empire, MGT, Stingray, and UTOS pipelines, the proposed Order requires the Respondents to provide transitional services to the purchaser of these pipelines, at a reasonable fee, sufficient to operate the assets. The Respondents must provide these services for a period of up to nine months. Also, in connection with the divestiture of these assets, the Order requires the Respondents to give the acquirers an opportunity to transfer applicable employment relationships from either Coastal or El Paso to each acquirer. These provisions of the proposed Order help assure that there will be a successful and reasonably short transition of the pipelines to the new owners.

The proposed Order also contains additional provisions with respect to the divestiture of Gulfstream Natural Gas System. Gulfstream Natural Gas System is beginning to construct a 140-mile natural gas pipeline that will originate near Mobile Bay, Alabama; extend across the Gulf of Mexico to the west coast of Florida near Tampa; and extend inland to various destinations in the Florida peninsula. To ensure that the pipeline meets its scheduled in-service date of June 1, 2002, the proposed Order requires Respondents to provide consulting services, at a reasonable fee, to the buyer of Gulfstream until June 2002. The proposed Order prohibits the Respondents from acquiring any long term firm capacity on Gulfstream (except for their own end use) and from disclosing or making available any Gulfstream confidential information to any person. The Respondents are further prohibited from using any Gulfstream confidential information, except to provide consulting services to the buyer of Gulfstream.

In connection with the divestiture of the MGT pipeline, the proposed Order requires the Respondents to include and enforce a provision in the MGT purchase and sale agreement that requires the MGT acquirer to connect MGT to the Guardian pipeline (''Guardian Interconnection''). The Respondents are prohibited by the proposed Order from engaging in any action, or failing to take any action, the result of which would prevent, hinder, or delay completion of the Guardian Interconnection. Furthermore, the proposed Order prohibits the Respondents from engaging in any unfair or deceptive practice that would prevent, hinder, or delay construction of the Guardian pipeline; and requires Respondents to notify publicly the Federal Energy Regulatory Commission and the Public Service Commission of Wisconsin if Respondents fund any third-party effort to oppose the Guardian pipeline. These provisions are designed to ensure the effectiveness of the Commission's remedy. With regard to the MGT divestiture, the Respondents must divest MGT to a buyer approved by the Commission within 120 days from the date upon which the Commission places the proposed Order on the public record.

In connection with the divestiture of its interests in the Iroquois pipeline, the proposed Order prohibits Respondents from divesting more than 8.72% of their partnership interest in Iroquois pipeline to Dominion Resources. This limitation prevents Dominion Resources from acquiring additional control or influence over the Iroquois pipeline that could be used to thwart competition. The proposed Order also prohibits Respondents from serving on any committee of the Iroquois pipeline, attending any meeting of any such committee, or receiving any information from the Iroquois pipeline not made available to all shippers or to the public at large. Furthermore, until the Respondents are removed from the Iroquois Management Committee, the proposed Order requires that the Respondents' vote be case in favor of expansion, if such a vote should arise. The Respondents are also deemed, by proposed Order, to vote to create unanimity when unanimous action is required within a voting bloc in order to cast that bloc's vote. These provisions prevent the Respondents from gaining access to competitively sensitive information that could be used to prevent competition between Respondents and the Iroquois pipeline, and keep the Respondents from limiting the ability of the Iroquois pipeline to expand in the Albany market.

The proposed Order also requires that the Respondents to create a fund to encourage expansions of the Tarpon and Green Canyon pipelines by providing $40 million, within ten days from the date of the divestiture of the Tarpon and Green Canyon pipelines, to be deposited in an interest-bearing account. The Tarpon and Green Canyon pipelines will be permitted to use the fund to pay the direct costs of constructing a natural gas pipeline or related facility that originates at any pipeline owned by the Green Canyon and Tarpon acquirer, and which extends to a location within a specified area. The fund will ensure that competition is maintained by allowing the Tarpon and Green Canyon acquirer to extend its pipelines into an area of competitive concern and to compete against the Respondents in that area. Without this fund competition would be reduced and the Tarpon and Green Canyon acquirer would be at a competitive disadvantage due to the longer distance between the acquiring firm's pipelines and the areas of concern. Any money remaining in the fund after twenty years will be paid to Respondent El Paso.

The proposed Order further requires that the Respondents assist the acquires of the Gulfstream, Empire, Iroquois, MGT, Green Canyon, Tarpon, Nautilus, Manta Ray, Nemo, Stingray, and UTOS pipelines in obtaining any approval, consent, ratification, waiver, or other authorization (including governmental) that is or will become necessary to complete the divestitures required by the proposed Order.

Additionally, for a period of 10 years after the proposed Order becomes final, the Respondents must provide written notice to the Commission prior to acquiring any interest in any of the assets which are required to be divested by the proposed Order. The proposed Order also prohibits the Respondents from entering into any agreement to acquire any rights to long term firm transportation on the Gulfstream, Empire, or MGT pipelines from the date Respondents sign the Agreement Containing Consent Orders until Respondents have divested the applicable pipeline. After that date, and for a period of ten years, Respondents must provide advance written notification before entering into an agreement to purchase long term firm transportation greater than 100,000 dekatherms per day on either the Empire or MGT pipeline. There is an exception to these restrictions where the purchase of the transportation is for the Respondents' own end use. Furthermore, the Respondents must provide the Commission with a report of compliance with the proposed Order within 60 days after the proposed Order becomes final, annually thereafter until

the order terminates, and at other times as the Commission may require.

The parties will also be subject to an ''Order to Maintain Assets,'' to be issued by the Commission. Under the Order to Maintain Assets, between the date the Respondents sign the Agreement Containing Consent Orders and the date of divestiture of the applicable asset, the Respondents must maintain the assets to be divested in substantially the same condition as existing on the date the Respondents signed the Agreement Containing Consent Orders; use their best efforts to keep available the services of current personnel relating to the assets to be divested and to maintain the relations and good will of those entities which have business relationships with the assets to be divested; and preserve the assets to be divested intact as an ongoing business. Under the Order to Maintain Assets, the Respondents must also provide the acquirers of the assets to be divested an opportunity to transfer employment relationships from the Respondents to the acquirers. In addition, the Order to Maintain Assets imposes several obligations on the Respondents which are also imposed by he proposed Order and which are mentioned earlier in this notice.

Further, Dominion Resources, which already owns 16% of the Iroquois pipeline, has been made a party to the proposed Order for the purposes of requiring it to provide the Commission with advance written notification before increasing its interest in the Iroquois pipeline.

Finally, under the terms of the proposed Order, in the event that El Paso does not divest the assets required to be divested under the terms and time constraints of the proposed Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price. The proposed Order also authorizes the Commission to appoint a Monitor Trustee to oversee the Development Fund by ensuring that those funds are used in a manner consistent with the terms of the proposed Order.

*V. Opportunity for Public Comment*

The proposed Order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Order and the comments received and will decide whether it should withdraw from the proposed Order or make it final. By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether to make the proposed Order final. This Analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01–3190 Filed 2–06–01; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

**[File No. 001–0172]**

## Entergy Corporation, et al., Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before March 2, 2001.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** William Vigdor, Frank Lipson or Anne Schenof, FTC/S–2105, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3177, 326–2617 or 326–2031.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 31, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/01/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of the Complaint and Consent Order To Aid Public Comment

*I. Introduction*

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order (''Consent Agreement'') with Entergy Corporation and Entergy-Koch, LP (''EKLP''), a limited partnership owned equally by Entergy and Koch Industries, Inc., and has issued a Complaint and the Decision and Order (''Order'') contained in the Consent Agreement. The Order seeks to remedy the anticompetitive effects of EKLP's acquisition from Koch of the Gulf South Pipeline Company, LP (formerly the Koch Gateway Pipeline Company and referred to herein as ''Gulf South''). As a result of this acquisition, Entergy will own 50 percent of the Gulf South pipeline, a major natural gas pipeline serving Entergy's regulated utilities in Louisiana and Mississippi. The Order requires Entergy to adopt an open-solicitation process for its purchase of natural gas and gas transportation. Adoption of these measures will avoid affiliate bias in Entergy's purchase of gas supplies and the resulting higher energy prices.

*II. Description of the Parties and the Proposed Joint Venture*

Entergy, a Delaware corporation, is engaged in the generation, transmission, and distribution of electricity. Entergy provides retail electric service to customers in portions of Arkansas, Louisiana, Mississippi, and Texas. Entergy also owns the local natural gas distribution utility in New Orleans and Baton Rouge, Louisiana. In 1999,

Entergy had revenues of approximately $8.77 billion and net income of approximately $595 million.

Koch is a privately held corporation headquartered in Wichita, Kansas. Through its subsidiaries and affiliates, Koch markets natural gas, natural gas transportation, chemicals, petroleum products, minerals, and financial services. Koch conducts its natural gas business through Koch Entergy Trading and Gulf South. Koch Entergy Trading markets natural gas, electric power, and weather derivatives. Gulf South owns and operates the Gulf South pipeline (formerly known as the Koch Gateway pipeline). The Gulf South pipeline consists of about 10,000 miles of natural gas pipeline serving parts of the states of Texas, Louisiana, Mississippi, Alabama and Florida.

On May 26, 2000, Entergy and Koch entered into an agreement to form EKLP. Pursuant to that agreement, EKLP will acquire, among other things, Entergy Power Marketing Corporation (Entergy's subsidiary that markets electricity and gas in the United States) and Gulf South and Koch Entergy Trading from Koch. As a result of the joint venture agreement, Entergy will own 50 percent of Gulf South and Koch Entergy Trading.

*III. The Complaint*

The Complaint alleges that consummation of the joint venture agreement would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleges two markets in which the proposed joint venture is likely to lessen competitive discipline on prices substantially: the sale of electricity to consumers in areas of Louisiana and western Mississippi where Entergy subsidiaries are the regulated electric utilities (Count I); and the distribution of natural gas to consumers in New Orleans and Baton Rouge, where Entergy subsidiaries are the regulated natural gas distribution utilities (Count II). The Complaint alleges that prices in these relevant markets are ''likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation.''

According to the Complaint, Entergy, through its regulated subsidiaries, has the exclusive right to sell retail electricity in parts of Louisiana and Mississippi. Entergy subsidiaries also have the exclusive right to distribute natural gas in New Orleans and Baton Rouge, Louisiana. Entergy purchases substantial quantities of natural gas transportation for its regulated subsidiaries.

Under the current regulatory framework of the States of Louisiana and Mississippi and the City of New Orleans, Entergy is permitted, subject to review, to recover 100 percent of the cost of natural gas transportation purchased for its natural gas and electric utilities by passing on this cost directly to consumers. The Complaint alleges that, once Entergy shares in the profits of Gulf South, it will have the incentive and ability, and is therefore likely, to pay higher prices for the transportation of Gulf South, and purchase a level of transportation service from Gulf South above what is necessary for effective operation of Entergy's utilities.

The Complaint alleges that after EKLP acquires the Gulf South pipeline it would be difficult for state and local regulators to determine whether Entergy improperly incurred inflation costs of natural gas transportation than before the transaction. Entergy's natural gas transportation purchasing decisions involve the consideration of multiple factors; the process by which Entergy purchases gas transportation is not transparent; and existing market benchmarks are inadequate to assist regulators in determining whether the cost was prudently incurred. Entergy's ownership of EKLP and the Gulf South pipeline increases Entergy's incentive to evade regulation and therefore, it is more likely that regulators will need to address such evasion.

*IV. Terms of the Order*

The Order issued by the Commission remedies the alleged anticompetitive effects of the proposed joint venture by establishing a transparent process that will increase the potential for competition and provide a benchmark that will make it easier for regulators to detect possible rate evasion. The Order affects how Entergy purchases its gas supply, whether it purchases pipeline transportation to deliver natural gas to facilities operated by its regulated utilities or it purchases delivered natural gas.

The Order recognizes Entergy's requirement to purchase a flexible, reliable, and economical gas supply. For this reason, this Order provisions are tailored to reflect the duration of Entergy's contracts. Paragraph II. B. of the Order applies to long-term (over three months) and short-term purchases (longer than one day but less than or equal to three months) and requires Entergy to prepare a written plan before requesting proposals for gas supply. This plan must include, among other things, a statement explaining the goals Entergy is attempting to achieve (*e.g.*, reliable supply of gas at certain plants). These planning documents will allow state and local regulators to compare actual purchases with Entergy's forecasted gas supply requirements.

The Order also requires Entergy to post information about its gas supply requirements on its website. The information posted and the timing of the post are based on the duration of the contract terms and the pace of the market activity. For long-term purchases (Paragraph II.C.1.), Entergy must post a request for proposal (''RFP'') where each RFP must contain, among other things, the criteria that suppliers must satisfy to be eligible for consideration and the types of services, the amount of gas, and the duration of the contract. Entergy must post this RFP at least 30 days before any purchase under a contract whose term is one year or more, and at least 14 days in advance of any purchase under a contract whose term is between three months and one year. These time frames provide suppliers with adequate time to prepare their bids, without causing unnecessary delay. Further, the Order requires Entergy to provide requests for proposals to any potential supplier upon its request, and to consider any proposal for any potential supplier.

The process is similar for short-term purchases (Paragraph II.C.2.). Entergy must post this information at least 72 hours before considering any proposal for a term of at least one month. As with long-term purchases, the Order requires EKLP to ensure that Gulf South posts each announcement on its electronic bulletin board before submitting a proposal to Entergy, and requires Entergy to consider all proposals from any potential supplier. The order requires Entergy to create a log for all short-term purchases documenting the date, time, seller, and terms of all offers received, and indicating the selected proposals(s).

For daily purchases, (Paragraph II.C.3), the Order requires Entergy to publish on its website its intention to purchase gas supplies at various receipt and delivery points. The information contained in this notice is more limited than the requests that Entergy must publish for short-term and long-term purchases. The Order requires Entergy to provide potential suppliers, upon request, with the specific terms and conditions for which it seeks to purchase gas supplies. Entergy must maintain a log containing the same information that is required for short-term purchases. The Order does not

require Entergy to develop a planning document for its daily purchases, which is required for the other types of purchases.

These procedures will create a competitive, transparent process that will make it easier for regulators to detect whether Entergy purchased gas supplies at inflated costs. The planning document will provide regulators with Entergy's operational requirements for gas and gas transportation. The open-solicitation process will create competition to supply Entergy and establish a market price for gas supplies. Regulators will then be able to compare Entergy's operational requirements, Entergy's purchases and the market prices to identify whether Entergy purchased gas supplies from EKLP at inflated prices or a level of service that is above that necessary for effective operation.

The Order also designates Stephen P. Reynolds as Implementation Trustee. Mr. Reynolds has the expertise to determine the precise information that should be included in an RFP or other solicitation package, or information to be contained in a gas purchasing planning document. EKLP must bear all of the trustee's costs and expenses. The Implementation Trustee will serve until the earlier of one year or the date on which he certifies to the Commission that the parties have put in place adequate procedures with the Order and the Commission accepts such certification.

*V. Effective Date of Order and Opportunity for Public Comments*

The Commission issued the Complaint and the Decision and Order, and served them upon the respondents; at the same time it accepted the Consent Agreement for public comment. As a result of this action, the Order has already become effective. The Commission, in August 1999, adopted procedures to allow for immediate effectiveness of an Order prior to a public comment period. The Commission announced that it ''contemplates doing so only in exceptional cases where, for example, it believes that the allegedly unlawful conduct to be prohibited threatens substantial and imminent public harm.'' 65 FR 46267 (1999).

This case is an appropriate one in which to issue a final order before receiving public comment because it preserves an effective remedy for the Commission by subjecting the respondents to civil penalties for failing to comply with the Order. This ensures that the safeguards embodied in the Order will be implemented on schedule.

The Order has also been placed on the public record for 30 days for receipt of comments by interested persons, and comments received during this period will become part of the public record. Thereafter, the Commission will review the Order, and may determine, on the basis of the comments or otherwise, that the Order should be modified.[1]

The Commission anticipates that the Order, as issued, will resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment on the Order to aid the Commission in determing whether to modify the Order in any respect. This analysis is not intended to constitute an official interpretation of the Order, nor is it intended to modify the terms of the Order in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01–3191 Filed 2–6–01; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

**[File No. 002 3015]**

### Indigo Investment Systems, Inc., et al.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before February 26, 2001.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Janet Evans, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2125.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 25, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/01/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Indigo Investment Systems, Inc., a corporation, and Frank Alfonso, its CEO (together, ''respondents'') settling charges that they engaged in a deceptive advertising campaign for Indigo, a stock trading program.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sold Indigo through ads in various media, including investment magazines, Internet banner ads, and three websites: www.microstar-reserach.com, www.msindigo.com, and www.indigoinvestor.com. According to the FTC complaint, respondents'

[1] If the respondents do not agree to such modifications, the Commission may (1) initiate a proceeding to reopen and modify the Order in accordance with Rule 3.72(b), 16 CFR 3.72(b), or (2) commence a new administrative proceeding by issuing an administrative complaint in accordance with Rule 3.11, 16 CFR 3.11. See 16 CFR 2.34(e)(2).

advertising falsely represented that Indigo earnings data described in the ads represent trades that were actually made and that resulted in the profits stated in the advertisements; that the annual returns for the years 1990 through 1999 enumerated in the advertisements were actually achieved by users of respondents' Indigo trading program; and that users of respondents' Indigo investment trading program can reasonably expect to trade with little financial risk. According to the complaint, the Inidgo earnings data described on the site do not represent trades that were actually made and that resulted in the profits stated in the advertisements; instead, the data represent results of hypothetical trading and are prepared with the benefit of hindsight using historical data. The annual returns for the years 1990 through 1999 enumerated in the advertisements were not actually achieved by users of respondents' Indigo trading program; instead, the annual returns are based upon hypothetical trades using historical data. Indeed, respondents' Indigo trading program did not exist until 1995. Additionally, the complaint alleges, users of respondents' Indigo trading program cannot reasonably expect to trade with little financial risk; indeed, consumers who trade in stocks risk a substantial loss of capital, and trading some Indigo models represents a high risk speculative investment.

The complaint further alleges that respondents made several unsubstantiated claims. It alleges that respondents' advertising represented that most users of respondents' Indigo trading program who have invested in conservative portfolios have achieved an annual return of 40% over the past three years; that most users of respondents' Indigo trading program who have invested in aggressive portfolios with ''hot'' Internet stocks have achieved returns of several hundred percent; that testimonials appearing in the advertisements for respondents' Indigo trading program reflect the typical or ordinary experience of members of the public who use the program; and that users of respondents' Indigo trading program can reasonably expect to achieve substantial profits on a consistent basis, whether pursuing a conservative or aggressive trading strategy. Respondents, however, lacked a reasonable basis to substantiate these claims, according to the complaint.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I of the order would require, with regard to the sale of any trading program, that respondents posses a reasonable basis for future representations about the amount of earnings, income, or profit, or the rate of return, that a user of such trading program could reasonably expect to attain; the usual or typical earnings, income, profit, or rate of return, achieved by users of such trading program or any part thereof; or any financial benefit or other benefit of any kind from the purchase or use of such trading program.

Part II of the order prohibits respondents, in connection with sale of any trading program, from misrepresenting that hypothetical or simulated earnings data represent actual trading results; that users of such trading program can reasonably expect to trade with little risk; or the extent of risk to which users of the trading program are exposed.

Part III requires that future benefits claims be accompanied by the statement that ''STOCK [or CURRENCY, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a significant amount of money.'' Part IV prohibits respondents from representing that the experience represented by any user, testimonial or endorsement of the trading program represents the typical or ordinary experience of members of the public who use the trading program unless respondents can substantiate the typicality representation or they disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve.

The remaining parts of the order contain standard record keeping, order distribution, reporting, compliance, and sunsetting provisions.

The purpose of this analysis is to facilitate public comments on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01–3192 Filed 2–06–01; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File No. 992 3263]**

## Sharp Electronics Corp.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before February 26, 2001.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Kerry O'Brien or Matthew Gold, Federal Trade Commission, Western Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5266.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 25, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/01/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania, Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and

will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Sharp Electronics Corporation (''Sharp'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Sharp advertises and sells the ''Mobilon'' line of hand-held personal computers (''HPCs''). Sharp's Mobilon HPCs, as well as similar devices from several other manufacturers, use the Microsoft Windows CE operating system. This operating system and several applications, including a word processor, a spreadsheet, and a database, are installed on these devices' ROM board. HPCs are designed to be upgradeable to newer versions of the operating system and/or applications through the purchase and installation of a new ROM board.

This matter concerns allegedly false and deceptive advertising of Sharp's Mobilon HPCs. The Commission's proposed complaint alleges that Sharp claimed that it would offer to its Mobilon customers an upgrade to a later version of the Microsoft Windows CE operating system when such a later version became available. In fact, Sharp never offered to its Mobilon customers an upgrade to a later version of the Microsoft Windows CE operating system when such a later version became available. Further, the company continued to represent that its Mobilon HPCs were upgradeable for several months after deciding not to offer an upgrade.

The proposed consent order contains provisions designed to prevent Sharp from engaging in similar acts and practices in the future. Part I of the proposed Order prohibits the company from misrepresenting the availability of any upgrade product. Part II of the proposed order requires Sharp to offer the promised upgrade to consumers who purchased a Mobilon 4100, 4500, or 4600 handheld PC. Under this provision, Mobilon owners may obtain the upgrade for the payment of a shipping and handling charge of $10. Parts III through VI of the proposed order are reporting and compliance provisions. Part VII is a provision ''sunsetting'' the order after twenty years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By the direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01–3193 Filed 2–6–01; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Notice of Interest Rate on Overdue Debts

January 31, 2001.

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 14⅛% for the quarter ended December 31, 2000. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 31, 2001.

**George Strader,**

*Deputy Assistant Secretary, Finance.*

[FR Doc. 01–3154 Filed 2–6–01; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–01–19]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Project**

Evaluating HIV Prevention Programs in Community-Based Organizations (CBOs)—New—The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP) proposes to develop and test a model of HIV prevention community-based organization (CBO) functioning using a one time data collection questionnaire. Each CBO will be asked to answer questions related to the existence and importance of factors affecting their HIV prevention interventions. This data collection is necessary for CDC to better (a) assess CBO applications systematically for funding, (b) develop materials CBOs can use to assess their own programmatic needs and create a social map of their target populations, including a CBO profile of organizational, environmental, target population, intervention program

and accomplishments characteristics, (c) better develop CBO technical assistance (TA) materials, and (d) provide TA to CBOs that have already been selected by CDC for funding. This study will also yield more hypotheses for statistical testing, instruments with reliability and validity data for use in other studies, and a model that can be used and revised to meet the context of a particular CBO. The questionnaire will be administered to 766 CBOs that have applied for CDC funding under program announcements 00023, 00100, 99047, 99091, 99092, 99096. The total annual cost to respondents is estimated at $26,044 based on an average salary of $35,000 ($17.00 per hour) for program managers.

| Respondents | No. of respondents | No. of responses per respondent | Average burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| Model Survey | 766 | 1 | 2 | 1532 |
| Total | ..... | ..... | ..... | 1532 |

Dated: February 1, 2001.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 01–3178 Filed 2–6–01; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Delegations of Authority

Notice is hereby given that on January 19, 2001 the Director of Child Support Enforcement redelegated to the Deputy Commissioner of Child Support Enforcement, all the authorities delegated to the Deputy Director/Commissioner of Child Support Enforcement by the Director of Child Support Enforcement. This delegation is subject to any limitations or conditions contained in the delegations to the Deputy Director/Commissioner.

Dated: January 19, 2001.

**Olivia A. Golden,**

*Director, Child Support Enforcement.*

[FR Doc. 01–3114 Filed 2–6–01; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1651]**

### Devices—Inspections of Medical Device Manufacturers Compliance Program Guidance Manual, CP 7382.845; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a compliance program (CP) entitled ''Inspection of Medical Device Manufacturers.'' This CP is intended to help FDA components and industry comply with FDA's internal inspection and compliance processes concerning quality system/good manufacturing practice (QS/GMP) inspections of manufacturers of medical devices.

**DATES:** Submit written comments on this CP at any time.

**ADDRESSES:** Submit written requests for single copies of CP 7382.845 ''Inspections of Medical Device Manufacturers'' to the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Copies of the CP may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs (ORA) home page includes the CP and may be accessed at http://www.fda.gov/ora. The CP will be available on the compliance references page for ORA. Submit written comments on the CP to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** *Technical questions concerning inspections of medical device manufacturers:* Denise D. Dion, Division of Emergency and Investigational Operations (HFC–130), Office of Regional Operations, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5645, FAX 301–443–6919.

*Questions concerning regulatory actions and all comments:* Wes W. Morgenstern, Division of Program Operations (HFZ–305), Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–4699, FAX 301–594–4715.

**SUPPLEMENTARY INFORMATION:** FDA has renumbered CP 7382.830 as CP 7382.845 and revised it to reflect a change in the guidance on how a QS/GMP inspection of a medical device manufacturer should be conducted. The new inspectional method is known as the quality systems inspection technique. The revision to the CP also reflects changes in when FDA may consider a firm out of compliance with the medical device quality system regulation (21 CFR part 820).

The CP is intended to provide policy and regulatory guidance to FDA's field and headquarters staff with regard to medical device manufacturer inspections. It also contains information that may be useful to the regulated industry and to the public.

The CP is being issued as a guidance document and represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. FDA published a notice making a draft of the CP available for public comment in the **Federal Register** (64 FR 44024, August 12, 1999).

The agency has adopted good guidance practice (GGP) regulations (65 FR 56468, September 19, 2000) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This CP is issued as a level 1 guidance consistent with GGP's.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the CP entitled ''Inspections of Medical Device Manufacturers'' at any time. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the CP and

received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 22, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 01–3203 Filed 2–6–01; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1662]**

### Draft ''Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans;'' Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans'' dated February 2001. The draft guidance document is intended to provide guidance on the production, testing, and evaluation of products intended for use in xenotransplantation.

**DATES:** Submit written comments on the draft guidance to ensure their adequate consideration in preparation of the final document by May 8, 2001.

**ADDRESSES:** Submit written requests for single copies of the draft guidance entitled ''Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans'' dated February 2001 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans'' dated February 2001. For the purpose of the draft guidance ''xenotransplantation'' refers to any procedure that involves the transplantation, implantation, or infusion into a human recipient of either: (1) Live cells, tissues, or organs from a nonhuman animal source, or (2) human body fluids, cells, tissues, or organs that have had ex vivo contact with live nonhuman animal cells, tissues, or organs. This document is intended to provide guidance on the production, testing, and evaluation of products intended for use in xenotransplantation. The draft guidance includes scientific questions that should be addressed by sponsors during protocol development and during the preparation of submissions to FDA (e.g., investigational new drug application and biologics license application). The topics in the draft guidance include: Regulatory responsibility; source animal and xenotransplantation products characterization; microbiological testing of xenotransplantation products; manufacturing and process-related good manufacturing practice considerations for harvest and processing of xenotransplantation products; preclinical considerations for xenotransplantation products; and clinical issues in xenotransplantation.

FDA has previously announced the availability of the guidance document entitled ''Guidance for Industry: Public Health Issues Posed by the Use of Nonhuman Primate Xenografts in Humans'' dated April 1999, in the **Federal Register** of April 6, 1999 (64 FR 16743). FDA also announced the availability of the draft guidance document ''Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantion Product Recipients and Their Contacts'' dated December 1999, in the **Federal Register** of December 30, 1999 (64 FR 73562). In the future, FDA intends to finalize the guidance. Furthermore, FDA is considering developing draft guidance to address various issues pertaining to FDA's regulation of transgenic animals.

This draft guidance is being issued consistent with FDA's good guidance practice regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance document represents the agency's current thinking with regard to the production, testing, and evaluation of products intended for use in xenotransplantation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document is intended to provide information and does not set forth requirements.

#### II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Submit written comments to ensure adequate consideration in preparation of the final document by May 8, 2001. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

#### III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: December 26, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 01–3202 Filed 2–6–01; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–3054–N]**

### Medicare Program; Renewal of the Medicare Coverage Advisory Committee (MCAC)

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the renewal of the Medicare Coverage Advisory Committee (MCAC). The MCAC advises the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Health Care Financing Administration, as requested by the Secretary, whether medical items and services are reasonable and necessary under Title XVIII of the Social Security Act. This notice announces the signing of the MCAC charter renewal by the Secretary on November 24, 2000. The charter will terminate on November 24, 2002, unless renewed by the Secretary.

**FOR FURTHER INFORMATION CONTACT:** Patricia Brocato-Simons, Office of Clinical Standards and Quality, HCFA, 7500 Security Boulevard, Mail Stop S3–02–01, Baltimore, MD 21244, 410–786–0261, or E-mail pbrocatosimons@hcfa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) announcing the establishment of the Medicare Coverage Advisory Committee (MCAC). The charter for the MCAC was signed by the Secretary on November 24, 1998.

The MCAC, chartered under 42 U.S.C. 217(a), section 222 of the Public Health Service Act, as amended, is governed by the provisions of the Federal Advisory Committee Act (FACA) (Public Law 92–463 as amended (5 U.S.C. Appendix 2)), which sets forth standards for the formulation and use of advisory committees.

The MCAC consists of 6 specialty panels and an executive committee (EC), with a total of 120 appointed members from authorities in clinical and administrative medicine, biologic and physical sciences, public health administration, health care data and information management and analysis, the economics of health care, medical ethics, and other related professions. The MCAC, functioning on its panel basis, reviews and evaluates medical literature, reviews technical assessments, and examines data and information on the effectiveness and appropriateness of medical items and services that are covered or eligible for coverage under Medicare. The panels work from an agenda provided by the MCAC that lists specific issues. The panels develop technical advice to be reviewed and ratified by the EC to assist us in determining reasonable and necessary applications of medical services and technology.

### II. Provisions of This Notice

This notice announces the signing of the MCAC charter renewal by the Secretary on November 24, 2000. The charter will terminate on November 24, 2002, unless renewed by the Secretary.

### III. Copies of the Charter

You may obtain a copy of the Secretary's Charter for the MCAC by submitting a request to Maria Ellis, Office of Clinical Standards and Quality, Health Care Financing Administration, 7500 Security Blvd., Mail Stop S3–02–01, Baltimore, MD 21244, 410–786–0309, or E-mail the request to mellis@hcfa.gov.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 29, 2001.

**Michael McMullan,**

*Acting Deputy Administrator, Health Care Financing Administration.*

[FR Doc. 01–3121 Filed 2–6–01; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)—Revision**

This is a request for revision of the application form for the Nursing Education Loan Repayment Program (NELRP). The NELRP was originally authorized by 42 U.S.C. 297b(h) (section 836(h) of the Public Health Service Act) as amended by Pub. L. 100–607, November 4, 1988. The NELRP is currently authorized by 42 U.S.C. 297(n) (section 846 of the Public Health Service Act) as amended by Pub. L. 102–408, October 13, 1992.

Under the NELRP, registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary, under which the Public Health Service agrees to repay the nurses' indebtedness for nursing education. In exchange, the nurses agree to serve for a specified period of time in certain types of health facilities identified in the statute.

Nurse educational loan repayment contracts will be approved by the Secretary for eligible nurses who have incurred previous monetary indebtedness by accepting a loan for nursing education costs from a bank, credit union, savings and loan association, Government agency or program, school, or other lender that meets NELRP criteria. Approval is requested for the application form. The application form requires information from two types of respondents:

a. Applicants must provide information on the proposed service site and on all nursing education loans for which reimbursement is requested, and

b. For those applicants accepted into the NELRP, lenders must provide information on loan status for all loans accepted for repayment.

ESTIMATES OF ANNUALIZED HOUR BURDEN

| Form/regulatory requirement | Number of respondents | Responses per respondents | Hours per response | Total burden hours |
|---|---|---|---|---|
| NELRP Application | 1,000 | 1 | 1 | 1,000 |
| Loan Verification Form | 50 | 4 | .25 | 50 |

ESTIMATES OF ANNUALIZED HOUR BURDEN—Continued

| Form/regulatory requirement | Number of respondents | Responses per respondents | Hours per response | Total burden hours |
|---|---|---|---|---|
| Total | 1,050 | | | 1,050 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 1, 2001.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 01–3125 Filed 2–6–01; 8:45 am]

**BILLING CODE 4160–15–U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2001 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2001 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Program Announcement, including Part I, CSAP Cooperative Agreement for the Southeast Center for the Application of Prevention Technologies, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

| Activity | Application deadline | Est. funds FY 2001 | Est. No. of awards | Project period |
|---|---|---|---|---|
| Cooperative Agreement for the Southeast Center for the Application of Prevention Technologies. | March 22, 2001 | $1,500,000 | 1 | 2 years |

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2001 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126, page 35962) on July 2, 1993.

*General Instructions:* Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345. Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: http://www.samhsa.gov.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

*Purpose:* The cooperative agreement for SE Center for Application of Prevention Technology, number SP01–001, referred to as ''The SE CAPT,'' solicits applications for projects that provide clients with technical assistance and training in order to apply consistently the latest research-based knowledge about effective substance abuse prevention programs, practices, and policies.

*Eligible Applicants:* Applications may be submitted by public and private domestic nonprofit entities such as units of State or local government, community-based organizations, universities, colleges, and hospitals. Applicants must be physically located within the National Prevention Network's Southeast Region.

*Amount:* CSAP is making $1.5 million available to support one award under this GFA in FY 2001. This $1.5 million amount may be increased using CSAP and other funds in each year of the project up to a total of $3 million. Actual funding levels for each budget period may be significantly augmented on a discretionary basis if current exploratory talks with other federal agencies sharing our interest in substance abuse prevention result in interagency agreements transferring funds to us for this program's use. There may be no such increases. However, under optimum conditions, substantial increases of funding in any given year are possible. Such increases would be for the purpose of providing the same services to the same clients with greater frequency or to additional clients. All potential applicants should also be aware that any expansion based on interagency agreements for this purpose will not be competed but will be limited to the applicant funded under this announcement.

*Period of Support:* Support may be requested for a period of up to two years. An annual award will be made subject to continued availability of funds and progress achieved.

*Criteria for Review and Funding:*

*General Review Criteria:* Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

*Award Criteria for Scored Applications:* Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity

may be included in the application guidance materials.

*Catalog of Federal Domestic Assistance Number:* 93.230.

*Program Contact:* For questions concerning program issues, contact:

Ms. Luisa del Carmen Pollard, M.A., Division of Prevention Application and Education, CSAP, SAMHSA, Rockwall II, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–6728

or

Jon Rolf, Ph.D., Division of Prevention Application and Education, CSAP, SAMHSA, Rockwall II, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443–0380.

For questions regarding grants management issues, contact: Edna Frazier, Division of Grants Management, OPS, SAMHSA, Rockwall II, Suite 640, 5600 Fishers Lane, Rockville, Maryland 20857, (301)443–6816.

*Public Health System Reporting Requirements:* The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

*PHS Non-use of Tobacco Policy Statement:* The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

*Executive Order 12372:* Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: January 31, 2001.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 01–3124 Filed 2–6–01; 8:45 am]

BILLING CODE 4162–20–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2001 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2001 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Program Announcement, including Part I, Implementation of Community-Based Practice/Research Collaboratives, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

| Activity | Application deadline | Est. funds FY 2001 | Est. No. of awards | Project period |
|---|---|---|---|---|
| Implementation of Community-Based Practice/Research Collaboratives. | May 4, 2001 ..... | $2,400,000 | 6–7 | 3 years |

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2001 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126 page 35962) on July 2, 1993.

*General Instructions:* Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD

20847–2345. Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: http://www.samhsa.gov.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

*Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of cooperative agreements to support the implementation of Practice/Research Collaboratives, hereinafter referred to as PRCs. This announcement solicits applications for cooperative agreements to implement the practice/research agenda that has been developed by community based stakeholders who are members of a Practice/Research Collaborative. Project support will enable grantees to build a self sustaining infrastructure, conduct studies which address PRC defined needs, and apply evidence based practices in community based treatment settings.

The overall purpose of the PRC program is to improve the quality of substance abuse treatment by increasing interaction and knowledge exchange among key community based stakeholders, including substance abuse treatment providers, researchers, policy makers, and a consumer representative. Prior to the Implementation Phase of the program, it is expected that the PRCs will have developed the necessary infrastructure to implement and evaluate the use of evidence based practices in community settings. Through these efforts, the PRCs will be able, over time, to make significant contributions to the field's knowledge and understanding about substance abuse treatment.

The PRC program is comprised of two types of grants: developmental grants and implementation cooperative agreements. In Fiscal Year 1999, the PRC program solicited applications for Developmental Grants under GFA TI 99–006. This announcement is a reissuance (with revisions) of the Fiscal Year 2000 GFA, TI 00–004, and is a solicitation for implementation grants only.

*Eligibility:* Applications for Implementation Cooperative Agreements may be submitted by domestic public and private nonprofit entities, such as community-based organizations, public or private universities, colleges, and hospitals, units of State or local government, and Indian Tribes and tribal organizations.

In order to accomplish the goals of the Phase II PRC Implementation Program, applicants must have an infrastructure in place. Therefore, applicants must provide written evidence that:

- An operational, community based PRC has been established in which providers participate as full partners with researchers, policy makers, a consumer representative, and other stakeholder groups;
- A formal organizational structure and statement of operating procedures, roles and responsibilities of stakeholder members and designated consumer representative have been developed and endorsed by stakeholder groups; and
- A formal needs assessment of PRC stakeholders has been conducted.

*Availability of Funds:* It is estimated that $2.4 million will be available to support approximately 6–7 awards under this GFA in FY 2001. Awards are expected to range from $300,000–$400,000 per year in total costs (direct+indirect).

*Period of Support:* Support may be requested for a period of up to three years. Annual awards will be made subject to continued availability of funds and progress achieved.

*Criteria for Review and Funding:*

*General Review Criteria:* Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

*Award Criteria for Scored Applications:* Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

*Catalog of Federal Domestic Assistance Number:* 93.230.

*Program Contact:* For questions concerning program issues, contact: Frances Cotter, Project Officer, Office of Managed Care, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8796.

For questions regarding grants management issues, contact: Kathleen Sample, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 630, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8926.

*Public Health System Reporting Requirements:* The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2001 activity is subject to the Public Health System Reporting Requirements.

*PHS Non-use of Tobacco Policy Statement:* The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

*Executive Order 12372:* Applications submitted in response to the FY 2001 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up

a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: January 31, 2001.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 01–3123 Filed 2–6–01; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Alligator River National Wildlife Refuge, NC; Meeting

**ACTION:** Notice of Intent to conduct public scoping meetings to obtain suggestions and information on issues to include in the preparation of Comprehensive Conservation Plans for Alligator River Wildlife Refuge in Dare County, North Carolina; Mattamuskeet and Swanquarter National Wildlife Refuges in Hyde County, North Carolina; and Pocosin Lakes National Wildlife Refuge in Tyrrell County, North Carolina.

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental documents for these refuges in pursuant to the National Environmental Policy Act and implementing regulations.

The meetings are scheduled as follows:

*Thursday, February 15, 2001*

1:00 p.m.–4:00 p.m.
6:00 p.m.–9:00 p.m.
Department of Environment and Natural Resources, Meeting Room, 943 Washington Square Mall, Washington, N.C. 27889

*Friday, February 16, 2001*

6:00 p.m.–9:00 p.m.
Mattamuskeet High School, Cafeteria, 20370 U.S. 264, Swanquarter, N.C. 27885

*Tuesday, February 20, 2001*

6:00 p.m.–9:00 p.m.
Vernon James Center, 207 Research Road, Plymouth, N.C. 27962

*Thursday, February 22, 2001*

6:00 p.m.–9:00 p.m.
Tyrrell Hall, 906 Highway 64 East, Columbia, N.C. 27925

*Friday, February 23, 2001*

6:00 p.m.–9:00 p.m.
Manns Harbor Community Center, 6677 Highway 64/264, Manns Harbor, N.C. 27953

**DATES:** Written comments should be received on or before March 9, 2001.

**ADDRESSES:** Comments and requests for information concerning these refuges may be addressed to: D.A. Brown, M.S., P.W.S., 1106 West Queen Street, P.O. Box 329, Edenton, North Carolina 27932, 252/482–2364, 252/482–3855 (fax), 252/337–5283 (cell).

Information concerning these refuges may be found at the following website: http://rtncf-rci.ral.r4.fws.gov.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: D_A_Brown@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact D.A. Brown directly at the above address. Finally, you may hand-deliver comments to Mr. Brown at 1106 West Queen Street, Edenton, North Carolina. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies.

Dated: January 30, 2001.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 01–3115 Filed 2–6–01; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Aquatic Nuisance Species Task Force Green Crab Control Committee and Ballast Water and Shipping Committee

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** This notice announces meetings of the Aquatic Nuisance Species (ANS) Task Force Green Crab control Committee and the Ballast Water and Shipping Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

**DATES:** The Green Crab Control Committee will meet from 9 a.m. to 5 p.m., Wednesday, February 21, 2001, and 9 a.m. to noon on Thursday, February 22, 2001. The Ballast Water and Shipping Committee will meet from 9:30 a.m. to 3:30 p.m., Friday, March 2, 2001.

**ADDRESSES:** The Green Crab Control Committee meeting will be held at the Buehler Alumni Center, Old Davis Road, University of California at Davis,

Davis, California—Phone 530–752–8111. The Ballast Water and Shipping Committee meeting will be held at the U.S. Coast Guard Headquarters, Room 2415, 2100 Second Street, SW., Washington, DC 20593.

**FOR FURTHER INFORMATION CONTACT:** Fred Kern, Green Crab Control Committee Chairperson, at 410–226–5193 or by email at *Fred.Kern@noaa.gov*; LT Mary Pat McKeown, U.S. Coast Guard, Ballast Water and Shipping Committee Chairperson, at 202–267–0500 or by email at *mmckeown@comdt.uscg.mil*; or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at *sharon__gross@fws.gov*.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Green Crab control Committee and Ballast Water and Shipping Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Topics to be addressed at the Green Crab Control Committee meeting include: review and development of Green Crab Management Plan components to address four critical areas including prevention, detection and forecasting, control/eradication, and information access and management; and development of priorities for action. The Ballast Water and Shipping Committee will meet to develop and prioritized list of ballast water related research needs.

Minutes of the meetings will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Chair of the Ballast Water and Shipping Committee at the Environmental Standards Division, Office of Operations and Environmental Standards, U.S. Coast Guard (G–MSO–4), 2100 Second Street, SW., Room 1309, Washington, DC 20593–0001 and the Chair of the Green Crab Control Committee at the National Oceanic and Atmospheric Administration, Cooperative Oxford Laboratory, 904 South Morris Street, Oxford, Maryland 21654. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: January 25, 2001.

**Cathleen I. Short,**

*Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.*

[FR Doc. 01–3199 Filed 2–6–01; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection (OMB Control Number 1010–0006).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR) titled ''30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.'' We are also soliciting comments from the public on this ICR.

**DATES:** Submit written comments by March 9, 2001.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0006), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your comments to the Department of the Interior, Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain at no cost a copy of our submission to OMB, which includes the regulations that require this information to be collected.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.

*OMB Control Number:* 1010–0006.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's Energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify filing fees for these transfer applications.

Responses are required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. The individual responses to Calls for Information are the only information collected involving the protection of confidentiality. MMS protects specific individual replies from disclosure as proprietary information according to section 26 of the OCS Lands Act and 30 CFR 256.10(d).

MMS uses the information to determine if applicants are qualified to hold leases in the OCS and specifically to:

- Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.

• Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA.

• Ensure the qualification of assignees. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director.

• Obtain information and nominations on oil and gas leasing, exploration, and development and production. Early planning and consultation ensure that all interests and concerns are communicated to us for future decisions in the leasing process.

• Document that a leasehold or geographical subdivision has been surrendered by the record title holder.

• Verify that lessee's have adequate bonding coverage. Respondents must submit their bonds certification forms: Form MMS–2028, Outer Continental Shelf Mineral Lessee's and Operator's Bond and Act of Suretyship,'' and Form MMS–2028A, ''Outer Continental Shelf Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond and Act of Suretyship.'' We use these documents to hold the surety libel for the obligations and liability of the principal/lessee or operator.

With respect to the forms MMS–2028 and MMS–2028A, the currently approved forms are not written in ''plain language.'' In keeping with the current policy, MMS is revising these forms in plain language and the revised forms are undergoing legal and management review. The revised forms will not contain any new data elements requesting information from respondents. In the interim, as part of our ICR on 30 CFR part 256, we are asking OMB to renew the current version of the forms, but intend to supersede them with the plain language forms upon legal and management approval of the revised wording.

*Frequency:* The frequency of reporting is ''on occasion.''

*Estimated number and description of respondents:* Approximately 130 Federal OCS oil and gas or sulphur lessees, as well as the affected states and local governments.

*Estimated annual reporting and recordkeeping ''hour'' burden:* The estimated ''hour'' burden for this information collection is a total of 16,329 hours. The following chart provides a breakdown of the requirements and burden hours.

BURDEN BREAKDOWN

| Citation 30 CFR part 256 | Reporting requirement | Annual number | Burden hour(s) per response | Annual burden hours | Annual hour burden cost |
|---|---|---|---|---|---|
| Subparts A, C, E, H, L, M. | None | Not applicable. | | 0 | 0 |
| Subparts G, H, I, J: 256.37, 256.53, 256.68, 256.70, 256.71, 256.72, 256.73. | Request approval for various operations or submit plans or applications. | Burden included with other approved collections in 30 CFR part 250. | | 0 | 0 |
| Subpart B: 256.16, 256.17, 250.20. Subpart D: All sections. | Submit response to request/call for information, comments, and interest in areas for mineral leasing, including information from States/local governments. | 5 responses | 4 | 20 | @ $50 = $1,000 |
| Subpart F: 256.31 | States or local governments submit recommendations on size, timing or location of proposed lease sale. | 10 responses | 4 | 40 | @ $50 = $2,000 |
| Subpart G: | | | | | |
| 256.35, 256.46(d), (e). | Establish a Company File for pre-qualification purposes; submit updated information. | 100 responses | 2 | 200 | @ $100 = $20,000 |
| 256.41, 256.43, 256.46(g). | Submit qualification of bidders for joint bids and statement or report of production. | 200 responses | 4½ | 900 | @ $50 = $45,000 |
| 256.45, 256.46 | Submit bids and required information | 2,000 bids | 5 | 10,000 | @ $100 = $1,000,000 |
| 256.47(c) | File agreement to accept joint lease on tie bids. | 2 agreements | 3½ | 7 | @ $50 = $350 |
| 256.47(e)(1), (e)(3). | Request for reconsideration of bid rejection. | Exempt as defined in 5 CFR 1320.3(h)(9). | | 0 | 0 |
| 256.47(f), 256.50. | Execute lease (includes submission of evidence of authorized agent and request for dating of leases). | 630 leases | 1 | 630 | @ $100 = $63,000 |
| Subpart I: | | | | | |
| 256.54 | OCS Lessee's and Operator's Bond and Act of Suretyship (form MMS–2028). | 205 forms | ¼ | *51 | @ $100 = $5,100 |
| 256.54 | OCS Lessee's and Operator's Supplemental Plugging & Abandonment Bond and Act of Suretyship (form MMS–2028A). | 130 forms | ¼ | *33 | @ $100 = $3,300 |
| 256.52(f)(2), (g)(2). | Submit authority for Regional Director to sell Treasury or alternate type of securities. | 5 submissions | 2 | 10 | @ $100 = $1,000 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR part 256 | Reporting requirement | Annual number | Burden hour(s) per response | Annual burden hours | Annual hour burden cost |
|---|---|---|---|---|---|
| 256.53(c), (d), (f); 256.54(d)(3). | Demonstrate ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required. | 162 submissions .... | 2½ | 405 | @ $100 = $40,500 |
| 256.55(b) ..... | Notify MMS of action filed alleging lessee, surety, or guarantor are insolvent or bankrupt. | 2 notices ..... | ½ | 1 | @ $100 = $100 |
| 256.56 ..... | Provide plan to fund lease-specific abandonment account and related information; request approval to withdraw funds. | 4 submissions ..... | 11 | 44 | @ $50 = $2,200 |
| 256.57 ..... | Provide third-party guarantee, indemnity agreement, related notices, and annual update. | 12 submissions ..... | 16½ | 198 | @ $50 = $9,900 |
| 256.57(d)(3), 256.58. | Notice of and request approval to terminate period of liability, cancel bond, or other security. | 280 requests ..... | ½ | 140 | @ $50 = $7,000 |
| 256.59(c)(2) ..... | Provide information to demonstrate lease will be brought into compliance. | 3 responses ..... | 14 | 42 | @ $50 = $2,100 |
| Subpart J: | | | | | |
| 256.62, 256.64, 256.65, 256.67. | File application for assignment or transfer for approval. | 1,845 applications .. | 1 | 1,845 | @ $50 = $92,250 |
| 256.64(a)(7) ..... | File required instruments creating or transferring working interests, etc., for record purposes. | 2,915 filings ..... | ½ | *1,458 | @ $50 = $72,900 |
| 256.64(a)(8) ..... | Submit non-required documents for record purposes which respondents want MMS to file with the lease document. | Accepted on behalf of lessees as a service, but MMS does not require nor need the filings. | | 0 | 0 |
| Subpart K: 256.76 ... | File written request for relinquishment ... | 305 relinquishments | 1 | 305 | @ $50 = $15,250 |
| Total Reporting | 8,815 Responses ..... | 16,329 ..... | $1,382,950 | | |

*Rounded.

*Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* The estimated ''non-hour cost'' burden for this information collection is a total of $414,450. This cost burden is for filing fees associated with submitting requests for approval of instruments of transfer ($185 per application) or to file non-required documents for record purposes ($25 per filing) according to § 256.64(a)(8).

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on October 11, 2000, we published a **Federal Register** notice (65 FR 60449) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. In addition, § 256.0 and the PRA statement on the MMS forms display the OMB control number, specify that the public may comment at anytime on the collection of information required in the 30 CFR part 256 regulations and forms, and provide the address to which they should send comments. We have received no comments in response to those efforts. We also consulted with several respondents and adjusted some of the information collection burdens as a result of those consultations.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by March 9, 2001.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: January 23, 2001.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 01–3201 Filed 2–6–01; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information on Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 30 CFR part 784.

**DATES:** Comments on the proposed information collection must be received by April 9, 2001, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783, or submit electronically to jtreleas@osmre.gov.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 784.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents and costs. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* Underground Mining Permit Application—Minimum Requirements for Reclamation and Operation Plans, 30 CFR part 784.

*OMB Control Number:* 1029–0039.

*Summary:* Sections 507(b), 508(b), of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Underground coal mining permit applicants and State regulatory authorities.

*Total Annual Responses:* 100.

*Total Annual Burden Hours:* 96,460.

Dated: January 30, 2001.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 01–3101 Filed 2–6–01; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals; and 30 CFR part 850, Permanent Regulatory Program Requirements—Standards for Certification of Blasters, have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by March 9, 2001, in order to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at jtreleas@osmre.gov.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval for the collections of information found at 30 CFR parts 702 and 850. OSM is requesting a 3-year term of approval for these information collection activities.

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 these collections of information are 1029–0089 for Part 702 and 1029–0080 for Part 850, and may be found in OSM's regulations at 702.10 and 850.10.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on the collection of information for Part 702 was published on November 7, 2000 (65 FR 66764; and on November 2, 2000 (65 FR 65879) for Part 850. No comments were received from either notice. This notice provides the public with an additional 30 days in which to comment on the following information collection activities;

*Title:* Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, 30 CFR part 702.

*OMB Control Number:* 1029–0089.

*Summary:* This part implements the requirement in section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

*Bureau Form Number:* None.

*Frequency of Collection:* Once and annually thereafter.

*Description of Respondents:* Producers of coal and other minerals.

*Total Annual Responses:* 61.

*Total Annual Burden Hours:* 513.

*Title:* Permanent Regulatory Program Requirements—Standards for Certification of Blasters, 30 CFR part 850.

*OMB Control Number:* 1029–0080.

*Summary:* This part establishes the requirements and procedures applicable to the development of regulatory programs for the training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* State regulatory authorities.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 173.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: January 23, 2001.

**Sarah E. Donnelly,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 01–3099 Filed 2–6–01; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR part 882, Reclamation of private lands; and Form OSM–76, Abandoned Mine Land Problem Area Description form. The collections described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collections and the expected burdens and costs.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by March 9, 2001 in order to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted requests to OMB to approve the collections of information for 30 CFR Part 882, Reclamation of private lands; and Form OSM–76, Abandoned Mine Land Problem Area Description form. OSM is requesting a 3-year term of approval for these information collection activities.

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 or these collections of information are displayed in 30 CFR 882.10 for Part 882, and on the form OSM–76 for that collection.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on November 27, 2000 (65 FR 70736). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

*Title:* Reclamation on Private Lands, 30 CFR 882.

*OMB Control Number:* 1029–0057.

*Summary:* Public Law 95–87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to endure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* State governments and Indian tribes.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 16.

*Title:* Abandoned Mine Land Problem Area Description Form, OSM–76.

*OMB Control Number:* 1029–0087.

*Summary:* This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine lands. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

*Bureau Form Number:* OSM–76.

*Frequency of Collection:* On occasion.

*Description of Respondents:* State governments and Indian tribes.

*Total Annual Responses:* 1,800.

*Total Annual Burden Hours:* 4,000.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: January 30, 2001.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 01–3100 Filed 2–6–01; 8:45 am]

**BILLING CODE 4310–05–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–114]**

### In the Matter of: Certain Miniature Plug-In Blade Fuses; Notice of Exclusion Order Modification Proceeding and Request for Comments

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice and request for written comments.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission is instituting a proceeding under 19 CFR 210.76 to determine whether to modify a provision of the general exclusion order issued in 1983 in the above-captioned investigation. The Commission requests written comments from interested persons on issues specified below in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:**

*Effective Date:* The modification proceeding is instituted effective February 7, 2001.

*Deadline for Written Comments:* Interested persons other than parties to the investigation may file written comments on the matters to be decided in the modification proceeding on or before 5:15 p.m. March 9, 2001.

**ADDRESSES:** A signed original and twelve (12) copies of each set of comments should be mailed or hand-delivered to Donna R. Koehnke, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. General information concerning the Commission and the above-captioned investigation also may be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810.

**SUPPLEMENTARY INFORMATION:**

*The Investigation.* The Commission instituted the subject investigation in 1982 to determine whether there was a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 (1978 and 1981 Supp.)) in the importation or sale of certain miniature plug-in blade fuses that allegedly misrepresented their place of geographic origin, infringed the complainant's patents and/or trademarks, misappropriated the complainant's trade dress, were passed off as merchandise of the complainant, or were the subject of false advertising. The complainant was the patent and trademark owner, Littelfuse, Inc., of Des Plaines, Illinois. The Commission named nine firms in Taiwan and three domestic firms as respondents in the investigation. Their names and addresses, as they appeared in the notice of investigation in 1982, are set forth below:

Fuji Industries, Yang Tye Building, Third Floor, No. 50, Sung Chiang Road, Taipei, Taiwan
Leumark Industrial Co., Ltd., P.O. Box 38–113, Taipei, Taiwan
Walter Electronic Co., Ltd., P.O. Box 48–22, Taipei, Taiwan
Terng Nan Industrial Corp., P.O. Box 55–462, Taipei, Taiwan
Rite Industrial Corp, P.O. Box 59105, Taipei, Taiwan
Yueh Jyh Metal Industrial Co., Ltd., No. 257 Fu Hsin Road, Chung Ho City, Taipei Hsien, Taiwan
M & T Auto Parts, 3038 31st Street, Long Island City, New York 11102
Speedway, 4140 Eagle Rock Boulevard, Los Angeles, California 90065
David Art & Handicraft Co., Ltd., P.O. Box 16–133, Taipei, Taiwan
Tophole Trading Co., Ltd., P.O. Box 17–157, Taipei, Taiwan
Interchem Corp., 403 West 8th Street, Suite 620, Los Angeles, California 90014
Zeeman Fuse Manufacturing Corp., 2F and 3F, No. 2, Lane 79, San Chang Road, Nankank District, Taipei, Taiwan

*See* 47 FR 1448 (Jan. 13, 1982).

The investigation resulted in the issuance of a general exclusion order in 1983, prohibiting, among other things, the entry of imported miniature plug-in blade fuses having a trade dress, *i.e.*, a product configuration and/or packaging, simulating that of complainant Littelfuse. *Certain Miniature Plug-In Blade Fuses*, Inv. No. 337–TA–114, USITC Publication 1337 (Jan. 1983), Commission Action and Order at page 2, ¶ 2 (Jan. 13, 1983).

*The Pudenz Litigation.* At the time of the investigation, Littelfuse marketed its miniature plug-in blade fuses under various trademarks, including ''ATO.'' Littelfuse continued to use that mark after the investigation ended. Littelfuse also obtained U.S. Trademark Registration No. 1,513,357 (''the '357 registration''), which covers the two-dimensional outline of the ATO fuse, and U.S. Trademark Registration No. 1,553,579 (''the '579 registration''), which covers the three-dimensional configuration of the ATO fuse housing.

Wilhelm Pudenz GmbH, a German firm that was not a respondent in the original section 337 investigation, challenged the validity of the aforesaid trademark registrations by filing a civil action against Littelfuse in the United States District Court for the Northern District of Georgia, Atlanta Division. The district court decided that the individual features of the ATO fuse housing and the overall configuration of those features in the housing are functional and that this functionality renders the '357 and '579 registrations invalid and unenforceable. *See* the [Unpublished] Judgment and the [Unpublished] Order issued on January 7, 1998, in Civil Action No. 1:95–CV–2445–JTC, *Wilhelm Pudenz GmbH [and] Wickmann USA, Inc.* v. *Littelfuse, Inc.*

The U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's decision. *Wilhelm Pudenz GmbH* v. *Littlefuse [sic], Inc.*, 177 F.3d 1204, 51 U.S.P.Q.2d 1045 (11th Cir. 1999).

*The Modification Proceeding.* During the investigation, the nonfunctional nature of the asserted design features was one criterion the Commission applied in determining that Littelfuse's trade dress was entitled to protection from unauthorized copying. *See* USITC Pub. 1337, Commission Opinion at 19–21. The district and appellate courts have concluded, however, that as disclosed in the '357 and '579 registrations, individual features of the ATO fuse housing and the overall configuration of those features in the housing are functional. *See* the district court's Order of January 7, 1998, at Findings of Fact and Conclusions of Law, Functionality, 13–26; and 177 F.3d at 1212, 51 U.S.P.Q.2d at 1050.

Complainant Littelfuse has admitted that the product configuration covered by the exclusion order is substantially similar to the product configuration covered by Littelfuse's '357 and '579 trademark registrations. Written Report [of Complainant Littelfuse, Inc.] (Aug. 2, 2000) at page 2, ¶ 7. That admission and other considerations prompted the Commission to institute a proceeding, under 19 CFR 210.76, to determine whether the trade dress/product configuration provision of the section 337 general exclusion order should be modified in light of the judicial findings.

The Commission Order issued along with this notice discusses (1) the changed conditions of fact or law and the public interest reasons that prompted the Commission to institute the modification proceeding, (2) the specific modification that the Commission is contemplating, (3) the supporting materials and arguments,

and (4) the filing of written submissions by parties to the investigation.

The Commission expects to reach a determination in this proceeding without conducting a public hearing or delegating the proceeding to an administrative law judge for a hearing and a recommended determination.

All nonconfidential documents filed in the investigation, listed in the Commission Order issued along with this notice, or filed in the modification proceeding are or will be made available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802.

In addition, the Commission Order issued along with this notice, Littelfuse's written report, the Commission investigative staff's written comments on that report, and all nonconfidential documents filed in the modification proceeding will be available for inspection on the Commission's website. To access them from the Home Page of the Commission's Internet server, click on ''EDIS ON–LINE,'' click on ''337'' under ''Home,'' click on ''337 114 Violation Miniature Plug-In Blade Fuses,'' and then click on the specific document to be reviewed.

*Written Comments.* Interested persons who are not parties to the investigation may file written comments on (1) the conditions of fact or law and the public interest reasons set forth in the Commission Order of January 30, 2001, that prompted the Commission to institute the proceeding, (2) the specific modification that the Commission is contemplating, and (3) any other issues that will aid the Commission in determining whether to modify the trade dress/product configuration provision of the exclusion order. Such comments must be filed in accordance with the Commission's Rules of Practice and Procedure, particularly the relevant provisions of 19 CFR 201.6, 201.8 (except for the number of copies prescribed by 201.8(d)), 201.14, 201.16, and 210.4 through 210.7.

Issued: February 1, 2001.

By Order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–3195 Filed 2–6–01; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** February 12, 2001 at 2 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–413 and 731–TA–913–918 (Preliminary) (Stainless Steel Bar from France, Germany, Italy, Korea, Taiwan, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on February 12, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on February 20, 2001.)
5. Outstanding action jackets:

(1) Document No. EC–01–003: Approval of final report in Inv. No. 332–413 (The Economic Impact of U.S. Sanctions with Respect to Cuba).

(2) Document No. ID–01–001: Approval of study coverage, objectives, methodology, travel requirements, annotated outline, and revised staffing plan and work schedule in Inv. No. 332–423 (The Effects of EU Policies on the Competitive Position of the U.S. and EU Horticultural Products Sector).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 2, 2001.

By order of the Commission:

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–3331 Filed 2–5–01; 3:13 pm]

**BILLING CODE 7020–02–U**

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** February 13, 2001 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436 Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–355 and 731–TA–659–660 (Review) (Grain-Oriented Silicon Electrical Steel from Italy and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on February 23, 2001.)
5. Outstanding action jackets:

(1) Document No. EC–01–003: Approval of final report in Inv. No. 332–413 (The Economic Impact of U.S. Sanctions with Respect to Cuba).

(2) Document No. ID–01–001: Approval of study coverage, objectives, methodology, travel requirements, annotated outline, and revised staffing plan and work schedule in Inv. No. 332–423 (The Effects of EU Policies on the Competitive Position of the U.S. and EU Horticultural Products Sector).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: February 2, 2001.

By order of the Commission:

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01–3332 Filed 2–5–01; 3:13 pm]

**BILLING CODE 7020–02–U**

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. 99–3 CARP DD 95–98]**

### Distribution of 1995, 1996, 1997, and 1998 Digital Audio Recording Technology Royalties

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Distribution Order.

**SUMMARY:** The Librarian of Congress, upon the recommendation of the Register of Copyrights, is adopting the determination of the Copyright Arbitration Royality Panel (''CARP'') and issuing an order announcing the allocation of the royalty fees in the 1995, 1996, 1997, and 1998 Musical Works Funds. These fees are paid to the Copyright Office by importers and manufacturers of Digital Audio Recording Devices and Media (''DART'') who distribute these products in the United States.

**EFFECTIVE DATE:** The percentages announced in this Order are effective as of February 7, 2001.

**ADDRESSES:** The full text of the CARP's report to the Librarian of Congress is available for inspection and copying during normal business hours in the Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC, 20559–6000.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (''CARP''), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

**SUPPLEMENTARY INFORMATION:**

## Background

The Audio Home Recording Act of 1992, Public Law No. 102–563, requires manufacturers and importers of digital audio recording devices and media which are distributed in the United States to pay royalty fees to the Copyright Office. Upon receipt, the Copyright Office deposits these fees with the Treasury of the United States. 17 U.S.C. 1005.

Interested copyright parties must file a claim to these fees each year during January and February to establish their entitlement to a portion of the funds. How these funds are distributed to the various interested copyright parties is decided either by the parties or by Order of the Librarian, following a distribution proceeding conducted by a Copyright Arbitration Royalty Panel (''CARP''). 17 U.S.C. 1007.

On May 4, 1999, the Copyright Office requested comments from the interested copyright parties as to the existence of controversy concerning the distribution of the DART royalty fees in the 1995, 1996, 1997 and 1998 Musical Works Funds, and notices of intent to participate in any proceeding to determine the distribution of these funds. In addition, the Office announced that it was consolidating the consideration of the distribution of the 1995–1998 Musical Works Funds into a single proceeding in order to have sufficient funds to cover the cost of an arbitration proceeding. 64 FR 23875 (May 4, 1999).

Ten parties filed comments on the existence of controversies and notices of intent to participate in this proceeding: Broadcast Music, Inc. (''BMI''); the American Society of Composers, Authors and Publishers (''ASCAP''); SESAC, Inc. (''SESAC''); the Harry Fox Agency (''HFA''); the Songwriters Guild of America (''SGA''); and Copyright Management, Inc. (''CMI'') (collectively, the ''Settling Parties''); Carl DeMonbrun/Polyphonic Music, Inc. (''DeMonbrun''); James Cannings/Can Can Music (''Cannings''); Alicia Carolyn Evelyn (''Evelyn''); and Eugene ''Lampchops'' Curry/TaJai Music, Inc. (''Curry'').

Prior to the commencement of the proceeding, Cannings and DeMonbrun notified the Office that they had settled their claims with the Settling Parties and that they were withdrawing from the proceeding. *See* Notices of Settlement and Withdrawals of Claims in Docket No.99–3 DD 95–98 (dated November 10, 1999). This settlement resolved the remaining controversy over the distribution of the 1996 Musical Works Funds and left Evelyn's claim to a share of the royalty fees in the 1995, 1997 and 1998 Writer's Subfunds and Curry's claim to a share of the royalty fees in both the 1995 and 1997 Writer's and Publisher's Subfunds to be determined.

Each of the three participants filed his or her direct case with the Office on November 15, 1999, commencing the 45-day precontroversy discovery period. In addition, the Settling Parties filed a motion to dispense with formal hearings and to conduct the proceeding on the basis of written pleadings alone and a motion for full distribution of those funds not in controversy and a partial distribution of all remaining DART royalties.

The Copyright Office granted the motion for a full distribution of those royalty fees that were no longer in controversy and granted in part the request for a partial distribution of the remaining funds. *See* Order in Docket No. 99–3 CARP DD 95–98 (December 22, 1999). However, the Office did not rule on the motion to dispense with formal hearings, choosing instead to designate the issue to the CARP. *Id.*

On April 10, 2000, the Copyright Office announced the names of the three arbitrators chosen for this proceeding and the initiation of the 180-day arbitration period in a **Federal Register** notice. 65 FR 19025 (April 10, 2000). Shortly thereafter, the Chairperson of the panel resigned due to a perceived conflict of interest. Consequently, the Office suspended the 180-day period from May 16, 2000, until June 16, 2000, and a new chairperson was selected during this period in accordance with 37 CFR 251.6(f).

The first meeting between the parties and the arbitrators took place on June 19, 2000. The purpose of this initial encounter was to set the schedule for the proceeding and to resolve the two remaining procedural issues: whether to grant the Settling Parties' motion to suspend formal hearings and proceed on the basis of the formal record only and whether to allow the filing of a written rebuttal case. The CARP heard oral argument from the parties on these issues that day; and based upon these hearings, the Panel decided ''to waive the requirement of oral evidentiary hearings, to proceed upon the written record alone, and to permit the filing of written rebuttal cases.'' CARP Report, ¶ 24. *See* Order in Docket No. 99–3 CARP DD 95–98 (June 19, 2000). The Panel delivered its final report to the Copyright Office on November 9, 2000.

## The Panel's Report

Based upon the evidence offered in the written record, the Panel determined that the royalties in the 1995, 1997, and 1998 Musical Works Funds should be distributed as follows:

To Mr. Curry: 0.001966% of both the 1995 Writers and Publishers Subfunds; and 0.001027% of both the 1997 Writers and Publishers Subfunds.

To Ms. Evelyn: 0.000614% of the 1995 Writers Subfund; 0.000130% of the 1997 Writers Subfund and 0.000144% of the 1998 Writers Subfund.

To the Settling Parties: 99.997420% of the 1995 Writers Subfund and 99.998034% of the 1995 Publishers Subfund; 99.998843% of the 1997 Writers Subfund and 99.998973% of the 1997 Publishers Subfund; and 99.999856% of the 1998 Writers Subfund.

As in the prior proceeding to determine the distribution of the 1992–1994 Musical Works Funds, the CARP adopted the Settling Parties' methodology which gives Curry and Evelyn a share of the royalty fees from a particular subfund based upon the percentage of their song titles sold during the relevant time period. The Settling Parties receive all remaining royalty fees because they represent the interests of the remaining copyright owners entitled to receive a portion of these funds.

## Standard of Review

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP ''unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title.'' The Librarian of Congress has discussed his narrow scope of review in great detail in prior decisions and concluded that the use of the term ''arbitrary'' in this provision is no different than the ''arbitrary'' standard described in the Administrative Procedures Act, 5 U.S.C. 706(2)(A). *See* 63 FR 49823 (September 18, 1998); 63 FR 25394 (May 8, 1998); 62 FR 55742

(October 28, 1997); 62 FR 6558 (February 12, 1997); 61 FR 55653 (October 28, 1996). Thus, the standard of review adopted by the Librarian is narrow and provides that the Librarian will not reject the determination of a CARP unless its decision falls outside the ''zone of reasonableness'' that had been used by the courts to review decisions of the Copyright Royalty Tribunal. *See National Cable Television Ass'n* v. *Copyright Royalty Tribunal*, 724 F.2d 176, 182 (D.C. Cir. 1983). Moreover, based on a determination by the Register and the Librarian that the Panel's decision is neither arbitrary or contrary to law, the Librarian will adopt the CARP's determination even if the Register and the Librarian would have reached conclusion different from the conclusions reached by the CARP.

The U.S. Court of Appeals for the District of Columbia has stated, however, that the Librarian would act arbitrarily if ''without explanation or adjustment, he adopted an award proposed by the Panel that was not supported by any evidence or that was based on evidence which could not reasonably be interpreted to support the award.'' *See National Ass'n of Broadcasters* v. *Librarian of Congress*, 146 F.3d 907, 923 (D.C. Cir. 1998).

For this reason, the Panel must provide a detailed rational analysis of its decision, setting forth specific findings of fact and conclusions of law. *See National Cable Television Ass'n* v. *Copyright Royalty Tribunal*, 689 F.2d 1077, 1091 (D.C. Cir. 1992), (requiring Copyright Royalty Tribunal to weigh all relevant considerations and set out its conclusions in a form that permits the court to determine whether it has exercised its responsibilities lawfully).

It is then the task of the Register to review the Panel's report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether and in what manner, the Librarian should substitute his own determination.

**Review of the CARP Report**

*a. Determination of the Panel*

The Panel found that the Settling Parties are entitled to 100% of the funds in the 1995, 1996, 1997, and 1998 Musical Works Funds minus the amount owed to Curry and Evelyn. The methodology used to determine Curry's and Evelyn's shares is identical to the method used to determine the distribution of the 1992, 1993, and 1994 Musical Works Funds in an earlier proceeding. *See* 62 FR 6558 (February 12, 1997). It is a simple arithmetic calculation which determines each individual claimant's share by calculating the number of song titles credited to the claimant and sold in year X and dividing that figure by the total number of song titles sold that year. This computation represents the claimant's proportionate share of the total royalties in year X.

The Panel adopted the Settling Parties' formula, in part, because Curry and Evelyn, while objecting to the use of this same formulation, failed to offer any alternative systematic method or formula for calculating each party's share of the royalties. CARP Report ¶¶ 38, 59. Instead, both Curry and Evelyn suggested that each of them is entitled to 1% of the royalty fees collected for any year to which they filed a claim. The Panel rejected this proposal because it fails to explain why two individual claimants are entitled to 1% of the annual funds when the total claimant pool numbers in the thousands. ''If each of the thousands of claimants represented in this proceeding were to receive 1% of the DART royalties available for distribution, the total claimed would quickly exceed 100%.'' CARP Report ¶ 59.

Evelyn and Curry, however, do not accept the Settling Parties' contention that they represent thousands of claimants, arguing in their respective filings that the organizations and associations comprising the Settling Parties cannot represent individual claimants and act as their agent in these proceedings. *See* Curry's Direct Cast at 2; Evelyn's Rebuttal Case at ¶¶ 1–9; Evelyn Petition at 1–2.

The Panel considered these allegations and found that the Settling Parties are ''interested copyright parties,'' pursuant to 17 U.S.C. 1001(7) and may act as agents for their members. CARP Report ¶ 74. The Panel noted that an agency relationship is established for the purpose of a DART proceeding when an association or organizations files a DART claim on behalf of its members in accordance with § 259.2(c) of the Copyright Office rules. This provision requires an organization or association, which acts as a common agent on behalf of the members of its organization, to obtain separate, specific and written authorization from each of its members or affiliates in order to file a DART claim; and it further requires that each claim list the name of each individual songwriter and music publisher on whose behalf the organization is filing its claim. CARP Report ¶ 75; *see also*, 37 CFR 259.2(c) and 259.3(d). Based on these written expressions of the agency relationship, the CARP found that each of the Settling Parties has the authority to act as an agent for the members listed in the claims.

The CARP then examined the record evidence and the Settling parties' formula for calculating Evelyn's and Curry's share. First, it considered the Settling Parties' use of SoundScan data to establish the universe of record sales for each year, including testimony from Michael Fine, co-founder and chief executive of SoundScan. It weighted Fine's testimony, which identified Sound Scan as a premier independent online information system that tracks music sales throughout the United States, against challenges from Evelyn and Curry, who argued that the SoundScan data was incomplete because it did not include record club, computer and foreign sales figures. CARP Report ¶¶ 32–33, 62. It found that Evelyn and Curry were correct to conclude that inclusion of such data would indeed increase their total record sales, but went on to note that it would also increase the total record sales figures for other claimants. It then accepted the Settling Parties' conclusion that adding to the universe of sales would in all likelihood decrease the amount of Evelyn's and Curry's awards. CARP Report ¶ 62. The Panel also rejected Curry's and Evelyn's assertion that the total record sales figures should be adjusted to include foreign record sales because it determined that such sales are not compensable under the Audio Home Recording Act. CARP Report ¶ 62. Furthermore, and more importantly, the CARP found that neither Curry nor Evelyn offered an alternative mechanism to use of the SoundScan data for figuring out how many records sales occurred. CARP Report ¶¶ 50–53, 62, 68–69. Thus, finding not other basis for determining the universe of total record sales in the written record, the Panel accepted the testimony of Michael Fine and his methodology for determining the total number of record sales in any given year. CARP Report ¶ 33.

Next, the Panel scrutinized the evidence used to determine the number of record sales of Curry's and Evelyn's works. First, it found that Curry and Evelyn had submitted no evidence into the record of either record sales or performances of their works. This meant that the Settling Parties offered the only evidence on the number of record sales garnered by these claimants. CARP Report ¶¶ 64–65, 70. To make this determination, the Settling parties first identified the names of the record titles to which Curry and Evelyn have a claim for purposes of this proceeding by

reference to the list of titles identified for each claimant in the prior DART distribution proceeding, *see* Panel's Report in Docket No. 95–1 CARP DD 92–94 at ¶¶ 34, 35, the songs listed on the DART claims, and by conducting a search of the allmusic.com website.[1] Next, the Settling Parties identified the albums and singles which included these works by searching these titles in Phonolog, an industry standard directory that lists all records, CDs, cassettes, albums and singles issued in the United States. CARP Report ¶¶ 38–40. Once the titles were identified, it was a simple matter to use the SoundScan data to determine the number of unit sales per work for each year in controversy. CARP Report ¶¶ 44–47.

The CARP found that the evidence introduced by the Settling Parties identifying and quantifying the works of Evelyn and Curry was the only credible evidence in the record upon which to make a determination. CARP Report ¶¶ 63–72. In fact, the Panel found that the Settling Parties credited Evelyn and Curry with more than their actual percentage entitlement because no adjustment was made to reflect the co-authorship or co-publication of certain works. CARP Report ¶ 63. Thus, it adopted the evidence and conclusions offered by the Settling Parties and based its determination of Evelyn's and Curry's shares of the royalty fees on the Settling Parties' methodology. The CARP did so with full knowledge that the methodology had been used in the previous DART distribution proceeding and found to be ''logical and consistent'' by the Librarian of Congress and reviewed with approval by the United States Court of Appeals for the District of Columbia. CARP Report ¶¶ 78–79.

*b. Petitions To Modify or Set Aside the Panel's Determination*

1. *Evelyn's Petition:* Section 251.55(a) of the rules provides that ''[a]ny party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination.'' 37 CFR 251.55(a). Replies to petitions to modify are due 14 days after the filing of the petitions. 37 CFR 251.55(b).

Section 251.55 of the rules assists the Register of Copyrights in making her recommendation to the Librarian, and the Librarian in conducting his review of the CARP's decision by allowing the parties to the proceeding to raise specific objections to a CARP's determination. As required by section 802(f) of the copyright Act, if the Librarian determines that the Panel in this proceeding has acted arbitrarily or contrary to the provisions of the Copyright Act, he must ''after full examination of the record created in the arbitration proceeding, issue an order setting the * * * distribution of fees.'' 17 U.S.C. 802(f).

Evelyn, who appeared pro se in this proceeding on behalf of herself, filed a petition to modify. Her petition attacks the Panel's report on three basic points. First, as a threshold issue, she claims that the entities comprising the Settling Parties, particularly the performing rights organizations and Gospel Music Coalition, have not properly filed claims to the DART royalties on behalf of their members. Evelyn Petition at 1–3. Second, she argues that the Panel disregarded statements and evidence offered by herself and Curry which contested and disproved the Settling Parties' findings of fact and conclusions of law. *Id.* at 4–5, 8. And third, she lists a number of perceived procedural irregularities that she claims led to disparate treatment of the individual claimants: (1) Acceptance by the Office of the Settling Parties' direct case which she asserts was not filed in accordance with the governing regulations; (2) return of her rebuttal case which was submitted during the 45-day precontroversy discovery period; and (3) failure of the CARP to request additional information from her to substantiate her claim. *Id.* at 5–6, 8.

Curry, the other individual claimant participating in this proceeding, did not file a petition to modify.

2. *Settling Parties' Reply to Evelyn Petition to Modify:* Settling Parties oppose the Evelyn petition on both procedural and substantive grounds. They contend that the petition is substantively deficient because it does not demonstrate in what way the CARP report is either arbitrary or contrary to law—the standard of review to be used by the Librarian in his review of the Panel's report. *See* 17 U.S.C. 802(f). In making this point, the Settling Parties addresses each of the legal issues raised by Evelyn.

The Settling Parties also argue that the Librarian should reject Evelyn's petition because it fails to reference applicable sections of her proposed findings of fact and conclusions of law, as required under § 251.55(a) of title 37 of the Code of Federal Regulations. They argue that failure to correctly reference her filings shows an apparent willful disregard for the requirements of the rule and warrants dismissal of the Petition. Settling Parties' Reply at 11–12.

3. *Sufficiency of Evelyn's Petition:* Before the Register can address the issues raised by Evelyn's petition to modify the determination of the Panel, the Register must first address the Settling Parties' argument that the petition warrants dismissal for failure to comply with § 251.55(a) of the CARP regulations. That section provides that each petition must ''state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.'' 37 CFR 251.55(a).

The purpose of this requirement is to enable the Register and the Librarian to locate those portions of the testimony and filings that support a party's petition. Absent a showing of bad faith, the remedy for failure to comply with the regulation is an order from the Register, directing the offending party to amend his or her petition and include the proper citations to the relevant sections of the party's proposed findings of fact and conclusions of law. *See* 62 FR 6560 (February 12, 1997).

The Settling Parties point out that Evelyn had encountered the rule in the previous proceeding to determine the distribution of the 1992–1994 DART royalty fees and argue that her ''apparent willful disregard for the requirements imposed by Rule 251.55 warrants dismissal of the Petition.'' Settling Parties' Reply at 12.

While it is clear that Evelyn does not provide all relevant references to her proposed findings of fact and conclusions of law, she did make a good faith effort to comply with the regulation and supplied citations to the Settling Parties' Direct Case, the CARP Report and her own proposed findings of fact and conclusions of law. *See* e.g., Evelyn Petition at pp. 2, 5, 7. Moreover, the Library will accept a less than perfectly executed petition without amendment where the record is small, and it is reasonably easy to locate the cited information in the record. *See* 62 FR 6561 (February 12, 1997). Thus, Evelyn's petition has received full consideration.

*c. The Register's Review and Recommendation*

The statutory criteria to be considered when deciding how to distribute the DART royalties are set forth in section 1006(c)(2) of the Copyright Act, title 17 of the United States Code. It states that a CARP may only consider ''the extent to which, during the relevant period * * * each musical work was

[1] This website provides public access to a comprehensive database of information regarding recording artists, albums, and songs.

distributed in the form of digital musical recordings * * * or disseminated to the public in transmissions.'' In the first proceeding to determine the distribution of DART royalties, the Panel found, and the Library agreed, that the statute does not require the application of both criteria when evidence as to only one of the criteria has been presented by the parties to the proceeding. 62 FR 6561 (February 12, 1997). This determination established a precedent for the presentation of and reliance on sales data alone for the purpose of determining each claimant's share of the royalty fees.

Evelyn argues in her petition to modify that the first proceeding did not establish a binding precedent for all future distribution proceedings, but fails to offer an alternative approach or explain why the Panel should deviate from the methodology used in the first proceeding when the record evidence parallels the prior record in its approach. Every Petition at 7. Her assertion about the precedential effect of the first proceeding is not correct. Section 802(c) requires the Panel to ''act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration Panel determinations, and rulings by the Librarian of Congress under section 801(c).''

Had Evelyn offered evidence of public performances or evidence for ascertaining the scope of record sales in a different manner, the CARP could have adopted a different methodology for making the determinations. However, an assertion that she is entitled to 1% of the royalty fees in the funds to which she filed a claim is not evidence. *See* Proposed Distribution Order, Evelyn Proposed Findings of Fact and Conclusions of Law. It is merely a statement of opinion.

Evelyn party has an opportunity to present evidence to the Panel when it files the direct case. The written direct case is the very foundation of a party's case and as such must include testimony and exhibits which, when taken together, support and prove a party's claim. *See* Order in Docket No. 95–1 CARP DD 92–94 (dated May 9, 1996). In Evelyn's case, she supplied only a list of her works. *See* Evelyn Direct Case, exhibit 1a–1d; CARP Report ¶69. Evidently, she had thought the CARP would request additional information and evidence from her at a later date. Evelyn Petition at 8; Settling Parties' Reply at 8. While a CARP member may, in accordance with the regulations, request additional information from a party, he or she does so at his or her own discretion. *See* 37 CFR 251.46(d). It is not the function of the Panel to search for new evidence that favors a party's case. This is and remains each party's prime responsibility throughout the proceeding.

In the current proceeding, the arbitrators chose not to request any additional information, evidently finding the evidence in the record sufficient upon which to make an informed decision. Because the Settling Parties offered the same type of evidence as that adopted in the prior DART distribution proceeding and neither Evelyn or Curry made a showing of changed circumstances or presented material evidence [2] that would justify a rejection of the Settling Parties' evidence, the Panel's decision to follow the precedent is neither arbitrary nor contrary to law.

Evelyn also asserts, as a threshold matter, that the performing rights organizations had no authority to file a claim on behalf of their members. The Panel discussed this issue fully in its report and found that each of the organizations and associations that comprise the Settling Parties meet the definition of ''interested copyright party'' and are entitled to file a claim on behalf of its members and represents their interests in a CARP proceeding. *See, supra,* discussion in Determination of the Panel. This reasoning fully complies with the Copyright Act, and therefore, the participation of the members of the Settling Parties, including the performing rights organizations, is not arbitrary.

Evelyn also asserts that Gospel Music Coalition (''GMC'') failed to file a claim and therefore, cannot be represented by the Settling Parties. This assertion is clearly erroneous. A review of the Copyright Office records shows that GMC filed claims to the 1995, 1996, 1997 and 1998 Musical Works Funds and did so in both subfunds. *See,* claim no. 7, 1995 Publishers Subfund and claim no. 8, 1995 Writers Subfund; claim no. 9, 1996 Publishers Subfund and claim no. 7, 1996 Writers Subfund; claim no. 8, 1997 Publishers Subfund and claim no. 9, 1997 Writers Subfund; claim no. 8, 1998 Publishers Subfund and claim no. 8, 1998 Writers Subfund.

Based upon the proper filing of these claims, GMC was then free to negotiate a settlement agreement with the other parties who filed a claim to the same funds. 17 U.S.C. 1007(a)(2). This it did. On July 2, 1999, the Copyright Office received official notification that Gospel Music Coalition had reached an agreement to settle its claims to the 1995, 1996, 1997, and 1998 Musical Works Funds with respect to the Writers and Publishers Subfunds. *See,* Comments on the existence of controversies and notice of intent to participate of Broadcast Music, Inc., the American Society of Composers, Authors & Publishers, SESAC, Inc., The Harry Fox Agency, Inc., The Songwriters Guild of America and Copyright Management, Inc. as Settling Parties, Docket No. 99–3 CARP DD 95–98, at 3. Consequently, Evelyn's suggestion that GMC improperly reached an agreement with the Settling Parties is incorrect.

Another point Evelyn makes in her petition is that she received disparate treatment in this proceeding because of procedural irregularities. First, she argues that the Settling parties failed to submit their direct case in accordance with the CARP regulations. Section 251.45(b)(1)(i) of the rules requires that ''each party to the proceeding must effect actual delivery of a complete copy of its written direct case on each of the other parties to the proceeding no later than the first day of the 45-day period.'' In this proceeding, parties were directed to deliver copies of their direct cases to all parties on November 15, 1999. Evelyn, however, received her copy of the Settling Parties' direct case by special messenger at 3:30 a.m. on November 16, 1999, along with three additional motions.[3] Evelyn Petition at 5.

The Panel's response to this issue was incorrect as a matter of law. It stated that the CARP rules do not require that each party receive pleadings simultaneously, citing § 251.44(f). *See* CARP Report ¶ 19 n.5. The Panel failed to recognize that § 251.45(b) of the CARP rules governs the filing of a direct case and specifically requires filing of direct cases to all parties on the same day. This misinterpretation, however, does not require that the Librarian set aside the entire decision or strike the Settling Parties' case because Evelyn never requested relief from the Copyright Office. Had Evelyn wished to contest the filing of the Settling Parties' direct case, she had only to file a motion with the Office seeking dismissal of the

[2] Evelyn claims that an increase in the number of songs for which she is making a claim constitutes changed circumstances and should alter the outcome of the CARP's decision. Evelyn Petition at 8. However, there is no evidence in the record documenting sales of these works during the relevant period. CARP Report ¶69.

[3] Meanwhile, the Settling Parties had filed its direct case with the Copyright Office on November 15, 1999, in accordance with the Office's scheduling order.

Settling Parties' case or requesting an adjustment to the discovery schedule to make up for the lost time. She chose not to file such a motion, however, because she believed that ''the Copyright Office would (not) strike the case of the Settling Parties and leave only the two individual claimants in the case.'' Evelyn's Proposed Findings of Fact and Conclusions of Law at 3. Consequently, the Office had no reason to address the issue because Evelyn did not request any relief from the Office at the appropriate time. Furthermore, her continued involvement in the proceeding supports the Panel's conclusion that she did not suffer any undue harm because of the delay in the delivery of the direct case.

Another procedural irregularity raised by Evelyn concerns the return of her rebuttal case. She filed it with the Copyright Office on November 24,1999, during the 45-day precontroversy discovery period. By Order, dated November 24, 1999, the Office rejected the pleading except for a single sentence which addressed a motion for a partial distribution then under consideration. The Order stated that ''[n]o provision is made in the rules or the Library's scheduling order for the filing of rebuttal cases at this stage of the proceeding. Rebuttal cases, if required at all, are filed with the CARP after consideration of the written direct cases.'' Evelyn refiled her rebuttal case on July 28, 2000, and it was considered by the CARP at that time. Consequently, Evelyn suffered no prejudice from the Office's decision to strike her rebuttal case when it was first filed prematurely.

Evelyn makes one additional procedural challenge in her petition. She contends that the Settling parties did not provide sworn testimony to establish a universe of sales. Evelyn Petition at 8. Specifically, she objects to the inclusion of Michael Fine's prior testimony from the 1992–1994 DART distribution proceedings on the SoundScan data. This testimony established the basis for determining total record sales and record sales for Curry and Evelyn. CARP Report ¶ 32. She states that there were problems with his testimony in the 1992–1994 DART distribution proceedings but does not discuss what these problems were or why they have a bearing on the current proceeding. In any event, no problem was identified in the last proceeding concerning this testimony; thus, under the CARP rules, the Settling Parties were free to designate a portion of past records to be included in their direct case. 37 CFR 251.43. Had the Panel not allowed the incorporation of Fine's past testimony, it would have acted contrary to the law, unless it had reason to strike the testimony for good cause shown.

Evelyn's final challenge focuses on the Settling Parties' methodology. She, like Curry before her in the 1992–1994 DART distribution proceeding, objects to the use of a methodology that only requires a showing of the number of record sales for the individual claimants. She contends that no claim can be termed a ''de minimus claim'' until it is measured against the entitlement of others. Evelyn Petition at 3. In response, the Panel noted that the courts have repudiated as wasteful a requirement that all claimants in a given distribution proceeding prove their entitlement through the presentation of detailed data for every individual work. CARP Report ¶ 76. In *National Association of Broadcaster* v. *Copyright Royalty Tribunal,* 772 F.2d 922, 939 (D.C. Cir. 1985), the case cited by the Panel in its report, the court wisely noted that to do otherwise would effectively eliminate the likelihood of settlements because a single claimant—no matter how modest that claimant's likely share under even the most sanguine review—could choose not to settle with the other claimants and require a full hearing on all claims, even those not in controversy.

For all the reasons set forth in the prior discussion, the Register concludes that the Panel did not act arbitrarily or contrary to the provisions of the Copyright Act in determining the value of Curry's and Evelyn's DART claims and recommends that the Librarian adopt without amendment the Panel's Report and recommendation for the allocation of the 1995, 1997 and 1998 Musical Works Funds.

**Order of the Librarian of Congress**

Having duly considered the recommendation of the Register of Copyrights regarding the report of the Copyright Arbitration Royalty panel concerning the distribution of the 1995, 1997 and 1998 Musical Works Funds, the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's decision. For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing an order announcing the allocation of the royalty fees in the 1995, 1997 and 1998 Musical Works Funds.

Wherefore, it is ordered that the royalty fees in the 1995, 1997 and 1998 Musical Works Funds shall be distributed according to the following percentages:

| | 1995 | |
|---|---|---|
| | Writers (%) | Publishers (%) |
| Curry ..... | 0.001966 | 0.001966 |
| Evelyn ..... | 0.000614 | N/A |
| Settling parties ..... | 99.997420 | 99.998034 |
| Total ..... | 100.00 | 100.00 |

| | 1997 | |
|---|---|---|
| | Writers (%) | Publishers (%) |
| Curry ..... | 0.001027 | 0.001027 |
| Evelyn ..... | 0.000130 | N/A |
| Settling parties ..... | 99.998843 | 99.998973 |
| Total ..... | 100.00 | 100.00 |

| | 1998 | |
|---|---|---|
| | Writers (%) | Publishers (%) |
| Curry ..... | N/A | N/A |
| Evelyn ..... | 0.000144 | N/A |
| Settling parties ..... | 99.999856 | 100.00 |
| Total ..... | 100.00 | 100.00 |

As provided in 17 U.S.C. 802(g), the period for appealing this Order to the United States Court of Appeals for the District of Columbia is thirty (30) days from the effective date of this Order.

Dated: January 30, 2001.

**Marybeth Peters,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 01–3142 Filed 2–6–01; 8:45 am]

BILLING CODE 1410–33–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Privacy Act of 1974; Transfer of Records

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of transfer of records subject to the Privacy Act to the National Archives.

**SUMMARY:** Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the **Federal Register**. NARA publishes a notice of the records newly

transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Kurtz, Assistant Archivist for Records Services, Washington, DC, on (301) 713–7000.

**SUPPLEMENTARY INFORMATION:** In accordance with section (l)(1)(3) of the Privacy Act, archival records transferred from executive branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the **Federal Register** when executive branch systems of records retrievable by personal identifiers are transferred to the National Archives of the United States. After transfer of records retrievable by personal identifiers to the National Archives of the United States, NARA does not maintain these records as a separate system of records. NARA will attempt to locate specific records about an individual in any system of records described in a Privacy Act Notice as being part of the National Archives of the United States. Furthermore, records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series.

In this notice, each system is identified by the system name used by the executive branch agency that accumulated the records. That system name is followed by information in parentheses about the National Archives Record Group to which records in the system have been allocated. In the section of the notice covering categories of records in the system, the specific segment of the system transferred to the National Archives of the United States is identified by the accession number assigned to the system segment when it was transferred to the National Archives and the series title associated with the system in the National Archives. The following systems of records, or parts thereof, retrievable by personal identifiers have been transferred to the National Archives since the last notice published at 61 FR 36573, (December 8, 1998):

**1. SYSTEM NAME:**

Central Criminal Division Index File and Associated Records, JUSTICE/CRM–001 (part of National Archives Record Group 60, General Records of the Department of Justice).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover persons referred to in potential or actual cases and matters of concern to the Criminal Division and correspondents on subjects directed or referred to the Criminal Division.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include: (1) 146–7–3672 General Suspects Files on Ezra Pound, 1939–1958 (NARA Accession NN3–060–099–002); (2) 146–28–0 through 146–28–2028 Treasonable Utterances, 1941–1955 (NARA Accession NN3–060–099–003); (3) 146–200–2 Investigation of Government Employees for contract with subversive organizations, 1941–1950 (NARA Accession NN3–060–099–004); (4) 146–28–2203 through 146–28–2490 Treasonable Utterances, Korean War POW's, 1952–1956 (NARA Accession NN3–060–099–005); (5) microfilm cassettes of general name index cards consisting of 214 cassettes alphabetically by name and 30 cassettes numerically by classification number, 1930–1984 (NARA Accession NN3–060–099–006); (6) Department of Justice subject files and enclosures (litigation case files), 1930–1987 (NARA Accession Numbers NN3–060–099–008, and NN3–060–099–011); (7) Department of Justice security classified subject files and enclosures (litigation case files), 1930–1987 (NARA Acession Numbers NN3–060–099–009, and NN3–060–099–010); (8) N1–60–88–11, Class 118982–Diplomatic Immunity, 1941–1966 (NARA Accession Number NN3–060–00–004); (9) N1–60–88–10, Class 95, Miscellaneous Criminal Cases. This class covers a wide variety of subjects; these boxes contain records relative to desecration of the flag, crash of National Airlines Flight 967, destruction of aircraft or motor vehicle, blocking of interstate highways by trucks, and April riots—campus disorders, 1913–1970 (NARA Accession NN3–060–00–018); (10) N1–60–88–10, class 72, elections and political activity. Offenses relating to elections and political activity, including irregularities in federal elections, violations of the Hatch Act, Federal Corrupt Practices Act, regulation of lobbying act and civil rights acts, and voting rights, 1963–1969 (NARA Accession NN3–060–00–026); (11) N1–60–88–10, Class Hazardous Substances, Selective Service, patents, copyrights, custom violations, Federal Security Act, National Recovery Act, and kickback from public works employees, 1938–1969 (NARA Accession NN3–060–00–028); (12) N1–60–88–10, Class 123A—Anti-Racketeering Act. Cases brought under the Anti-Racketeering Act includes correspondence concerning organized crime and union activities, 1958–1971 (NARA Accession NN3–060–00–007); (13) N1–60–88–10, Class 82–Communications Act. Cases brought under the Radio Act and the Federal Communications Act, 1961–1970 (NARA Accession NN3–060–00–008); (14) N1–60–88–10, Class 72—Elections and Political Activity. Offenses relating to elections and political activity, including irregularities in federal elections, violations of the Hatch Act, and reporting of congressional campaign expenditures, 1938–1970 (NARA Accession NN3–060–00–009); (15) N1–60–88–12, Class 90—Lands. Cases concerning fire trespass upon federal land; reserved land cases; and crimes and depredations committed on federal land (including murder and rape within Indian reservations), 1942–1970 (NARA Accession NN3–060–00–010); (16) N1–60–88–10, Class 72—Elections and Political Activity. Cases concerning irregularities in federal elections, violations of the Hatch Act, and reporting of expenditures in connection with congressional political campaigns, 1934–1965 (NARA Accession NN3–060–00–011); (17) N1–60–88–10, Class 75—Eight Hour Law and Class 80A—Firearms Act. Cases concerning violations of the Eight Hour Law on public works, The National Firearms Act, and other federal gun control legislation, 1940–1970 (NARA Accesssion NN3–060–00–012); (18) N1–60–88–10, Class 164—Interstate Transmission of wagering information. Cases brought under legislation prohibiting the transmission of wagering information, 1961–1969 (NARA Accesssion NN3–060–00–013); (19) N1–60–88–13, Classes 146–13, 146–19, 146–21, 146–28, 146–29. Cases concerning alien enemy, censorship, trespassing on restricted defense areas, treasonable utterances, and subversive activities of

non-enemy aliens, 1941–1970 (NARA Accession NN3–060–00–014); (20) N1–60–88–10, Class 120—Commodity Credit Corporation, International Wheat Agreement; 121—Kickback from Public Works Employees; 122—National Stolen Property Act; and 126—Fugitive Felon Act, 1953–1970 (NARA Accession NN3–060–00–015); (21) N1–60–88–10, Class 82—Communications Act. Cases brought under the Radio Act and the Federal Communications Act, 1927–1969 (NARA Accession NN3–060–00–016); (22) N1–60–88–13, Class 146–12–Export Control; 146–16—Prisoners of War; 146–20A—Transfer of Vessels to Aliens, 1942–1968 (NARA Accession NN3–060–00–017); (23) 146–7–51–1708 General Subjects Radio broadcasts made by Mildred Gillars (Axis Sally) and Grand Jury testimony. Records pertaining to Mildred Gillars previously sent under NARA Accession NN3–060–099–003, 1941–1955 (NARA Accession NN3–060–00–019); (24) 146–7–62–807—146–7–77–42 General Suspects Files on Smith Act Violations—conspiring to teach and advocate the overthrowing of the government of the U. S. by force and violence (Joseph Kuzma and James Frederick Forrest), 1941–1960 (NARA Accesssion NN3–060–00–020); (25) 146–7–5130 General Suspects Files on Smith Act Violations—Communist Party infiltration of the United Electrical, Radio and Mechanical Workers of American Union, 1944–1960 (NARA Accession NN3–060–00–021); (26) 146–7–328 through 146–7–1603 Nazi Party, German Organizations WWII (German Bund Activities, August Klapprott, Alexander Trachtenberg, John Falk, Nationalist Party of Puerto Rico), 1942–1958 (NARA Accession NN3–060–00–022); (27) 146–7—Citizen correspondence concerning Pro Nazi Statements, sabotage, FBI Reports and individuals accused of Fifth Column activities (includes individuals of German, Japanese, Italian extraction), 1940–1944 (NARA Accession NN3–060–00–023); (28) 146–7–523 through 146–7–1689—The records consist of a mix of subjects during and after WWII, 1941–1962 (NARA Accession NN3–060–00–024); and (29) N1–60–88–10, Class 51, Offenses against Public Justice, Bribery and Perjury. Includes betrayal of Office, conflict of interest, and obstruction of justice, 1947–1969 (NARA Accession NN3–060–00–025).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper and microform records stored in archival containers.

b. Retrievability: Retrieved by individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**2. SYSTEM NAME:**

Civil Division Case File System, JUSTICE/CIV–001 (part of National Archives Record Group 60, General Records of the Department of Justice).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover individuals referenced in potential or actual cases and matters under the jurisdiction of the Civil Division; and attorneys, paralegals, and other employees of the Civil Division directly involved in these cases or matters.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include discovery documents and related indexes created for use in association with the government's case against Exxon Corporation in regards to the Exxon Valdez Diaster, 03/31/1989–12/19/1996 (NARA Accession NN3–060–00–029); Department of Justice security classified enclosures to subject files (litigation case files), 1930–1987 (NARA Accession NN3–060–099–010); and Department of Justice subject files and enclosures (litigation case files), 1930–1987 (NARA Accession Numbers NN3–060–099–008, and NN3–060–099–011).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers; and electronic database stored on magnetic tape.

b. Retrievability: Retrieved by file number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable

amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**3. SYSTEM NAME:**

Panama Canal Commission Board of Directors Biographical and Correspondence Files, PCC/WO/AE–2 (part of National Archives Record Group 185, Records of the Panama Canal).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover members of the Panama Canal Commission Board of Directors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include Board of Director files, including meetings, biographies, photos, and correspondence, 1980–1999 (NARA Accession Numbers NN3–185–00–007 and NN3–185–00–017).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by name of board member.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**4. SYSTEM NAME:**

General Files of the Panama Canal Commission, PCC/AMRM–1 (part of National Archives Record Group 185, Records of the Panama Canal).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover individuals who are the subject of correspondence or who correspond with the Office of the Administrator and staff offices on a variety of subjects related to the operation, maintenance, and protection of the Panama Canal.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include correspondence reading files for the offices of the Administrator and Deputy Administrator of the Panama Canal Commission, 1979–1996 (NARA Accession NN3–185–099–004).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**5. SYSTEM NAME:**

Records of Births, Deaths, and Marriages that occurred in the former Canal Zone, PCC/AMRM–7 (part of National Archives Record Group 185, Records of the Panama Canal).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover individuals who were married in the former Canal Zone.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include clergy marriage registration books containing abstracted information on Canal Zone

marriages recorded by the officiating clergy, 1904–1979 (NARA Accession NN3–185–098–008).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers; and index cards on microfilm.

b. Retrievability: Retrieved by name, date of birth, death, or marriage, and number of certificate.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

6. SYSTEM NAME:

Correspondence Files and Correspondence Control Files—Treasury/IRS 00.001 (part of National Archives Record Group 58, Records of the Internal Revenue Service).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover initiators of the correspondence; persons upon whose behalf the correspondence was initiated; and subjects of the correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include organizational history files, 1929–1990 (Nara Accession NN3–058–099–001); strategic planning documentation, 1953–1990 (NARA Accession NN3–058–099–002); historian records, 1980's–1990's (NARA Accession NN3–058–099–003); legislative affairs records, 1970's–1990's (NARA Accession NN3–058–099–004); planning division/internal management records, 1950's–1990's (NARA Accession NN3–058–099–005); public affairs/problem resolution records/ publishing services, 1950's–1990's (NARA Accession NN3–058–099–006); chief counsel records, 1930's–1990's (NARA Accession NN3–058–099–007); information systems/data processing records, 1960's–1990's (NARA Accession NN3–058–099–008); reports and studies, 1918–1980's (NARA Accession NN3–058–099–009); audio/ visual records, 1980's–1990's (NARA Accession NN3–058–099–010); publications, books, and forms, 1800's–1938 (NARA Accession Numbers NN3–058–099–011 and NN3–058–099–012).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by individual name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

7. SYSTEM NAME:

Intelligence/Counterintelligence Source Files, A0381–100a DAMI (part of National Archives Record Group 319, Records of the Army Staff).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover selected individuals who qualify and may be accepted as an intelligence or counterintelligence source for the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include intelligence/counterintelligence source files (JFK Collection), 1953–1977 (NARA Accession Numbers NN3–319–099–002 and NN3–319–00–004).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions

may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper and microform records stored in archival containers.

b. Retrievability: By individual name and numerically by source or project number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**8. SYSTEM NAME:**

Counterintelligence/Security Files, A0381–20b DAMI (part of National Archives Record Group 319, Records of the Army Staff).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover military and civilian personnel associated with the U.S. Army; and industrial or contractor personnel working in private industry which have contracts involving classified Department of Defense (DOD) information.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include Counterintelligence/Security Investigations (JFK Collection), 1953–1977 (NARA Accession NN3–319–099–006); U.S. POW/MIA/Detainee Intelligence, 1945–1975 (NARA Accession Numbers NN3–319–099–001, NN3–319–099–007, NN3–319–099–009, NN3–319–00–010, NN3–319–00–011, NN3–319–00–024, NN3–319–00–028, NN3–319–00–030, and NN3–319–00–031); and Counterintelligence/Security Investigations, 1952–1994 (NARA Accession Numbers NN3–319–099–008, NN3–319–00–005, NN3–319–00–025, NN3–319–00–029, and NN3–319–00032).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper, microform and photographic records stored in archival containers.

b. Retrievability: Retrieved by name, aliases, or title in combination with social security number or regular dossier number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**9. SYSTEM NAME:**

Personnel Security Clearance Information Files, A0380–67 DAMI (part of National Archives Record Group 319, Records of the Army Staff).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover any individual, civilian or military, affiliated with the U.S. Army by assignment, employment, contractual relationship, or as the result of an interservice support agreement on whom a personnel security clearance determination has been completed, is in process, or may be pending.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include Counterintelligence/Security Investigations (JFK Collection), 1953–1977 (NARA Accession NN3–319–099–006); U.S. POW/MIA/Detainee Intelligence, 1945–1975 (NARA Accession Numbers NN3–319–099–001, NN3–319–099–007, NN3–319–099–009, NN3–319–00–010, NN3–319–00–011, NN3–319–00–024, NN3–319–00–028, NN3–319–00–030, and NN3–319–00–031); and Counterintelligence/Security Investigations, 1952–1994 (NARA Accession Numbers NN3–319–099–008, NN3–319–00–005, NN3–319–00–025, NN3–319–00–029, and NN3–319–00–032).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper, microform and photographic records stored in archival containers.

b. Retrievability: Retrieved alphabetically by individual's surname or social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

10. SYSTEM NAME:

NCIS Investigative Files System, N05520–4 (part of National Archives Record Group 526, Records of the Naval Criminal Investigative Service).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover individuals who require access to classified defense information and others who are of criminal, counterintelligence, security or general investigative interest to NCIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include Historical Matters Records (records covering a broad range of topics that document the history of the Naval Criminal Investigative Service and its predecessor; security related topics from offices within Office of Naval Intelligence; and security, counterintelligence, investigative, and other topics undertaken by Naval Intelligence and the District Intelligence Offices (DIO)), 1935–1977 (NARA Accession Numbers NN3–526–099–001, NN3–526–099–002, and NN3–526–099–003); POW/MIA Intelligence Files: These records contain information concerning the U.S.S. Pueblo that was captured on January 23, 1968 off the coast of North Korea and commercial news broadcast (U.S. and foreign), crew member ''confession'' press reports and interviews of crew members and Mrs. Bucher, 1968–1971 (NARA Accession NN3–526–099–004); and Major Investigations: These records contain closed case investigations of alleged espionage, subversion, sabotage and other security related investigations conducted primarily during the Vietnam Conflict period, 1958–1975 (NARA Accession NN3–526–099–005).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper and photographic records stored in archival containers.

b. Retrievability: Retrieved by numeric sequential number and alphabetically by topical title, and geographic location.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

11. SYSTEM NAME:

Population and Housing Census Records of the 1960 and Subsequent Censuses-Commerce/Census-5 (part of National Archives Record Group 29, Records of the Bureau of the Census).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover all individuals counted during the Censuses of Population and Housing taken in 1960 and later.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include census of population and housing sample and one hundred-percent edited detail files for states, Puerto Rico and outlying areas, 1980 (NARA Accession Numbers NN3–029–099–010 and NN3–029–099–011); decennial census of population and housing sample edited detail tape files, 1960 (NARA Accession NN3–029–00–022); and decennial census of population and housing one hundred-percent and twenty-percent sample edited detail files for states, Puerto Rico, and outlying areas, 1970 (NARA Accession Numbers NN3–029–099–012, NN3–029–099–013, and NN3–029–099–014).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further

information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by the use of unique serial identification numbers internal to the Bureau of the Census.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**12. SYSTEM NAME:**

Army History Files, A0228.01 DAMH (part of National Archives Record Group 338, Records of U.S. Army Commands, 1942–).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover military and civilian personnel associated with the Army; individuals who offer historically significant items or gifts of money to the Army Museum System.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include Command Historian's Files, 1915–1999 (NARA Accession NN3–338–099–014).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by individual's name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**13. SYSTEM NAME:**

Counterintelligence/Security Files, A0381–20b DAMI (part of National Archives Record Group 338, Records of U.S. Army Commands, 1942–)

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover military and civilian personnel associated with the U.S. Army; and industrial or contractor personnel working in private industry which have contracts involving classified Department of Defense (DOD) information.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include Counterintelligence/Security Investigations, 1949–1972 (NARA Accession Numbers NN3–338–099–004 and NN3–338–00–002); and POW/MIA Detainee Intelligence, 1944–1986 (NARA Accession Numbers NN3–338–099–005, NN3–338–099–015, and NN3–338–00–001).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper, microform and photographic records stored in archival containers.

b. Retrievability: Retrieved by name, aliases, or title in combination with social security number or regular dossier number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

14. SYSTEM NAME:

Personnel Security Clearance Information Files, A0380–67 DAMI (part of National Archives Record Group 338, Records of U.S. Army Commands, 1942–).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover any individual, civilian or military, affiliated with the U.S. Army by assignment, employment, contractual relationship, or as the result of an interservice support agreement on whom a personnel security clearance determination has been completed, is in process, or may be pending.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include Counterintelligence/Security Investigations, 1949–1972 (NARA Accession Numbers NN3–338–099–004 and NN3–338–00–002); and U.S. POW/MIA Detainee Intelligence, 1944–1986 (NARA Accession Numbers NN3–338–099–005, NN3–338–099–015, and NN3–338–00–001).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper, microform and photographic records stored in archival containers.

b. Retrievability: Retrieved alphabetically by individual's surname or social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

*System manager and address:*

The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

15. SYSTEM NAME:

Health and Demographic Surveys Conducted in Probability Samples of the U. S. Population, HHS/OASH/NCHS, 09–20–0164 (part of National Archives Record Group 442, Records of the Centers for Disease Control and Prevention).

SYSTEM LOCATION:

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in the National Archives cover individuals and members of households selected by probability sampling techniques to be representative of the civilian population of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the National Archives covered by this notice include National Health Examination Surveys, Cycles I, II, and III (NHES I, II, and III) data tapes and documentation, 1959–1970 (NARA Accession Numbers NN3–442–099–001, NN3–099–002, and NN3–442–099–003); First and Second National Health and Nutrition Examination Surveys (NHANES I and II) data tapes and documentation, 1971–1980 (NARA Accession Numbers NN3–442–099–004 and NN3–442–099–005); and Hispanic Health and Nutrition Examination Survey (HHANES) data tapes and documentation, 1982–1984 (NARA Accession NN3–442–099–006).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

a. Storage: Paper records stored in archival containers; and electronic database stored on magnetic tape.

b. Retrievability: Retrieved by serial number cross-indexed to the original, individually identifiable record.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

SYSTEM MANAGER AND ADDRESS:

The system manager is the Assistant Archivist for Records Services-Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

NOTIFICATION PROCEDURES:

Individuals desiring information from or about these records should direct inquiries to the system manager.

RECORDS ACCESS PROCEDURES:

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be

considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**16. SYSTEM NAME:**

Special Use Permits, Easements, and Licenses, USDA/FS–24 (part of National Archives Record Group 95, Records of the Forest Service).

**SYSTEM LOCATION:**

National Archives, Pacific Alaska Region (Seattle), 6125 Sand Point Way, N.E., Seattle, WA 98115.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover individuals holding a special use permit, easement or license authorizing use or occupancy of National Forest System land or land administered for National Forest purposes.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include special use permits, 1943–1966 (NARA Accession NRIS–095–099–031).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by permittee's name and date of permit issuance or other field.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Regional Records Services (NR), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**17. SYSTEM NAME:**

Office of Alien Property File System, JUSTICE/CIV–003 (part of National Archives Record Group 131, Records of the Office of Alien Property).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover any and all parties involved in the cases, claims and matters handled by the Office of Alien Property.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include records of the Office of Alien Property, 1941–1963 (NARA Accession Numbers NN3–131–099–001 and NN3–131–099–002).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by indexed file numbers.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**18. SYSTEM NAME:**

Military Personnel Records System, F035 AF MP C (part of National Archives Record Group 518, Records of U.S. Central Command).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover Air Force active duty military, Air Force Reserve and Air National Guard personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include operational analyses, 1989–1992 (NARA Accession Numbers NN3–518–099–001 and NN3–518–00–001).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the

National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by individual's surname and social security number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**19. SYSTEM NAME:**

National Crime Information Center (NCIC), JUSTICE/FBI 001 (part of National Archives Record Group 65, Records of the Federal Bureau of Investigation).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover individuals for whom Federal warrants are outstanding; individuals who have committed or have been identified with an offense which is classified as a felony or serious misdemeanor; a ''Temporary Felony Want'' to take prompt action for a suspected felon; juveniles who have been adjudicated delinquent; individuals who have committed an offense in a foreign country and for which act an extradition treaty exists between the United States and that country; individuals identified with an offense committed in Canada which meets the requirements of the Canada-U.S. Extradition Treaty, 18 U.S.C. 3184; and individuals designated by the U.S. Secret Service as posing a potential danger to the President or other authorized protectees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include records responsive to Nazi War Crimes Disclosure Act, 1917–1969 (NARA Accession NN3–065–00–004).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved alphabetically by name or by identification number.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**20. SYSTEM NAME:**

Claim Files—Interior, Office of the Solicitor-2, INTERIOR/SOL–2 (part of National Archives Record Group 48, Records of the Office of the Secretary of the Interior).

**SYSTEM LOCATION:**

National Archives and Records Administration-Pacific Northwest Region (Seattle), 6125 Sand Point Way, NE, Seattle, WA 98115.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover individuals who have filed Tort, Federal Employee, Admiralty or Irrigation claims.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include tort claims, 1988–1993 (NARA Accession NRIS–048–00–002).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by name of claimant.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Regional Records Services (NR), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**21. SYSTEM NAME:**

NCIS Investigative Files System, N05520–4 (part of National Archives Record Group 289, Records of the Naval Intelligence Command).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover individuals who require access to classified defense information and others who are of criminal, counterintelligence, security or general investigative interest to NCIS.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include primary program records, files consisting of incoming and outgoing correspondence on Communist Party activities in the maritime industry, and issues concerning employment, 1936–1954 (NARA Accession NN3–289–099–001).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Paper records stored in archival containers.

b. Retrievability: Retrieved by numeric sequential number and alphabetically by topical title, and geographic location.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**22. SYSTEM NAME:**

General Personnel Records, OPM/GOVT–1 (part of National Archives Record Group 478, Records of the Office of Personnel Management).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover current and former Federal employees as defined in 5 U.S.C. 2105.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include an electronic database of personal and employment related information on Federal employees; the Central Personnel Data File (CPDF), 1987 (NARA Accession NN3–478–099–001).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by various combinations of name, birth date, social security number, or identification number of the individual on whom they are maintained.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States*, which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

**23. SYSTEM NAME:**

Current Research Information System (CRIS), USDA/CSRS (part of National Archives Record Group 540, Records of the Cooperative State Research, Education, and Extension Service).

**SYSTEM LOCATION:**

National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records in the National Archives cover scientists listed on research projects entered into the CRIS.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the National Archives covered by this notice include the Current Research Information System (CRIS) File, 1998 (NARA Accession NN3–540–00–001).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(l)(1)(3). Further information about uses and restrictions may be found in 36 CFR part 1256 and in the Appendix following this notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

a. Storage: Electronic database stored on magnetic tape.

b. Retrievability: Retrieved by name of project leader or co-investigator.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized NARA personnel.

d. Retention and disposal: Records are retained permanently.

**SYSTEM MANAGER AND ADDRESS:**

The system manager is the Assistant Archivist for Records Services, Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001.

**NOTIFICATION PROCEDURES:**

Individuals desiring information from or about these records should direct inquiries to the system manager.

**RECORDS ACCESS PROCEDURES:**

Upon request, NARA will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR part 1256. Enough information must be provided to permit NARA to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the NARA research facilities listed in 36 CFR part 1253.

Dated: January 31, 2001.

**Michael J. Kurtz,**

*Assistant Archivist for Records Services, Washington, DC.*

## Appendix

*General Statement About Uses and Restrictions*

A record from an accessioned system of records may be made available to any person who has applied for and received a researcher identification card. No special qualifications are required in order to use the records of the National Archives. Rule governing the use of records and procedures for applying for research cards are found in 36 CFR part 1254. However, the use of some of the records is subject to restrictions imposed by statute or Executive order, or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the transferring agency. Restrictions currently in effect on access to particular records that have been specified by the transferring agency are known as ''specific restrictions.'' Restrictions on access that may apply to more than one record group are termed ''general restrictions.'' They are applicable to the kinds of information or classes of accessioned records designated regardless of the record group to which they have been allocated or the specific system of records in which they are contained. The restrictions are published in the ''Guide to the National Archives of the United States'' and supplemented by restriction statements approved by the Archivist of the United States and set forth in 36 CFR part 1256.

[FR Doc. 01–3102 Filed 2–6–01; 8:45 am]

BILLING CODE 7515–01–P

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 29, 2001, through February 9, 2001. The last biweekly notice was published on January 24, 2001 (66 FR 7667).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide an opportunity for a

hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 9, 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 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of amendment request:* December 28, 2000.

*Description of amendment request:* The proposed amendment would decrease the allowed outage time for an inoperable channel of the anticipated transient without scram recirculation pump trip instrumentation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specifications are to the allowed outage time(s) specified for instrumentation associated with the Anticipated Transient Without Scram (ATWS) Reactor Recirculation Pump Trip (RPT) system.

The proposed changes do not involve a change to the plant design or operating modes. The changes apply to the ATWS–RPT system, but they have no impact on the failure modes or initiators that potentially cause an ATWS, and thus have no impact on the frequency of occurrence of an ATWS event.

The proposed changes do not involve a change to the design of the ATWS–RPT system, as the proposed changes primarily only affect the allowed outage time of the system and do not otherwise affect the manner in which the system is tested or operated. Thus, the manner in which the ATWS–RPT system is designed to respond to an ATWS event is not affected, so its mitigation design function is not impacted. Although, by design, on-lime testing of the ATWS–RPT requires the system to be rendered unavailable for short periods of time, system unavailability is not significantly impacted by the proposed changes. The proposed changes involve the establishment of a reasonable allowed outage time to support online testing needed to periodically confirm system operability, but which minimizes the overall system average unavailability. All of the proposed allowed outage times are based on the Standard Technical Specifications and as such have been determined to be acceptable for maintaining adequate ATWS–RPT availability and for minimizing plant risk. They thus provide reasonable assurance that the ATWS–RPT system will be available on demand to perform its mitigating function in the event of an accident or transient involving a failure of the primary scram function (i.e., the reactor protection system).

Based on the above, the proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes only affect the outage time allowed for the ATWS–RPT instrumentation. They do not involve any changes to the plant design or operation, and thus do not introduce a new failure mode. Therefore, the proposed changes to the TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not involve a change to the plant design or operation including the ATWS–RPT system itself. No change to the setpoints of the ATWS–RPT instrumentation is involved. Since ATWS–RPT availability will be maintained to a sufficiently high degree, and since the ATWS–RPT design (including its associated instrument setpoints) is unaffected, the TS will continue to provide adequate assurance that the ATWS–RPT is capable of performing its intended function.

Based on the above, the proposed changes to the TS do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036–5869.

*NRC Section Chief:* Anthony J. Mendiola.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of amendment request:* December 20, 2000.

*Description of amendment request:* The proposed amendment request revises Technical Specification (TS) 5.3.1, ''Reactor Core,'' to permit the use of the Framatome Cogema Fuels (FCF) ''M5'' advanced alloy for fuel rod cladding and fuel assembly spacer grids. The licensee has submitted a related exemption request from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' Section 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors,'' and associated Appendix K, ''ECCS Evaluating Models,'' which presume the use of zircaloy or ZIRLO cladding. A related Bases change is also made to the Bases for TS 2.1.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

AmerGen has determined that this license amendment request poses no significant hazards considerations as defined by 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. It has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. Further, there are no evaluated accidents in which the fuel cladding or fuel assembly structural components are assumed to arbitrarily fail as an accident initiator. The fuel handling accident assumes that the cladding does, in fact, fail as a result of an undefined fuel handling event. However, the probability of that undefined initiating event is independent of the properties of the fuel rod cladding. Additionally, in both LOCA [loss-of-cooling accident] and non-LOCA accident scenarios, there will be no significant increase in cladding failure or fission product release, since it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. Therefore, this activity does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. It has been demonstrated that the material propoerties of the M5 alloy are not significantly different than those of Zircaloy-4. Therefore, M5 fuel cladding and the fuel assembly structural components will perform similarly to those fabricated from Zircaloy-4, thus precluding the possibility of the fuel becoming an accident initiator. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The material properties of the M5 alloy are not significantly different from those of Zircaloy-4 for all normal operating and accident scenarios, including both LOCA and non-LOCA scenarios * * * Therefore, this activity does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland*

*Date of amendment request:* September 14, 2000, as supplemented on December 21, 2000.

*Description of amendment request:* The licensee proposes to revise the

Technical Specifications to allow a lead fuel assembly (LFA) with a limited number of fuel rods clad with advanced zirconium-based alloys to be inserted into the core during the next refueling outage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Calvert Cliffs Technical Specification 4.2.1, Fuel Assemblies, states that fuel rods are clad with either zircaloy or ZIRLO. This reflects the requirements of 10 CFR 50.44, 50.46, and 10 CFR Part 50, Appendix K, which also restricts fuel rod cladding materials to zircaloy or ZIRLO. Calvert Cliffs Nuclear Power Plant, Inc. proposes to insert a fuel assembly into Calvert Cliffs Unit 2 that have some fuel rods clad in zirconium alloys that do not meet the definition of zircaloy or ZIRLO. An exemption to the regulations has also been requested to allow this fuel assembly to be inserted into Unit 2. The proposed change to the Calvert Cliffs Technical Specifications will allow the use of cladding materials that are not zircaloy or ZIRLO for one fuel cycle once the exemption is approved. To obtain approval of new cladding materials, 10 CFR 50.12 requires that the applicant show that the proposed exemption is authorized by law, is consistent with the common defense and security, will not present an undue risk to the public health and safety, and is accompanied by special circumstances. The proposed change to the Technical Specification is effective only as long as the exemption is effective. The addition of what will be an approved temporary exemption to Unit 2 Technical Specification 4.2.1 does not change the probability or consequences of an accident previously evaluated.

Supporting analyses indicate that since the LFA will be placed in a non-limiting location, the placement scheme and the similarity of the advanced alloys to zircaloy-4 will assure that the behavior of the fuel rods with these alloys are bounded by the fuel performance and safety analyses performed for the zircaloy-4 clad fuel rods currently in the Unit 2 core. Therefore, the addition of these advanced claddings does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with existing equipment, change the equipment's function, or change the method of operating the equipment. The proposed change does not affect normal plant operations or configuration. Since the proposed change does not change the design, configuration, or operation, it could not become an accident initiator.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The proposed change will add an approved temporary exemption to the Unit 2 Technical Specifications allowing the installation of a lead fuel assembly. This assembly uses advanced cladding materials that are not specifically permitted by existing regulations or Calvert Cliffs' Technical Specifications. A temporary exemption to allow the installation of this assembly has been requested. The addition of an approved temporary exemption to Technical Specification 4.2.1 is simply intended to allow the installation of the lead fuel assembly under the provisions of the temporary exemption. The license amendment is effective only as long as the exemption is effective. This amendment does not change the margin of safety since it only adds a reference to an approved, temporary exemption to the Technical Specifications.

Supporting analyses indicate that since the LFA will be placed in a non-limiting location, the placement scheme and the similarity of the advanced alloys to zircaloy-4 will assure that the behavior of the fuel rods with these alloys are bounded by the fuel performance and safety analyses performed for the zircaloy-4 clad fuel rods currently in the Unit 2 core. Therefore, the addition of these advanced claddings does not involve a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* December 21, 2000.

*Description of amendments request:* The amendments would revise Technical Specification 5.2.2.e by removing the reference to the Nuclear Regulatory Commission (NRC) Policy Statement on working hours.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed licensing basis change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification 5.2.2.e only alters the administrative location of, and the regulatory controls applicable to, unit staff-specific overtime limits and working hours. Overtime limits and working hours will remain controlled by plant administrative procedures. Changes to the relocated overtime limits and working hours will be controlled in accordance with our established procedural control processes. There is no increase in the probability of an accident previously evaluated because no change is being made to any accident initiator. No previously analyzed accident scenario is changed, and initiating conditions and assumptions remain as previously analyzed.

There is no increase in the radiological consequences of any accident previously evaluated because the proposed amendment does not affect accident conditions or assumptions used in evaluating the radiological consequences of an accident. The proposed change does not alter the source term, containment isolation, or allowable radiological releases.

Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

2. The proposed licensing basis change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to Technical Specification 5.2.2.e only alters the administrative location of and the regulatory controls applicable to unit staff specific overtime limits and working hours. The proposed amendment does not change the way the plant is operated, and no new or different failure modes have been defined for any plant system or component important to safety. No limiting single failure has been identified as a result of the proposed amendment. No new or different types of failures, accident initiators or scenarios are introduced by the proposed amendment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed licensing basis change does not involve a significant reduction in [a] margin of safety.

Unit staff overtime is not an input into the calculation of any safety margin in the Technical Specification Safety Limits, Limiting Safety Settings, or other Limiting Conditions for Operation. Unit staff overtime is not an input into the calculation of any safety margin in the Technical Requirements Manual, or any other previously defined

margins for any structure, system, or component important to safety. The proposed amendment to Technical Specification 5.2.2.e only alters the administrative location of, and the regulatory controls applicable to unit staff-specific overtime limits and working hours.

Therefore, the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina*

*Date of application for amendments:* December 1, 2000.

*Description of amendments request:* The proposed amendments would change the Technical Specification (TS) 5.6.3, ''Radioactive Effluent Release Report'' date for submittal of the Radioactive Effluent Release Report to ''prior to May 1'' of each year.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature. The date of submittal of the Radioactive Effluent Release Report is not an initiator of any analyzed event. Similarly, the date of submission does not affect the consequences of any accident previously evaluated. The proposed change will not physically alter the plant, and it will not affect plant operation. The proposed change to the submission date of the Radioactive Effluent Release Report will continue to meet the reporting requirement of 10 CFR 50.36a(a)(2) and further clarifies when the report is to be submitted. As such, the proposed change does not involve an increase in the probability or consequence of any accident previously evaluated.

2. The proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change is administrative in nature. It would revise the date by which the Radioactive Effluent Release Report is required to be submitted to the NRC. Revision of the submittal date for the report will not affect any accident initiator or cause any new accident precursors to be created. The proposed change will not affect the types or amounts of radioactive effluents released or cumulative occupational radiological exposures.

3. The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed change to the submittal requirement for the Radioactive Effluent Release Report is only an administrative change and will have no [effect] on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards considerations.

*Attorney for licensee:* William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

*NRC Section Chief:* Richard P. Correia.

*Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan*

*Date of amendment request:* December 29, 2000.

*Description of amendment request:* The proposed amendment would modify the applicability statements of Technical Specification (TS) Limiting Conditions for Operations (LCOs) 3.3.6.2, ''Secondary Containment Isolation Instrumentation,'' 3.3.7.1, ''Control Room Emergency Filtration (CREF) System Instrumentation,'' 3.6.4.1, ''Secondary Containment,'' 3.6.4.2, ''Secondary Containment Isolation Valves (SCIVs),'' 3.6.4.3, ''Standby Gas Treatment (SGT) System,'' 3.7.3, ''Control Room Emergency Filtration (CREF) System,'' 3.7.4, ''Control Center Air Conditioning (AC) System,'' 3.8.2, ''AC Sources—Shutdown,'' 3.8.5, ''DC Sources—Shutdown,'' and 3.8.8, ''Distribution Systems—Shutdown.'' The proposed modifications would require operability of the associated systems only if recently irradiated fuel, which is identified as fuel that has occupied part of a critical reactor core within the previous 7 days, is handled during the first few days of an outage. The 7-day value is based on the results of a revised analysis of a fuel handling accident (FHA) that was performed by utilizing the guidelines contained in NRC Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' dated July 2000.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The new ''recently irradiated fuel'' term to describe irradiated fuel assemblies is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis. Because the equipment affected by the revised operational conditions is not an initiator to any previously analyzed accident, the proposed change cannot increase the probability of any previously evaluated accident.

The re-analysis of the Fuel Handling Accident concludes that radiological consequences are within the acceptance criteria in Regulatory Guide 1.183 (Reference 3 [of the licensee's application dated December 27, 2000]). The results of the Core Alterations events other than the Fuel Handling Accident remain unchanged from the original design basis, which showed that these events do not result in fuel cladding damage or radioactive release. The FHA re-analysis includes a drop of a non-irradiated fuel assembly over recently irradiated assemblies in the reactor core 24 hours after reactor shutdown. The radiological consequences associated with this scenario, assuming no mitigation credit for Secondary Containment, SGT and CREF Systems, have been shown to satisfy the acceptance criteria in Reference 3. Therefore, the proposed changes do not significantly increase the radiological consequences of any previously evaluated accident.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed requirements are imposed when specific activities represent situations where significant radioactive releases are not postulated. The proposed requirements are supported by the revised design basis Fuel Handling Accident analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed change does not create the potential for a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed changes revise the Fermi 2 TS[s] to establish operational conditions where specific activities represent situations during which significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the regulatory guidelines. Safety margins and analytical conservatisms are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed TS Applicability statements continue to ensure that the TEDE [total effective dose equivalent] at both the Control Room and the exclusion area and low population zone boundaries are below the corresponding regulatory guidelines in Reference 3 [of the licensee's application dated December 27, 2000]; therefore, the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

*NRC Section Chief:* Claudia M. Craig.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* December 28, 2000

*Description of amendment request:* The proposed amendments would revise the Technical Specification requirements associated with storage of spent fuel in the spent fuel storage pools to account for degradation of the Boraflex panels used in the construction of the storage racks and maintain acceptable margins of subcriticality in the spent fuel storage pools.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed Oconee Nuclear Station (ONS) Technical Specification (TS) changes described in the License Amendment Request (LAR) do not create a significant increase in the probability or consequence of an accident previously evaluated.

The loss of boron from the Boraflex panels in the Spent Fuel Pool (SFP) racks is offset by the presence of soluble boron in the SFP water for criticality control. The increased surveillance frequency provides assurance the SFP boron concentration limits will be maintained. The handling of the fuel assemblies in the SFP has always been performed in borated water. Fuel assembly placement in the revised fuel storage configurations described in the LAR will continue to be controlled by approved fuel handling procedures to ensure compliance with TS requirements.

The proposed changes do not affect the probability of a dropped fuel assembly accident, accidental misloading of spent fuel, or heavy load drop onto the SFP racks. The criticality analyses show the consequences of such events are not affected by the proposed changes and that the fuel will remain subcritical.

The radiological consequences of a fuel misloading or handling accident in the SFP, or a heavy load drop onto the SFP racks, do not change by taking credit for soluble boron in the pool because the current SFP boron concentration limit is unchanged.

In the unlikely event of significant SFP temperature increases or decreases, the proposed soluble boron limits and increased surveillance frequency of the SFP boron concentration provide assurance the fuel will remain subcritical.

2. Will the change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

Criticality accidents in the SFP are not new or different types of accidents. They have been analyzed as described in Section 9.1.2.3.2 of the Updated Final Safety Analysis Report and in Criticality Analysis reports associated with specific licensing amendments for fuel enrichments up to 5.00 weight percent U–235. The evaluations described in the LAR demonstrate that the proposed changes do not create a new or different kind of accident from any previously analyzed. The accident analysis in the Updated Final Safety Analysis Report remains bounding.

There are no changes in equipment design or in plant configuration. The revised requirement will not result in the installation of any new equipment or modification of any existing equipment. Therefore, the proposed changes will not result in the possibility of a new or different kind of accident.

3. Will the change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes and the resulting spent fuel storage operating limits provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on the ONS spent fuel pool-specific criticality analyses described in the LAR.

The criticality analyses are based on the methodology described in WCAP–14416–NP–A, ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology,'' Revision 1, November 1996, which has been reviewed and approved by the NRC. This methodology takes partial credit for soluble boron in the SFP and meets the following NRC acceptance criteria (10 CFR 50.68) for preventing criticality outside the reactor:

a. $k_{eff}$ shall be less than 1.0 if fully flooded with unborated water, which includes an allowance for uncertainties at a 95% probability, 95% confidence (95/95) level; and

b. $k_{eff}$ shall be less than or equal to 0.95 if fully flooded with borated water, which includes an allowance for uncertainties at a 95/95 level.

The proposed TS limits provide a level of safety comparable to the conservative criticality analysis methodology required by USNRC Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, LWR Edition, NUREG–0800, June 1987, USNRC Spent Fuel Storage Facility Design Bases (for comment) Proposed Revision 2, 1981, Regulatory Guide 1.13, and ANSI/ANS–57.2–1983.

Therefore, the proposed changes will not result in a significant reduction in the plant's margin of safety.

Based on the above evaluations, Duke concludes that the activities associated with the above described changes present no significant hazards consideration under the standards set forth in 10 CFR 50.92 and accordingly, a finding by the NRC of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

*NRC Section Chief:* Richard L. Emch, Jr.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania*

*Date of amendment request:* July 21, 2000, as supplemented by letter dated December 13, 2000.

*Description of amendment request:* The proposed amendment would reduce the limit for reactor coolant system (RCS) specific activity in technical specification (TS) 3/4.4.8. The dose equivalent iodine 131 (I–131) is proposed to be lowered from the current value of ≤ 0.35 micro Curies per gram (μCi/gram) to a value of ≤ 0.20 μCi/gram as specified in TS 3.4.8.a (and associated Actions and Table 4.4–12). This change will also lower the ''''Acceptable Operation'' line on Figure 3.4–1 from 21 μCi/gram to 12 μCi/gram Dose Equivalent I–131 for 80-percent to 100-percent power, and a commensurate reduction for power between 20-percent and 80-percent power.

In conjunction with the reduced TS limit for RCS specific activity, the

Beaver Valley Power Station (BVPS) Unit 1, control room and offsite dose consequences resulting from a postulated Main Steam Line Break have been re-analyzed to allow for higher primary-to-secondary leakage in accordance with methodology described in Nuclear Regulatory Commission (NRC) Generic Letter (GL) 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes by Outside Diameter Stress Corrosion Cracking,'' and as previously approved in BVPS–1 license amendment number 205.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change, which lowers the Technical Specification limit for Dose Equivalent I–131, is conservative and will not adversely affect the current calculated dose values for BVPS Unit 1 Design Basis Accidents (DBAs) since a lower RCS specific activity will lower the calculated dose from any resultant steam generator tube leakage postulated during the DBA. The Standard Review Plan assumption for accident-induced steam generator tube leakage spike remains valid. Thus, the dose listed in the BVPS Unit 1 UFSAR [Updated Final Safety Analysis Report] from those DBAs which calculate and list a dose value in the BVPS Unit 1 UFSAR will remain bounding values, except for the Main Steam Line Break (MSLB) DBA.

The immediate effect upon receiving a revised lower primary coolant specific activity limit in Technical Specification 3.4.8.a would also result in a lower calculated MSLB dose value, if incorporated into the MSLB dose calculation without any other modifications. But the BVPS Unit 1 MSLB analysis is analyzed per GL 95–05 which states that a reduction [in] RCS iodine activity is an acceptable means for accepting higher projected leakage rates and still meeting the applicable limit of Title 10 of the Code of Federal Regulations Part 100 and GDC [General Design Criterion] 19 utilizing currently accepted licensing basis assumptions. Thus, pursuant to this GL 95–05 methodology, the reduced RCS specific activity limit for Technical Specification 3.4.8.a will be used to allow for higher projected leakage rates, while still meeting the applicable regulatory dose limits.

Thus, the current BVPS Unit 1 MSLB calculated dose value will not decrease with a new lower RCS specific activity value in order to allow for a higher projected leakage rates[sic]. However, the BVPS Unit 1 MSLB calculated dose values will remain within the limits specified in 10 CFR 50 Appendix A, GDC 19, and the radiological doses to the public will remain a small fraction of the regulatory limits specified in 10 CFR 100.11, using methodology previously accepted in BVPS Unit 1 License Amendment No. 205.

Therefore, this proposed change will not increase the probability of occurrence of a postulated accident or will not significantly increase the consequences of an accident previously evaluated since the change would continue to comply with the current BVPS Unit 1 and Unit 2 licensing basis as it relates to the dose limits of GDC 19 and 10 CFR Part 100.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed license amendment to the primary coolant specific activity limit does not change the way the RCS is operated. The proposed changes only involve changes to the primary coolant specific activity limit where continued power operation may occur. This reduced limit is conservative and does not alter the RCS or steam generators' ability to perform their design bases [functions].

GL 95–05 states that any reduction of RCS specific activity less than 0.35 μCi/gram Dose Equivalent I–131 requires an evaluation of release rate data. This evaluation shows that BVPS Unit 1 RCS Dose Equivalent I–131 data fully supports lowering the Technical Specification RCS specific activity limit to 0.20 μCi/gram without compromising the Standard Review Plan assumption of a post-event iodine spike factor of 500.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated accident since the RCS and steam generator will continue to operate in accordance with their design bases.

3. Does the change involve a significant reduction in a margin of safety?

The proposed amendment does not involve revisions to any safety limits or safety system setting that would adversely impact plant safety. The proposed amendment does not adversely affect the ability of systems, structures or components important to the mitigation and control of design bases accident conditions within the facility. In addition, the proposed amendment does not affect the ability of safety systems to ensure that the facility can be maintained in a shutdown or refueling conditions for extended periods of time.

The proposed license amendment to the primary coolant specific activity limit does not adversely change the way the RCS or steam generators are operated. This modification does not alter these systems' ability to perform their design bases [functions]. The existing safety analyses remain bounding. Therefore, the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for Licensee:* Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Marsha Gamberoni.

*Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida*

*Date of amendment request:* December 4, 2000.

*Description of amendment request:* The proposed license amendment would revise the St. Lucie Unit 1 Updated Safety Analysis Report to reflect the new main steam line break (MSLB) analysis treatment of a hypothesized single failure of a main feedwater isolation valve (MFIV). The new analysis of the MSLB terminates feedwater addition to the faulted steam generator by crediting MFIV closure and tripping the main feedwater (MFW) and condensate pumps.

This proposed change to the Unit 1 licensing bases for the MSLB analysis is required to resolve an existing Generic Letter 91–18 degraded, but operable, condition regarding the postulated peak pressure during an MSLB inside containment. In December 1998 the draft results of a Unit 1 MSLB containment re-analysis indicated an unexpected higher peak containment pressure of 55.9 psig. The Unit 1 containment design pressure is 44 psig. The cause for the higher peak pressure in the re-analyzed MSLB event is that non-conservative assumptions were used in the original analysis of record. When these non-conservatisms were corrected and input to the MSLB licensing bases analysis, the containment peak pressure exceeded the containment design pressure. This condition was reported to the NRC via Licensee Event Report No. 50–335/1998–009.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment changes the licensing bases for the MSLB analysis to credit a trip of the non-safety MFW and condensate pumps as a backup method to terminate feedwater addition should a MFIV fail to close. This activity has no increase in the probability of a MSLB, as no physical changes are being made to the steam generators, main steam piping, and the normal operating temperatures and pressures for the main steam system remain

unchanged. This activity also has no adverse effect on the consequences of an accident because the MSLB containment response is bounded by the new analysis. Main feedwater termination occurs during a postulated MSLB such that the containment design pressure is not exceeded. Although a circuit failure (short) in the MSIS [main steam isolation signal] backup trip of the MFW and condensate pump breakers would result in tripping the running MFW and condensate pumps, this is less probable due to the energized to actuate design than existing postulated failures in the MSIS circuitry that would also lead to a loss of feedwater event. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment changes the licensing bases for the MSLB analysis to credit a trip of the non-safety MFW and condensate pumps as a backup method to terminate feedwater addition should a MFIV fail to close. The physical modifications made to support the installation of the new pneumatic valve operators for the MFIVs and installation of the backup main steam isolation signal (MSIS) trip of the non-safety MFW and condensate pumps conform to all applicable design standards. Failure modes introduced by these changes are bounded by the original design, and no other physical changes were made to the plant. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

This amendment changes the licensing bases for the MSLB inside containment response analysis to credit a trip of the non-safety MFW and condensate pumps as a backup method to terminate feedwater addition should a MFIV fail to close. This differs from the currently licensed analysis that credits the closure of redundant safety related valves for main feedwater termination single failure considerations. However, Sections 6.2.1.4 and 15.1.5 of the Standard Review Plan allows the use of a non-safety backup in response to a failure of safety related components with regards to mitigating the effects of the mass energy release of ruptured secondary piping inside containment. This change to the licensing bases is consistent with the guidance provided in the Standard Review Plan. In addition, a probabilistic safety assessment was performed to evaluate the change in main feedwater isolation reliability between crediting redundant safety related isolation valves or safety related isolation valves and trip of the non-safety MFW and condensate pumps. This assessment concluded that the change in reliability is not risk significant. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida*

*Date of amendment request:* November 28, 2000.

*Description of amendment request:* The proposed license amendment would revise the Updated Final Safety Analysis Report (UFSAR) with a revised post-trip steam line break (SLB) analysis. The design basis for the current analysis of record ensures that no fuel failure will occur for all post-trip SLB cases. The new analysis supports a change to the fuel failure criterion, to limit fuel failure to less than or equal to 2%. The change in allowed fuel failure fraction results in a shutdown margin benefit and provides additional flexibility in the core design. Limits for the physics parameters that most affect the post-trip SLB results will be established on a core-specific basis and included in the Core Operating Limits Report for each cycle. The revised analysis, with the limit of 2% fuel failure, continues to meet the 10 CFR part 100 dose criteria.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revises the post-trip SLB analysis of record to support a fuel failure limit of 2% as compared to the current criterion of no fuel failure. Post-trip SLB is a current design basis event for St. Lucie Unit 2 and is defined in the St. Lucie Unit 2 Updated Final Safety Analysis Report (UFSAR). The revision to the analysis does not impact the event initiator and requires no change to any plant component or system. The plant configuration remains unchanged, and thus the probability of occurrence of previously analyzed accidents is not affected by the proposed change.

Radiological consequences for the return to power (RTP) SLB event for St. Lucie Unit 2 have been calculated to infer the allowed fuel failure fraction from the 2-hour and 8-hour 10 CFR 100 dose limits and are consistent with the results presented in License Amendment 105. Releases were calculated based on fuel that violates Centerline-Melt (CTM) criteria and produces fuel failure limits of 13.5% for inside containment SLB and 3.4% fuel failure for an outside containment SLB.

These fuel failure values represent an upper bound limit corresponding to the 10 CFR 100 dose criteria. A conservative value of 2% fuel failures (from violation of CTM and/or departure nucleate boiling ratio (DNBR) specified acceptable fuel design limits (SAFDL)) will be utilized as a cycle specific limit for post-trip SLB. The peak power density during the post-trip SLB also will be limited to less than or equal to 30 kW/ft. For each fuel cycle core design, these limits will be verified based on the calculated physics data for that cycle.

The limit of 2% fuel failures, in conjunction with the 30 kW/ft on peak power density, ensures a coolable geometry during and subsequent to the post-trip SLB RTP. This fuel failure limit, along with a conservative allowance for DNB propagation failures, remains well below the upper bound limits of 13.5% and 3.4% fuel failure for the inside and the outside containment breaks, respectively, corresponding to the 10 CFR 100 dose criteria.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Use of the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment is merely a revision to the post-trip SLB event analysis, which continues to meet the applicable limits of 10 CFR 100 dose criteria. There is no change to the plant configuration, systems, or components that would create new failure modes. The modes of operation of the plant remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Use of the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment revises the post-trip SLB analysis and supports a change to the fuel failure acceptance criterion. The revised analysis, with the limit of 2% fuel failure, would continue to provide margin to the applicable limits of 10 CFR 100 dose criteria. The proposed change, including any core design variations, will have no adverse impact on other plant safety analysis. The plant operation would continue to remain within all design basis requirements, which would ensure that a safety margin to the

acceptance criteria would continue to remain available during plant operation at all power levels.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida*

*Date of amendment request:* December 6, 2000.

*Description of amendment request:* The proposed license amendments would revise the Turkey Point Units 3 and 4 Technical Specification (TS) Surveillance Requirement (SR) 4.6.1.3.c to allow performance of the required surveillance test of the air lock interlock at an interval of 24 months. Currently, SR 4.6.1.3.c requires the interlocks to be tested at least once every six month, and is, therefore, done with the plant online.

Each containment at Turkey Point has two air locks, commonly named the personnel air lock and the escape hatch. Each air lock has an inner and an outer door. Interlocks prevent both doors in the air lock from being opened at the same time, thereby preserving containment integrity, when required. These interlocks are completely mechanical, and contain no degradable components. Historically, the air lock interlock test frequency was chosen to coincide with that of the overall airlock leakage test. Turkey Point Units 3 and 4 TSs were amended in January 1997, to permit the extension of the overall airlock leakage test frequency up to a maximum of 30 months, based on acceptable test results. The licensee requested revision of SR 4.6.1.3.c. to require testing of the air lock interlock at an interval of 24 months, which would also allow a maximum interval of up to 30 months between tests. Therefore, the proposed amendments would realign the SR frequencies of the air lock interlock test and the overall leakage test with each other. In support of these amendments, the licensee stated that currently the SR test is being performed with the plant online, when the interlocks are required to be operable. If the proposed amendments are granted, the licensee expects to perform the test during refueling outages, when the plant is in a mode in which the interlock is not required to be operable. Also, the licensee stated that the proposed amendments are consistent with the as-low-as-reasonably-achievable principles, because they would preclude performance of the test with the plant online, which involves some risk of dose to workers.

Additionally, the licensee requested to amend TS 3.3.2, Table 3.3–2, Item 1.e, that addresses the requirements for the safety injection signal (SIS) generated by high steamline differential pressure, to change the asterisk following Modes 1, 2, 3, to a pound sign (i.e., #). The licensee stated that the existing asterisk refers to an incorrect note, in that it indicates that the SIS may be blocked below the Tavg—Low Interlock Setpoint, when in fact the Block Permissive for this SIS is pressurizer pressure below 2000 psi. The licensee stated that this is due to a typographical error, and that the change is requested to make the Mode Applicability consistent with the design of the protection logic.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes allow performance of the required surveillance at the same frequency as the performance of the air lock overall leakage surveillance. The proposed relaxation in surveillance frequency will not impact the initiating event for any previously evaluated accident. The correction of the typographical error has no impact on any accident analysis. The proposed changes do not affect any of the assumptions made or methodologies used for any accident analysis. Thus the proposed changes have no impact on any of the accident probabilities or consequences. Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not alter the design, physical configuration, or modes of operation of the plant. No changes are being made to the plant that would introduce any new accident causal mechanisms. The proposed Technical Specification changes do not impact any other plant systems. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes do not change the operation, function, or modes of plant or equipment operation. The proposed changes do not change the level of assurance of containment integrity. Plant processes and training preclude challenges to the air lock interlocks. The correction of the typographical error has no impact on any margin of safety. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota*

*Date of amendment request:* December 5, 2000.

*Description of amendment request:* The proposed amendment would implement programmatic controls for radiological effluent technical specifications (RETS) in the administrative section of the Technical Specifications (TSs) and relocate the procedural details of the RETS to the offsite dose calculation manual (ODCM), the process control program (PCP), or other new programs, consistent with the guidance of Standard TSs (STS) (NUREG–1433) and NRC Generic Letter 89–01.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and alter only the format and location of programmatic controls and procedural details relative to radioactive effluents, radiological environmental monitoring, radioactive source leakage testing, solid radioactive wastes, and associated reporting requirements. Existing TS containing procedural details on radioactive effluents, radiological environmental monitoring, radioactive source leakage testing, explosive gas monitoring, storage tank radioactive content limits, solid radioactive wastes and associated reporting requirements are being relocated to the ODCM, PCP or other new programs as appropriate. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions or assumptions in any of the previous accident analyses. Since the previous accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes.

Therefore, the probability or consequences of an accident previously evaluated are not affected by any of the proposed amendments.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any effluents released offsite.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any actual change in the methodology used in the control of radioactive effluents, radioactive sources, solid radioactive wastes, or radiological environmental monitoring. These changes are considered administrative in nature and provide for the relocation of procedural details outside of the technical specifications but add appropriate administrative controls to provide continued assurance of compliance to applicable regulatory requirements. These proposed changes also comply with the guidance contained in Generic Letter 89–01 and the STS.

Therefore, it can be concluded a significant reduction in the margin of safety would not be involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

*NRC Section Chief:* Claudia M. Craig.

*Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota*

*Date of amendment request:* January 10, 2001.

*Description of amendment request:* The proposed amendment would remove the standby liquid control pump flow surveillance requirement to recycle demineralized water to the test tank and change the testing frequency from monthly to quarterly.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only significant consequence of these changes compared to present plant operation will be to change the test frequency of the MNGP [Monticello Nuclear Generating Plant] SLC [standby liquid control] pump capacity test to quarterly, which has been previously reviewed and approved by the NRC staff for similar boiling water reactors (BWRs). There are no changes to equipment performance or postulated failure modes. The change does not affect the assumptions or methods of accident mitigation previously evaluated. The proposed amendment will have no impact on the probability or consequences of an accident.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The only significant consequence of these changes compared to present plant operation will be to change the test frequency of the MNGP SLC capacity flow test to quarterly, which has been previously reviewed and approved by the NRC staff for similar BWRs. The change does not affect or introduce any new plant operating modes. The changes do not alter any existing system interaction and do not introduce any new failure modes. The proposed amendment will not create the possibility for any new or different accidents for those previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The only significant consequence of these changes compared to present plant operation will be to change the test frequency of the MNGP SLC pump capacity test to quarterly, which has been previously reviewed and approved by the NRC staff for similar BWRs. There is no change in the reliability or performance of the SLC system. Other surveillance requirements assure that SLC hydraulic conditions will not degrade between quarterly surveillances. The proposed changes have no effect on the mitigation of any postulated accident or event at MNGP. The proposed Technical Specification changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

*NRC Section Chief:* Claudia M. Craig.

*Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of amendment request:* November 20, 2000.

*Description of amendment request:* The proposed amendments will implement changes to the Technical Specifications to increase the allowable deviation in individual rod position indication (IRPI). The portion of this amendment that pertains to control rod misalignment above 85 percent as a function of peaking factors will be reviewed by the NRC staff as a separate action.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

Based on the analyses documented in WCAP–15432, Revision 1, all pertinent licensing-basis acceptance criteria have been met and the margin of safety, as defined in the Technical Specification Bases, is not significantly reduced in any of the Point Beach licensing basis accident analyses based on the subject change. Therefore, the probability of an accident previously evaluated has not significantly increased. Because design limitations continue to be met and the integrity of the reactor coolant

system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. Neither rod position indication nor the limits on allowed rod position deviation is an accident initiator or precursor. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

Based on the analyses documented in WCAP–15432, Revision 1, all pertinent licensing-basis acceptance criteria have been met and the margin of safety, as defined in the Technical Specification Bases, is not significantly reduced in any of the Point Beach licensing basis accident analyses based on the subject change.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The changes described in the amendment are supported by the analyses and evaluations described in Attachment 2 of this letter (safety evaluation) [licensee's application dated November 20, 2000]. The evaluation of the effects of the proposed changes indicate that all design standards and applicable safety criteria limits are met. These changes therefore do not cause the initiation of any new or different accident nor create any new failure mechanisms.

All equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

Based on the analyses documented in WCAP–15432, Revision 1, all pertinent licensing-basis acceptance criteria have been met and the margin of safety, as defined in the Technical Specification Bases, is not significantly reduced in any of the Point Beach licensing basis accident analyses based on the subject changes to safety analyses input parameter values. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. Since the safety evaluation in Attachment 2 of this letter [licensee's application dated November 20, 2000] demonstrates that all applicable acceptance criteria continue to be met, the subject operating conditions will not involve a significant reduction in a margin of safety at Point Beach.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Claudia M. Craig.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* December 20, 2000.

*Description of amendment request:* The proposed changes would revise the Technical Specifications and Technical Requirements Manual requirements applicable when actions direct suspension of operations involving positive reactivity changes, by removing the requirement not to make positive reactivity changes during certain plant conditions, and by limiting the amount of reactivity changes that are allowed to those that will continue to assure appropriate reactivity limits are met. Related changes to the Bases are also proposed. In addition, an administrative change is also proposed to remove a footnote that allowed an alternate onsite emergency power source to be substituted for one of the required diesel generators for 21 consecutive days for refueling outages 1RE05 and 2RE04 only.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed activities to be allowed during certain operating conditions are permitted at other times during routine operating conditions. The changes do not affect the limits on reactivity that are specified in other specifications. The proposed changes do not reduce restrictions on addition or flowpaths of unborated water that are in the existing specifications. The proposed change does not affect the limits on reactivity that are credited in the safety analysis. Therefore, no increase in the probability or consequences of any accident previously evaluated will occur.

In addition to the changes proposed to controls over reactivity changes, an administrative change is proposed to remove a footnote that is no longer applicable to the facility. Since the footnote no longer has meaning or relevance to the operation of the facility, its removal does not increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes merely permit the conduct of normal operating evolutions during limited periods when additional controls over reactivity margin are imposed by the Technical Specifications. The proposed change does not introduce any new equipment into the plant or significantly alter the manner in which existing equipment will be operated. The changes to operating allowances are minor and are only applicable during certain conditions. The operating allowances are consistent with those acceptable at other times. Since the proposed changes only allow activities that are presently approved and routinely conducted, no possibility exists for a new or different kind of accident from those previously evaluated.

In addition to the changes proposed to controls over reactivity changes, an administrative change is proposed to remove a footnote that is no longer applicable to the facility. Since the footnote no longer has meaning or relevance to the operation of the facility, its removal cannot create the possibility of a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety because the ability to make the reactor subcritical and maintain it subcritical during all operating conditions and modes of operation will be maintained. The margin of safety is defined by the shutdown margin limits and the refueling boron concentration limit. The proposed changes do not affect these operating restrictions and the margin of safety which assures the ability to make and maintain the reactor subcritical is not affected.

In addition to the changes proposed to controls over reactivity changes, an administrative change is proposed to remove a footnote that is no longer applicable to the facility. Since the footnote no longer has meaning or relevance to the operation of the facility, its removal cannot result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Attorney for licensee:* Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

*NRC Section Chief:* Robert A. Gramm.

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama*

*Date of amendment request:* October 6, 2000.

*Description of amendment request:* The proposed amendment would revise each of the three units' Technical Specifications (TS) to provide action requirements and completion times for use under plant conditions involving one inoperable low pressure coolant injection (LPCI) pump in each of the two emergency core cooling system (ECCS) divisions. The new requirements are consistent with those currently specified for use under conditions of two inoperable LPCI pumps in the same ECCS division.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LPCI system consists of two independent LPCI subsystems. Each of the two LPCI subsystems has two LPCI pumps. The current TS Limiting Conditions for Operation are based on ECCS analyses that postulate the failure of one entire subsystem. New analyses have been performed that postulate the failure of one LPCI pump in each subsystem (i.e., both subsystems operating at reduced capacity). The new analyses show that the total ECCS flow capacity provided by the entire LPCI system is greater when operating under the newly-analyzed conditions than for the previously analyzed conditions. Thus, the action requirements and completion times associated with inoperability of two LPCI pumps in on the same LPCI subsystem may be applied in cases when one LPCI pump is inoperable in each LPCI subsystem. Since ECCS performance is not adversely affected, there is no increase in the probability or consequences of any analyzed accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment or require any existing equipment to be operated in a manner different from the present design. The proposed change will not impose any new or eliminate any existing requirements.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no adverse effect on any safety analyses assumptions. The proposed new Conditions involving one inoperable LPCI pump in each LPCI injection subsystem represent more reliable configurations than the existing LCOs which apply for two inoperable LPCI pumps in one ECCS subsystem.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* January 22, 2001 (TS 00–01).

*Brief description of amendments:* The proposed amendments would change the Sequoyah Nuclear Plant Technical Specification surveillance requirements for assuring against ice condenser flow blockage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a loss-of-coolant accident (LOCA) and a high energy line break (HELB) inside containment. However, the ice condenser is not postulated as being the initiator of any LOCA or HELB. This is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the reactor coolant or main steam systems.

Neither the TS [Technical Specification] amendment nor the TS Bases changes can increase the probability of occurrence of any analyzed accident because they are not the result or cause of any physical modification to ice condenser structures, and for the current design of the ice condenser, there is no correlation between any credible failure of it and the initiation of any previously analyzed event.

Regarding the consequences of analyzed accidents, the ice condenser is an engineered safety feature designed, in part, to limit the containment subcompartment and steel containment vessel pressures immediately following the initiation of a LOCA or HELB. Conservative subcompartment pressure analysis shows this criteria will be met if the reduction in the flow area per bay provided for ice condenser air and or steam flow channels is less than or equal to 15 percent, or if the total flow area blocked within each lumped analysis section is less than or equal to the 15 percent as assumed in the safety analysis.

The proposed amendment also revises the flow area verification surveillance frequency from at least once per 12 months to at least once per 18 months such that it will coincide with refueling outages. Management of ice condenser maintenance activities has successfully limited activities, with the potential for significant flow channel degradation, to the refueling outage. Verifying an ice bed is left with less than or equal to 15 percent flow channel blockage at the conclusion of a refueling outage assures the ice bed will remain in an acceptable condition for the duration of the operating cycle. During the operating cycle, a certain amount of ice sublimates and reforms as frost on the colder surfaces in the ice condenser. However, frost does not degrade the flow channel flow area. The surveillance will effectively demonstrate operability for an allowed 18-month surveillance period. Therefore, increasing the surveillance interval does not affect the ice condenser operation or accident response. Limiting ice bed flow channel blockage to less than or equal to 15 percent ensures operation is consistent with the assumptions of the DBA analyses. Thus, the proposed amendment for flow blockage determination provides the necessary assurance that flow channel requirements are met without additional evaluations and thus will not increase the consequences of a LOCA or HELB.

In regard to [the] TS 3.6.5.3 Bases change, clarifying the action entry of Action b to not apply when personnel are standing on or opening doors for a short duration to perform surveillances or minor maintenance activities, such as ice removal, does not increase analyzed accident consequences. These are not new or additional actions compared to those performed previously, the probability of an accident versus the time to perform these actions is small, the number of personnel involved is small, and their duration is generally much less than the four-hour frequency of required Action b (monitor maximum ice condenser temperature). Therefore, these activities do not adversely affect ice bed sublimation, melting, or ice condenser flow channels. However, if during these activities any door is determined to be restrained, not fully closed from a previous activity, or otherwise not operable, then separate entry into Action b is required.

Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Because the TS and [TS] Bases changes do not involve any physical changes to the ice condenser, or make any changes in the operational or maintenance aspects of the ice condenser as required by the TSs, there can be no new accidents created from those already identified and evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

Design basis accident analysis have shown that with 85 percent of the total flow area available (uniformly distributed), the ice condenser will perform its intended function. Thus, the safety limit for ice condenser operability is a maximum 15 percent blockage of flow channels. Surveillance Requirement (SR) 4.6.5.1 currently applies the 15 percent flow blockage criteria to the total flow area of each bay which includes flow passages between the ice baskets, past lattice frames, through intermediate and top deck floor grating, or past lower plenum support structures and turning vanes. This application of the criteria does not have direct correlation to the safety limit for blockage of ice condenser flow channels (those areas that comprise the area between ice baskets, and past lattice frames and wall panels). Changing the TS to implement a surveillance program that uses acceptance criteria consistent with the transient mass distribution (TMD) analysis will not reduce the margin of safety.

Additionally, verifying an ice bed is left with less than or equal to 15 percent flow channel blockage at the end of a refueling outage assures the ice bed will remain in an acceptable condition for the duration of the operating cycle. During the operating cycle, a certain amount of ice sublimates and reforms as frost on the colder surfaces in the ice condenser. However, frost has been determined to not degrade the flow channel flow area. Thus, design limits for the continued safe function of containment subcompartment walls and the steel containment vessel are not exceeded due to this change.

The change made to TS 3.6.5.3 Bases does not affect the margin of safety as defined in any TS as it does not involve design specifications or acceptance criteria. This change only adds a clarifying note that entry into Action b is not required solely because of actions (standing on and opening intermediate/upper deck doors) necessary for the performance of required ice condenser surveillances, maintenance, or routine activities. This does not preclude entry into Action b during performance of these activities should an intermediate deck door or upper deck door otherwise be determined inoperable.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* February 28, 2000, as supplemented by letters dated May 12, May 24, June 1 and June 28, 2000.

*Brief description of amendment:* The amendments revise certain license conditions to reflect the change in ownership interest from PECO to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 137.

*Facility Operating License No. NPF–62:* The amendment revised the License.

*Date of initial notice in* ***Federal Register:*** April 11, 2000 ( 65 FR 19396). The May 12, May 24, June 1, and June 28, 2000, supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* October 6, 2000 (U–603332).

*Brief description of amendment:* The amendment removes from the Technical Specification surveillance requirements the minimum operating time specified for the containment/drywell hydrogen mixing system.

*Date of issuance:* January 25, 2001.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 138.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** November 29, 2000 (65 FR 71132) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 2001.

No significant hazards consideration comments recieved: No.

*AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of application for amendment:* December 1, 1999, as supplemented on September 15, 2000.

*Brief description of amendment:* The proposed amendment revised the Technical Specifications to change the standard by which you test charcoal used in engineered safeguards features systems to American Society for Testing and Materials D3803–1989. These revisions are made in accordance with Generic Letter 99–02.

*Date of Issuance:* January 24, 2001.

*Effective date:* January 24, 2001 and shall be implemented within 30 days of issuance.

*Amendment No.:* 219.

*Facility Operating License No. DPR–16:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 17, 2000 (65 FR 31357)

The September 15, 2000, letter provided clarifying information within the scope of the original application and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 24, 2001.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois*

*Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois*

*Date of application for amendments:* December 20, 1999, as supplemented on January 14, March 10, March 23, March 29, and June 16, 2000.

*Brief description of amendments:* The amendments revise the licenses and technical specifications to reflect the transfer of the licenses from Commonwealth Edison Company to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* Immediately to be implemented within 30 days.

*Amendment Nos.:* 109 & 115.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Licenses and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12583) and (65 FR 12584). The March 10, March 23, March 29, and June 16, 2000, supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–10, 50–237, and 50–249, Dresden Nuclear Power Station, Units 1, 2, and 3, Grundy County, Illinois*

*Date of application for amendments:* December 20, 1999, as supplemented January 14, March 10, March 23, March 29, and June 16 2000.

*Brief description of amendments:* The amendments revise the licenses to reflect the transfer of the licenses from Commonwealth Edison Company to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 40, 183, and 178.

*Facility Operating License Nos. DPR–2, DPR–19 and DPR–25:* The amendments revised the Licenses to reflect the transfer of the licenses from Commonwealth Edison Company to Exelon Generation Company, LLC.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12582).

The March 10, March 23, March 29 and June 16, 2000 letters are within the scope of the original notice and did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No

*Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of application for amendments:* December 20, 1999, as supplemented January 14, March 10, March 23, March 29, and June 16, 2000.

*Brief description of amendments:* The amendments revise the licenses and technical specifications to reflect the transfer of the license from Commonwealth Edison Company to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* Immediately to be implemented within 30 days.

*Amendment Nos.:* 146 and 132.

*Facility Operating License Nos. NPF–11 and NPF–18:* The amendments revised the Licenses and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12585). The March 10, March 23, March 29, and June 16, 2000, supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Date of application for amendments:* December 20, 1999, as supplemented January 14, March 10, March 23, March 29, and June 16, 2000.

*Brief description of amendments:* The amendments revise the license to reflect the transfer of the license from Commonwealth Edison Company to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* January 12, 2001.

*Amendment Nos.:* 197 and 193.

*Facility Operating License Nos. DPR–29 and DPR–30:* The amendments revised the Licenses.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12581). The March 10, March 23, March 29, and June 16, 2000, supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois*

*Date of application for amendments:* December 20, 1999, as supplemented January 14, March 10, March 23, March 29, and June 16, 2000.

*Brief description of amendments:* The amendments revised the operating licenses to reflect the transfer of the licenses from Commonwealth Edison Company to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* January 12, 2001, to be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 181 and 168.

*Facility Operating License Nos. DPR–39 and DPR–48:* The amendments revised the Operating Licenses.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12586).

The March 10, March 23, March 29, and June 16, 2000, supplemental letters provided additional clarifying information and did not change the staff's original no significant hazard consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida*

*Date of application for amendment:* November 17, 1999, as supplemented June 14, November 13 and December 4, 2000.

*Brief description of amendment:* Increased the allowed outage time to restore an inoperable emergency diesel generator set to operable status from 72 hours to 14 days.

*Date of Issuance:* January 19, 2001.

*Effective Date:* January 19, 2001.

*Amendment No.:* 170.

*Facility Operating License No. NPF–16:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 15, 1999 (65 FR 70089). The June 14, November 13, and December 4, 2000, supplements did not affect the original proposed no significant hazards determination, or expand the scope of the request as noticed in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 2001.

No significant hazards consideration comments received: No.

*Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida*

*Date of application for amendment:* July 19, 2000.

*Brief description of amendment:* Revised the license: (1) to implement Siemens Power Corporation (SPC) high thermal performance fuel assembly design in Cycle 17, (2) relocate shutdown margin requirements in Modes 1 to 5 to the Core Operating Limits Report (COLR), (3) update the COLR methodologies listed in the Technical Specification (TS) Section 6.9.1.11, and (4) request relief from the SPC fuel assembly reconstitution restrictions for peripheral low power fuel assemblies. Additionally, administrative changes were made to the boron concentration specifications related to the boration requirements.

*Date of Issuance:* January 25, 2001.

*Effective Date:* January 25, 2001.

*Amendment No.:* 171.

*Facility Operating License No. DPR–67:* Amendment revised the TSs.

*Date of initial notice in* ***Federal Register:*** August 9, 2000 (65 FR 48748).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 2001.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* April 19, 2000.

*Brief description of amendment:* The amendment changes Technical Specifications (TS) 3.8.4.1, ''Electrical Power System—Containment Penetration Conductor Overcurrent Protective Devices;'' 3.8.4.2.1, ''Electrical Power Systems—Motor-Operated Valves Thermal Overload Protections;'' and 3.8.4.2.2, ''Electrical Power Systems—Motor-Operated Valves Thermal Overload Protection Not Bypassed.'' The proposed changes would relocate the requirements for containment penetration conductor overcurrent and motor-operated valve thermal overload protective devices from the TS to the licensee's Technical Requirements Manual (TRM). The Bases for these TSs would also be relocated to the TRM.

*Date of issuance:* January 16, 2001.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 192.

*Facility Operating License No. NPF–49:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 23, 2000 (65 FR 51360).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2001.

No significant hazards consideration comments received: No.

*Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa*

*Date of application for amendment:* September 19, 2000.

*Brief description of amendment:* The amendment revises the Standby Liquid Control boron solution requirements in TS Figure 3.1.7–1 to ensure a minimum boron concentration of 660 parts per million in the reactor.

*Date of issuance:* January 23, 2001.

*Effective date:* As of the date of issuance and shall be implemented before entering Mode 2 during Cycle 18.

*Amendment No.:* 236.

*Facility Operating License No. DPR–49:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** November 1, 2000 (65 FR 65343).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 2001.

No significant hazards consideration comments received: No.

*PECO Energy Company, Docket No. 50–353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania*

*Date of application for amendment:* October 14, 1999, as supplemented February 11, September 22, and October 18, 2000.

*Brief description of amendment:* This amendment revised TS Section 2.2, ''Safety Limits and Limiting Safety Systems Settings,'' and TS Section 3.0/4.0, ''Limiting Conditions for Operation and Surveillance Requirements.'' These revisions will support the installation of LGS Modification P00224 for Unit 2, which will install a Power Range Neutron Monitoring System and incorporate long-term thermal-hydraulic stability solution hardware.

*Date of issuance:* January 16, 2001.

*Effective date:* As of date of issuance and shall be implemented during the Limerick Unit 2 refueling outage scheduled to begin in the spring of 2001.

*Amendment No.:* 109.

*Facility Operating License No. NPF–85.* This amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 1, 1999 (64 FR 67337). The February 11, September 22, and October 18, 2000, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 2001.

No significant hazards consideration comments received: No.

*PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of application for amendments:* December 20, 1999, as supplemented January 3, February 14, March 10, March 23, March 30, and June 15, 2000.

*Brief description of amendments:* The amendments revised the licenses for Limerick Units 1 and 2 to reflect the transfer of PECO's ownership of these units to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* As of date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 147 and 108.

*Facility Operating License Nos. NPF–39 and NPF–85.* The amendments revised the license.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12587).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* December 20, 1999, as supplemented December 22, 1999, January 3, February 14, March 10, March 23, March 30, and June 15, 2000.

*Brief description of amendments:* The amendments revise the licenses to reflect the transfer of PECO Energy Company's ownership interest in the Salem Nuclear Generating Station, Unit Nos. 1 and 2, to Exelon Generation Company, LLC.

*Date of issuance:* January 12, 2001.

*Effective date:* January 12, 2001.

*Amendment Nos.:* 241 & 222.

*Facility Operating License Nos. DPR–70 and DPR–75:* The amendments revised the Facility Operating Licenses.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12591). The December 22, 1999, January 3, February 14, March 10, March 23, March 30, and June 15, 2000, supplements did not expand the scope of the original application with respect to both the proposed transfer action and the proposed amendment action as initially noticed in the **Federal Register**. No hearing requests or comments were received. In addition, the submittal did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 3, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama*

*Date of application for amendments:* October 30, 2000.

*Brief description of amendments:* The amendments revised main steam isolation valve surveillance testing requirements. Specifically, the amendments permit use of the minimum pathway leakage value for the ''as-found'' test limit.

*Date of issuance:* January 24, 2001.

*Effective date:* January 24, 2001.

*Amendment Nos.:* 267 and 227.

*Facility Operating License Nos. DPR–52 and DPR–68:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** November 29, 2000.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 2001.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of application for amendment:* June 7, 2000, as supplemented June 23, August 24, September 26, October 6, October 27 and November 16, 2000.

*Brief description of amendment:* The amendment changes the Facility Operating License (FOL) and the Technical Specifications (TS) to reflect an increase in the full core power rating from 3411 to 3459 megawatts thermal.

*Date of issuance:* January 19, 2001.

*Effective date:* January 19, 2001.

*Amendment No.:* 31.

*Facility Operating License No. NPF–90:* Amendment revises the FOL and TS.

*Date of initial notice in* ***Federal Register:*** September 7, 2000 (65 FR 54322).

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated November 21, 2000 and in a Safety Evaluation dated January 19, 2001.

No significant hazards consideration comments received: No.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of application for amendment:* October 25, 2000.

*Brief description of amendment:* The amendment makes editorial and administrative changes to the Technical Specifications (TSs). These changes correct spelling and grammatical errors, correct references, eliminate excessive detail related to specifying a job title, revise position titles, consolidate pages and generalize statements allowing U.S. Nuclear Regulatory Commission (NRC) approved alternatives to specified requirements.

*Date of Issuance:* January 23, 2001.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 196.

*Facility Operating License No. DPR–28:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** November 29, 2000 (65 FR 71140).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 23, 2001.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 31st day of January 2001.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–3028 Filed 2–6–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Consolidated Guidance About Materials Licenses: Guidance About Administrative Licensing Procedures

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of Availability of final NUREG.

**SUMMARY:** The NRC is announcing the availability of the final NUREG–1556, Volume 20, ''Consolidated Guidance about Materials Licenses: Guidance about Administrative Licensing Procedures,'' dated December 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This final NUREG report is the 20th guidance document developed for the new process.

This guidance is intended for use by the NRC staff, and will also be available to Agreement States, applicants, and licensees. This document combines and updates the guidance for NRC license reviewers and licensing assistants previously found in the documents listed in Appendix A of the NUREG. NRC licensing staff will use these administrative procedures to process license applications and prepare licenses.

A free single copy of final NUREG–1556, Volume 20, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–F–31, Washington, DC. 20555–0001. Alternatively, submit requests through the Internet by

addressing electronic mail to cxb@nrc.gov. A copy of final NUREG–1556, Volume 20, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room 01–F21, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION, CONTACT:** Mrs. Carrie Brown, TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

**Electronic Access**

Final NUREG–1556, Vol. 20 is available electronically by visiting the NRC's Home Page (*http://www.nrc.gov/nrc/nucmat.html*).

Dated at Rockville, Maryland, this 31st day of January, 2001.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 01–3134 Filed 2–6–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Licenses Authorizing Distribution to General Licensees

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of availability of final NUREG.

**SUMMARY:** The NRC is announcing the availability of the final NUREG–1556, Volume 16, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees,'' dated December 2000.

The NRC is using Business Process Redesign techniques to redesign its material licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This final NUREG report is the sixteenth program-specific guidance developed to support an improved materials licensing process.

This final NUREG has been developed in parallel with the final rulemaking on 10 CFR parts 30, 31, 32, 170, and 171, ''Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material.'' The final rule was published in the **Federal Register** on December 18, 2000 (65 FR 79161). This guidance is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel.

A free single copy of final NUREG–1556, Volume 16, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to *cxb@nrc.gov*. A copy of the final NUREG–1556, Volume 16, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room 01–F21, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION, CONTACT:** Mrs. Carrie Brown, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8092; electronic mail address: *cxb@nrc.gov*.

**Electronic Access**

Final NUREG–1556, Vol. 16 is available electronically by visiting NRC's Home Page (*http://www.nrc.gov/NRC/nucmat.html*).

Dated at Rockville, Maryland, this 31st day of January, 2001.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 01–3135 Filed 2–6–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Possession Licenses for Manufacturing and Distribution

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of Availability of final NUREG.

**SUMMARY:** The NRC is announcing the availability of the final NUREG–1556, Volume 12, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Possession Licenses for Manufacturing and Distribution,'' dated December 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This final NUREG report is the 12th program-specific guidance developed to support an improved materials licensing process.

This guidance is intended for use by applicants, licensees, and the NRC staff, and will also be available to Agreement States. This document combines and updates the guidance found in Regulatory Guide 10.7, ''Guide for the Preparation of Applications for Licenses for Laboratory and Industrial Use of Small Quantities of Byproduct Material,'' dated August 1979; Nuclear Material Safety and Safeguards (NMSS) Policy and Guidance Directive FC 84–1, ''Review Responsibility—Manufacturing and Distribution of Products to Persons Exempt Pursuant to 10 CFR 32.11 through 32.26,'' dated April 1984; NMSS Policy and Guidance Directive FC 85–6, ''Standard Review Plan for Applications for Licenses and Approvals to Authorize Distribution of Various Items to Group Medical Licensees,'' dated February 1985; and Draft Regulatory Guide DG–0007, ''Guide for the Preparation of Applications for Licenses to Authorize Distribution of Various Items to Commercial Nuclear Pharmacies and Medical Use Licensees,'' dated March 1997. This final report takes a more risk-informed, performance-based approach to licensing possession for manufacturing and distribution, and reduces the amount of detailed information needed to support an application.

A free single copy of final NUREG–1556, Volume 12, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to *cxb@nrc.gov*. A copy of final NUREG–1556, Volume 12, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room 01–F21, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION, CONTACT:** Mrs. Carrie Brown, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, telephone (301) 415–8092; electronic mail address: *cxb@nrc.gov*.

**Electronic Access**

Final NUREG–1556, Vol. 12 is available electronically by visiting the NRC's Home Page (*http://www.nrc.gov/nrc/nucmat.html).*

Dated at Rockville, Maryland, this 31st day of January, 2001.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 01–3136 Filed 2–6–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Master Materials Licenses

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of availability of final NUREG.

**SUMMARY:** The NRC is announcing the availability of the final NUREG–1556, Volume 10, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance about Master Materials Licenses,'' dated December 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This final NUREG report is the 10th program-specific guidance developed to support an improved materials licensing process.

This guidance is intended for use by Federal applicants and licensees, and NRC staff. This document updates the guidance for applicants and licensees previously found in Policy and Guidance Directive PG 6–02, Revision 1: ''Standard Review Plan (SRP) for License Application for Master Material License,'' dated September 25, 1997.

A free single copy of final NUREG–1556, Volume 10, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to *cxb@nrc.gov*. A copy of the final NUREG–1556, Volume 10, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room 01–F21, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION, CONTACT:** Mrs. Carrie Brown, TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8092; electronic mail address: *cxb@nrc.gov*.

**Electronic Access**

Final NUREG–1556, Volume 10, is available electronically by visiting the NRC's Home Page (*http://www.nrc.gov/nrc/nucmat.html*).

Dated at Rockville, Maryland, this 31st day of January, 2001.

For the Nuclear Regulatory Commission.

**Patricia K. Holahan,**

*Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 01–3137 Filed 2–6–01; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43913; File No. SR–NASD–00–76]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Locked and Crossed Markets That Occur at or Prior to the Market's Open and the Market's Close

January 31, 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 5, 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 (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 22, 2001, the NASD, through Nasdaq, filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to amend the provisions of NASD Rule 4613(e) regarding locked and crossed market conditions that occur prior to the market's opening and to add provisions relating to locked and crossed markets that occur prior to the market's close. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

**4613. Character of Quotations**

(a)–(d) No Change.

(e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) No Change.

(B) No Change.

(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening *And Prior to Market Closing*

(i) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a market maker that is a party to a lock/cross because the market maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker (''party to a lock/cross'') may, beginning at 9:20 a.m. Eastern Time, send through Nasdaq's SelectNet system (or its successor system) a message of any size that is at the receiving market maker's quoted price (''Trade-or-Move Message''). [Any market maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.]

(ii) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.—[If] *Before* a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Sapna C. Patel, Attorney, Division of Market Regulation (''Division''), Commission, dated January 19, 2001 (''Amendment No. 1''). In Amendment No. 1, the Nasdaq made a minor technical correction to the rule text.

market maker *enters a quote that would* lock[s] or cross[es] the market between 9:20 and 9:29:59 a.m. Eastern Time, the market maker must [immediately] *first* send through SelectNet to the market maker whose quote[s] it [is] *would* lock[ing] or cross[ing] a Trade-or-Move *Message* [a message] that is at the receiving market maker's quoted price and that is for at least [5,000] *10,000* shares ([in instances where there are] *if* multiple market makers [to a] *would be* locke*d*/crosse*d, each one must receive a Trade-or-Move Message* [the locking/crossing market maker must send a message to each party to the lock/cross] and the aggregate size of all such messages must be at least [5,000] *10,000* shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Message9s) in an amount equal to the agency order, even if that order is less than [5,000] *10,000* shares. *A market maker that sends a Trade-or-Move Message during these periods must then wait at least 15 seconds before entering a quote that would lock or cross the market.* [A market maker that receives a Trade-or-Move Message during this period and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.]

*(iii) Locked/Crossed Market Between 3:50 and 3:59:59 p.m.—Before a market maker enters a quote that would lock or cross the market between 3:50 and 3:59:59 p.m. Eastern Time, the market maker must first send through SelectNet to the market maker whose quote it would lock or cross, a Trade-or-Move Message that is at the receiving market maker's quoted price and that is for at least 10,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Message and the aggregate size of all such messages must be at least 10,000 shares); provided, however, that if a market participant is representing an agency order (as defined in subparagraph (vi) of this rule), the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 10,000 shares. A market maker that sends a Trade-or-Move Message during this period must then wait at least 15 seconds before entering a quote that would lock or cross the market.*

(iv) *A market maker that receives a Trade-or-Move Message must, within 15 seconds of receiving such message, either fill the incoming Trade-or-Move Message for the full size of the message, or, consistent with its Firm Quote obligations, move its bid down (offer up) by a quotation increment that restores or maintains an unlocked/uncrossed market.*

[(iii)] *(v)* A market maker that sends a Trade-or-Move Message pursuant to subparagraphs (e)(1)(C)(i), *(ii), or (iii)* [or (e)(1)(C)(ii)] of this rule must append to the message a Nasdaq-provided symbol indicating that it is a Trade-or-Move Message.

[(iv)] *(vi)* For the purposes of this rule ''agency order'' shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an ''institutional account'' as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.

(2)–(3) No Change.

* * * * *

## 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.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq is proposing amendments to NASD Rule 4613(e) that would alter the obligations of market makers regarding locked and crossed markets that occur prior to the market's open and also prior to the market's close. Specifically, the proposal would: (1) Extend the application of NASD Rule 4613(1)(C)(ii) regarding locked/crossed markets before the market's open to the period just prior to the market's close as well; (2) require market makers that send a Trade-or-Move Message do so at least 15 seconds before entering a locking/crossing quote rather than after entering a locking/crossing quote, as the rule currently requires; (3) increase from 5,000 to 10,000 the minimum number of shares that accompany a non-agency Trade-or-Move Message; and (4) reduce from 30 seconds to 15 seconds the amount of time within which the recipient of a Trade-or-Move Message must properly respond.

a. *Background.* On February 7, 2000, the Commission approved changes to NASD Rule 4613(e)[4] that altered the obligations of market participants who enter locking/crossing quotations during the pre-market opening period.[5] Under the NASD Rule 4613(e), a market participant that locks/crosses the market between 9:20 a.m. and 9:29:59 a.m. is then required to send a message(s), which has a ''Trade-or-Move'' designator (''Trade-or-Move Message''), to the parties it is locking/crossing. The Trade-or-Move modifier allows market participants to distinguish a Trade-or-Move Message (to which a receiving market maker is obligated to respond) from other pre-opening messages it may receive.

Currently, under NASD Rule 4613(e), the aggregate size of the Trade-or-Move Message must be at least 5,000 shares (*i.e.*, the market participant must send a total of 5,000 shares to all parties it is locking/crossing) in the case of a proprietary quote, or the actual size of an agency order if that is the basis for the locking/crossing quote. NASD Rule 4613(e) further provides that a party that receives a Trade-or-Move Message must, within 30 seconds, either: (1) Trade in full with the incoming Trade-or-Move Message,[6] (2) decline to trade with the incoming Trade-or-Move Message and move its quotation to a price level that unlocks or uncrosses the market; or (3) trade with a portion of the incoming Trade-or-Move Message and move its quotation to a level that unlocks or uncrosses the market. In essence, NASD Rule 4613(e) prohibits market participants from locking/crossing the

[4] *See* Securities Exchange Act Release No. 42400 (February 7, 2000), 65 FR 7407 (February 14, 2000) (order approving File No. SR–NASD–99–23). On June 2, 2000, the Commission approved changes to NASD Rule 4613(e) relating to the allegations of market participants representing agency orders who enter locking/crossing quotations. *See* Securities Exchange Act Release No. 42896 (June 2, 2000), 65 FR 36747 (June 9, 2000) (order approving File No. SR–NASD–00–18).

[5] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

[6] The recipient of a Trade-or-Move Message that trades in full with the Trade-or-Move Message may move its quotation, but is not obligated to do so.

market during the 10 minutes before the opening, unless the party is willing to commit a significant number of shares.

Currently, unlike a market participant that actively locks or crosses the market after 9:20 a.m., a market participant that locks or crosses the market prior to 9:20 a.m. is not obligated to send a Trade-or-Move Message for a specific number of shares to all parties to the lock or cross.[7] This distinction is necessary because market participants often do not actively monitor their quotations prior to 9:20 a.m., and, as a result, it is often difficult to determine which party actively locked or crossed the market prior to 9:20 a.m. For this reason, the obligations and rights of the parties to the lock or cross do not begin until 9:20 a.m.

b. *Rule Changes.* The implementation of the Trade-or-Move Message has substantially reduced the occurrence of locked/crossed markets prior to the open. It has, in addition, reduced the duration of locks/crosses that do occur. Although these improvements are encouraging, Nasdaq members have indicated that further improvement can be achieved by further modifying NASD Rule 4613(e). First and foremost, Nasdaq believes that the occurrence of locked/crossed markets prior to the open would be further reduced if market makers were required to send a Trade-or-Move Message before rather than after the lock or cross is entered. By preventing individual locks/crosses from occurring, Nasdaq hopes to further reduce the aggregate time that any market remains locked/crossed.

Accordingly, under the current proposal, market participants would be obligated to send the Trade-or-Move Message before entering a locking or crossing quotation during the applicable periods.[8] Implicit in the sending of a Trade-or-Move Message is the representation by the sender of its determination of the appropriateness of the price sought to be reflected and the intention to enter such quote immediately following the response to the Trade-or-Move Message. Nasdaq will monitor the use of the Trade-or-Move Message by firms with respect to the entry of quotes following the response to the message, to detect any patterns of failure to enter quotations that may be indicative of manipulative conduct.

Specifically, under the proposal, market participants will be required to send a Trade-or-Move Message and then wait 15 seconds *before* entering a quotation that would lock or cross another quote. The market participant receiving the Trade-or-Move Message would be required to respond to the message within 15 seconds, rather than within 30 seconds as currently allowed. The recipient of a Trade-or-Move Message can respond by trading in full and leaving its quote at the same price, trading in part and moving its quote to a price that would not lock or cross the Trade-or-Move price, or decline to trade and move its quote to a price that would not lock or cross the Trade-or-Move price.[9] As is the case today, if a market maker receives a Trade-or-Move Message just prior to the open (*i.e.*, at or after 9:29:45 a.m.), the market maker must trade or move within 15 seconds, even if the end of that 15 seconds occurs after the market's open.[10]

Nasdaq also believes that increasing the economic significance of the Trade-or-Move Message would offset, and even further reduce, any potential for misuse that might arise by permitting market participants to send such messages without having first locked/crossed the market. Accordingly, Nasdaq proposes to increase the minimum size of the Trade-or-Move Message to 10,000 shares from the current 5,000 shares (subject to the agency order exception provided by the current rule). Consequently, when multiple market participants would be locked/crossed, each one must receive a Trade-or-Move Message and the aggregate size of all such messages must equal 10,000 shares (also subject to the agency order exception).

Finally, given the positive effect that Trade-or-Move has had on resolving potential locked and crossed markets at and immediately before the market's opening, Nasdaq proposes to expand its application to include the ten-minute period preceding the market's close (3:50 p.m. to 3:59:59 p.m.). Due to its volatility, this period is well-suited to the application of the Trade-or-Move Message and its related regulatory requirements to minimize the potential for locked or crossed markets. Nasdaq believes that the Trade-or-Move Message will facilitate the entry of quotes that more accurately reflect the current state of the market.

The Trade-or-Move Message used prior to the close would operate in the same manner as is currently proposed for prior to the open, with one exception. Prior to the market's open, the market participant receiving a Trade-or-Move Message has no liability under the NASD's firm quote rule (NASD Rule 4613(b)), or under the SEC's firm quote rule (Rule 11Ac–1 under the Act). Thus, a market maker is permitted to move its quote without trading upon the receipt of what, during market hours, would be a SelectNet ''liability'' order. Prior to the market's close, however, a Trade-or-Move Message will be considered a liability order. Therefore, unlike during the earlier period, a market participant that receives a Trade-or-Move Message prior to the close may move its quote or trade with just a portion of the Trade-or-Move Message only if doing so is consistent with its firm quote obligations under the NASD and SEC rules.[11]

c. *Examples of Rule Operation.* The following are examples of how the proposed rule would work. At 9:21 a.m., MMA plans to lock four market participants—MMB, MMC, MMD and MME—each quoting 1,000 shares at 20. Because the lock occurred after 9:20 a.m., MMA is required to send Trade-or-Move Messages in an aggregate amount of 10,000 shares to these four market makers at least 15 seconds before entering the locking quote. Accordingly, MMA sends a Trade-or-Move Message for 2,500 shares to MMB, who declines and moves (MMB must move at least one increment away from the locking price). MMC receives a 2,500 share order, fills it partially (1,000), and, as required, moves its quote at least one trading increment away from the locking price. MMD receives a message for 2,500 shares, fills the message in full, and then moves down one trading increment below the locking price, although MMD is not obligated to move its quote. MME receives a 2,500-share

[7] However, beginning at 9:20 a.m., any party to a lock/cross may send a Trade-or-Move Message to any other party to the lock/cross. *See* NASD Rule 4613(e)(1)(C)(i).

[8] Market participants will continue to utilize SelectNet to send Trade-or-Move Messages to market participants that would be locked or crossed by the entry of the intended quote. The Trade-or-Move Message will continue to carry the special identifier ''trd or mov'' for ease of recognition and will also continue to constitute a valid offer to buy or sell the number of shares contained in the message that may be accepted by the recipient in whole or in part, subject to the recipient's firm quote obligations.

[9] During market hours, the recipient's ability to decline to trade with the Trade-or-Move Message would be subject to the recipient's firm quote obligations.

[10] If, however, a market maker wishes to enter a locking/crossing quote at or after 9:30:00, the market maker would be required to use reasonable means to avoid locking/crossing the market by, for example, sending a SelectNet message to the party (or parties) it will lock/cross. *See NASD Notice to Members 97–49.*

[11] The proposed changes to NASD Rule 4613(e) are designed to address conditions that exist today in Nasdaq. Nasdaq hopes that the implementation of the Nasdaq National Market Execution System (''NNMS''), currently scheduled for after the full implementation of the decimalization for trading of Nasdaq securities, will further diminish the occurrence and duration of locked and crossed markets in Nasdaq and perhaps obviate the need for this rule. Nasdaq will carefully monitor the operation of NASD Rule 4613(e) in the NNMS and propose any changes necessitated by NNMS.

message, and fills it completely. MME is permitted to remain at her quote, but is not required to do so; like MMD, MME may move down one trading increment below the locking price. If MME remains at her quote, MMA could send another Trade-or-Move Message to MME, who could fill the message in full and remain at her quote, trade with a portion of the message and move her quote, or decline to trade with the message and move her quote.

As a second example, assume that at 9:18 a.m., MMW and MMX are bidding 20, and MMY and MMZ enter offer prices of 19, thus crossing the market. Because it is before 9:20 a.m., no Trade-or-Move Messages may be sent yet. At 9:20 a.m., each of the four market participants would have the right to send Trade-or-Move Messages of any size to either of the two market participants crossing them. Any party not filling such an order in full within 15 seconds would have to move its quote at least one trading increment beyond the crossing price, 19, to restore an unlocked/uncrossed market.

Finally, assume that at 3:51 p.m., MMA plans to lock two market participants—MMB and MMC—each quoting 2,000 shares at 10.[12] Because the lock would occur between 3:50 p.m. and 3:59:59 p.m., MMA is required to send a Trade-or-Move Message via SelectNet for a total of 10,000 shares to MMB and MMC at least 15 seconds before entering the locking quote. MMA sends a Trade-or-Move Message for 5,000 shares to MMB. MMB may either trade in full and stay at 10, trade in part and move, or decline move (MMB must move at least one increment away from the locking price).[13] If MMB chooses to trade in full and remain at 10, MMA could send another Trade-or-Move Message to MMB. MMC receives a 5,000-share order, fills the order partially (1,000 shares), and, as required, moves its quote at least one trading increment away from the locking price.

d. *Conclusion.* In sum, the Nasdaq believes that the proposal provides a strong impetus to avoiding locked or crossed markets near the open and the close, while providing a mechanism for the prompt adjustment of quotations to more accurately reflect the state of the market at that point in time. Moreover, the Nasdaq believes that the change in response time to the Trade-or-Move Message and the increased size the message will enhance the effectiveness of the rule both before the open and the close of the market, while providing the predictability needed to facilitate the programming of market participants systems to comply with the rule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[14] and section 11A(a)(1)(C)[15] of the Act. Section 15A(b)(6) requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) provides, in relevant part, that is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors or information with respect to quotations for and transactions in securities; (4) the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.

Nasdaq believes that the amendments to NASD Rule 4613(e) are consistent with section 15A(b)(6) and section 11A(a)(1)(C). By attempting to resolve locks and crosses at the market opening and closing, Nasadq believes that the proposal will ensure the fair and orderly operation of Nasdaq and the protection of investors, as its purpose is to limit the disruptions to the Nasdaq market and the potential for harm to investors.

*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*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**VI. 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–76 and should be submitted by February 28, 2001.

[12] Nasdaq revised the following examples to eliminate references to the customer limit orders. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Nasdaq, and Yvonne Fraticelli, Special Counsel, Division, Commission, on January 26, 2001.

[13] MMB's ability to decline to trade with the message is subject to MMB's firm quote obligations.

[14] 15 U.S.C. 78*o*–3(b)(6).

[15] 15 U.S.C. 78k–1(a)(1)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–3112 Filed 2–6–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43907; File No. SR–NASD–01–01]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Rule 4330(f) To Require a Nasdaq Issuer To Apply for Initial Inclusion Following a Reverse Merger With a Non-Nasdaq Entity

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 9, 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 (''SEC'' or ''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.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to amend NASD Rule 4330(f) to require a Nasdaq issuer to apply for initial inclusion following a reverse merger with a non-Nasdaq entity. Nasdaq also proposes to make conforming changes to IM–4300, Interpretive Material Regarding Future Priced Securities.[3] Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

**IM–4300. Interpretive Material Regarding Future Priced Securities**

* * * * *

*[Change of Control and Change in Financial Structure] Reverse Merger*

NASD Rule 4330(f) provides:

[Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.]

*An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a ''Reverse Merger''). In determining whether a Reverse Merger has occurred, Nasdaq will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq will also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.*

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial inclusion standards following a *Reverse M*[m]erger [or consolidation that results in a change of control if there is also a change in either the business or the financial structure of the issuer].[4] It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a [change of control in a deemed] *Reverse M*[m]erger [or consolidation] with the holders of the Future Priced Securities. [In addition, the issuance of the Future Priced Security and the large increase in the number of common shares outstanding after conversion of the Future Priced Security may be viewed as a change in financial structure.] In such event, an issuer may be required to re-apply for initial inclusion and satisfy all initial inclusion requirements.

* * * * *

**Rule 4330. Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria**

(a)–(e) No change.

(f) [Securities issued in connection with the merger, consolidation, or other type of acquisition of at least one issuer of qualifying securities shall be promptly included in Nasdaq, provided that the conditions of Rule 4310(c) or rule 4320(e) for securities that have already been included are satisfied. Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.]

*An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a ''Reverse Merger''). In determining whether a Reverse Merger has occurred, Nasdaq will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq will also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.*

* * * * *

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. A Future Priced Security is generally structured in the form of a convertible security and is often issued via a private placement. *See* IM–4300.

[4] This provision is designed to address situations where a company attempts to obtain a ''backdoor listing'' on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.

## 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.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend NASD Rule 4330(f) (the ''Rule'') which provides, in pertinent part, that a Nasdaq issuer must comply with all applicable initial inclusion requirements under Nasdaq rules in the event that the issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity, which results in a change of control and either a change in business or a change in the financial structure of the Nasdaq issuer.

Nasdaq originally adopted the Rule in 1993 to address the trend of non-Nasdaq entities seeking a ''backdoor listing'' on Nasdaq through a business combination involving a Nasdaq issuer.[5] In these combinations, a non-Nasdaq entity purchased a Nasdaq issuer in a transaction that resulted in the non-Nasdaq entity obtaining a Nasdaq listing without qualifying for initial listing or being subject to the background checks and scrutiny normally applied to issuers seeking initial listing.

Some issuers and their counsel have expressed uncertainty regarding the exact circumstances under which the Rule is applicable. Therefore, Nasdaq proposes to amend the Rule to more clearly define that it is intended to apply to business combinations between a Nasdaq issuer and a non-Nasdaq entity in which there is a change of control of the Nasdaq issuer[6] and the potential for the non-Nasdaq entity to acquire a Nasdaq listing (for purposes of this rule, such a transaction is referred to as a ''Reverse Merger''). To provide further clarification, the proposed Rule would also set forth a list of non-exclusive factors to be considered when determining whether a Reverse Merger has occurred. These factors include changes in the management, board of directors, voting power, ownership, and financial structure of the Nasdaq issuer. The nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity would also constitute additional factors to be considered. Nasdaq believes that these proposed amendments will clarify the Rule for issuers while continuing to prevent ''backdoor listings'' on Nasdaq.

Nasdaq also proposes to make conforming changes to IM–4300, Interpretive Material Regarding Future Priced Securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6)[7] of the Act, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. As noted above, the proposed rule change is aimed at clarifying NASD Rule 4330(f), which prevents non-Nasdaq entities from obtaining a ''backdoor listing'' on Nasdaq through a business combination involving a Nasdaq issuer.

*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*

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–01–01 and should be submitted by February 28, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–3113 Filed 2–6–01; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Securities Exchange Act Release No. 32264 (May 4, 1993), 58 FR 27760 (May 11, 1993) (ordering approving File No. SR–NASD–93–07).

[6] It is not necessary to obtain a majority interest in order for a change of control to occur.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 17 CFR 200.30–3(a)(12)

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43911; Filed No. SR–PCX–00–46]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Prohibition of Harassment

January 31, 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 December 13, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by the Exchange. The proposed rule change has been filed by the Phlx as a ''non-controversial'' rule change under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX proposes to adopt a new rule to prohibit harassment, intimidation, ''refusal to deal'' and retaliation in the option listing process and to prohibit harassment of another for ''seeking to act competitively.''

The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently PCX Rule 6.2(b) sets forth prohibitions on certain manner of conduct on the floor of the Exchange. Under this rule, a member will be sanctioned if two Floor Officials or the Options Floor Trading Committee make the determination that the member has acted in a manner that impairs the maintenance of a fair and orderly market or the member's conduct impairs public confidence in the operations of the Exchange. The purpose of the proposed rule is to broaden the scope of Rule 6.2 to prohibit harassment. The proposed rule seeks to prevent harassment and intimidation of members who act or seek to act competitively.

The proposed rule would make it ''conduct inconsistent with just and equitable principles of trade for any member, member organization or associated person of a member or member organization to engage, directly or indirectly, in any conduct that threatens, harasses, intimidates, constitutes a 'refusal to deal' or retaliate against any other member . . .'' because such member: (1) Has made a proposal to any exchange or other market to list or trade any option issue; (2) has advocated or made proposals concerning the listing or trading of an option issue on any exchange or other market; (3) has commenced making a market in or trading any option issue on any exchange or other market; (4) seeks to increase the capacity of any options exchange or the options industry to disseminate quote or trade data; (5) seeks to introduce new option products; or (6) seeks to act competitively.

The PCX believes that the prohibited conduct discussed above is inconsistent with the obligation of all members to their customers, the Exchange, and the public interest in the operation of fair and efficient options markets. The PCX will strictly enforce the requirements of the proposed rule. Any violations of this rule will be referred to the Exchange's Enforcement Division for appropriate disciplinary action.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by prohibiting harassment in the listing of options.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has been filed by the Exchange as ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–00–46 and should be submitted by February 28, 2001.

[3] 17 CFR 240.19b–4(f)(6).

[4] The PCX will revise its Employee Handbook and Statements of Fiduciary Responsibilities for Governors and Committee Members to include the same prohibitions on harassment. The Exchange must file with the Commission a proposed rule change incorporating these additional changes. Telephone call from Geoffrey Pemble, Attorney, Division of Market Regulation, SEC, to Hassan Abedi, Attorney, Regulatory Policy, PCX (Janary 30, 2001).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] The Exchange provide the Commission with the five business day notice required by Rule 19b–4(f)(6) of the Act.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–3157 Filed 2–6–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43912; File No. SR-Phlx–00–91]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Index Fund Shares

January 31, 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 December 4, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and III below, which Items have been prepared by the Phlx. On January 23, 2001, the Phlx filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons and to approve the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt listing standards and trading rules for Index Fund Shares, including generic listing standards, which would permit the Phlx to trade a series of Index Fund Shares pursuant to Rule 19b–4(e) under the Act. The text of the proposed rule change is available at the Phlx or the Commission.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Carla Behnfeldt, Director, New Product Development Group, Phlx, to Nancy Sanow, Esq., Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 22, 2001 (''Amendment No. 1''). Amendment No. 1 adds language to the rule text and the purpose section of the filing that clarifies Phlx's prospectus delivery requirements under the Securities Act of 1933. In addition, Amendment No. 1 adds representations by the Exchange in the purpose section of the filing regarding factors affecting (1) the trading prices of Index Fund Shares, (2) the minimum number of creation units, and (3) minimum trading variations.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

I. Purpose

a. *Listing Requirements for Index Fund Shares.* The Phlx proposes to adopt new listing and delisting requirements to accommodate the trading of Index Fund Shares, securities issued by an open-end management investment company (''Fund'') that seek to provide investment results that correspond generally to the price and yield performance of a specified underlying index (''Index Fund Shares''). The listing standards will permit the Exchange to trade Index Fund Shares either by listing or pursuant to unlisted trading privileges (''UTP'').

Index Fund Shares will be issued by an entity registered with the Commission as an open-end management investment company, and which may be organized as a series fund providing for the creation of separate series of securities, each with a portfolio consisting of some or all of the component securities of a specified securities index. Issuances of Index Fund Shares by a Fund will be made only in minimum size aggregations or multiples therof (''Creation Units''). The size of the applicable Creation Unit size aggregation will be set forth in the Fund's prospectus, and will vary from one series of Index Fund Shares to another, but generally will be of substantial size (*e.g.*, value in excess of $450,000 per Creation Unit). It is expected that a Fund will issue and sell Index Fund Shares through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Index Fund Shares in Creation Unit size aggregations is received in proper form. Index Fund Shares will be traded on the Exchange like other equity securities, and Phlx equity trading rules will apply to the trading of Index Fund Shares.

The Phlx expects that Creation Unit size aggregations of Index Fund Shares generally will be issued in exchange for the ''in kind'' deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. The Phlx anticipates that such deposits will be made primarily by institutional investors, arbitragers, and the Phlx specialist. Redemption of Index Fund Shares generally will be made ''in kind,'' with a portfolio of securities and or cash exchanged for Index Fund Shares that have been tendered for redemption. Issuances or redemptions also could occur for cash under specified circumstances (*e.g.*, if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

The Phlx expects that a Fund will make available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with the issuance of Index Fund Shares of a particular series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A Fund may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the Fund during the applicable period, net of expenses and liabilities for such period. A Fund may also distribute its capital gains, if any. The Exchange notes that the trading prices of Index Fund Shares may differ in varying degrees from their daily NAV and can be affected by market forces such as supply and demand, economic conditions and other factors.[4]

Index Fund Shares will be registered in book entry form through The Depository Trust Company (''DTC''), which means no stock certificates will be issued. Trading in Index Fund Shares on the Exchange may be effected until either 4:00 p.m. or 4:15 p.m. each business day.

*Criteria for Initial and Continued Listing.* The Phlx believes that the listing criteria proposed in its new rule are generally consisted with the listing standards for Index Fund Shares currently used by the American Stock

[4] *See* Amendment No. 1, *supra* note 3.

Exchange (''Amex''),[5] and are similar to the recently approved listing standards for Trust Shares.[6]

*Initial Listing.* If Index Fund Shares are to be listed on the Exchange, the Phlx will establish a minimum number of Index Fund Shares that must be outstanding at commencement of trading, and such minimum number will be included in any required submission under Rule 19b–4. The Exchange anticipates that a minimum of two creation units in any series of Index Fund Shares will be required to be outstanding before trading can begin.[7]

*Continued Listing.* In connection with continued listing, the Phlx will consider the suspension of trading in, or removal from listing of, an Index upon which a series of Index Fund Shares is based when any of the following circumstances arise: (1) There are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (3) such other event shall occur or condition exists which, in the opinion of the Phlx, makes further dealings on the Exchange inadvisable. The Phlx will not, however, be required to suspend or delist from trading, based on the above factors, any Index Fund Shares for a period of one year after the initial listing of such Index Fund Shares for trading on the Exchange. The Phlx will require that Index Fund Shares be removed from listing upon termination of the Fund that issued such shares.

b. *Exchange Rules Applicable to the Trading of Index Fund Shares.* Index Fund Shares are considered ''securities'' under the rules of the Phlx and are subject to all applicable trading rules, including the provisions of Phlx Rule 2001A, ITS ''Trade-Throughs'' and ''Locked Markets,'' which prohibit Exchange members from initiating trade-throughs for Intermarket Trading System securities, as well as rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.[8] Similarly, the Phlx's equity margin rules will apply. The Phlx will maintain written surveillance procedures to surveil trading in Index Fund Shares.

c. *Standards to Permit Trading, Either by Listing or Pursuant to UTP, of Index Fund Shares Pursuant to Rule 19b–4(e) under the Act.* The Phlx proposes to adopt generic listing and delisting standards to permit the Exchange to approve for trading, pursuant to Rule 19b–4(e) under the Act,[9] a series of Index Fund Shares. Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivative products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b) of the Act.[10] Accordingly, the Phlx proposes a series of Index Fund Shares for listing or trading, either by listing or pursuant to UTP, pursuant to Rule 19b–4(e) under the following criteria:

Upon the initial listing of a series of Index Fund Shares, component stocks that in the aggregate account for at least 90% of the weight of the underlying index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

The most heavily weighted component stocks in an underlying index or portfolio cannot exceed 25% of he weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks.[11] All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market). Any series of Index Fund Shares must meet these eligibility criteria as of the data of the initial deposit of securities and cash into the trust or fund.

The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer.

The current index value will be disseminated every 15 second over the Consolidated Tape Association's Network B. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading. Trading will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange. The minimum variation may vary among different series of Index Fund Shares, but will be set at 1/16, 1/32 or 1/64 of $1.00 (as established by the Exchange for Index Fund Shares trading in fractions) and $.01 (for Index Fund Shares trading in decimals).[12] The Exchange will utilize existing surveillance procedures for Index Fund Shares that it trades pursuant to Rule 19b–4(e).[13] The provisions of Phlx's proposed Rule 803(1) will apply to all series of Index Fund Shares.

d. *Notice to Members.* Prior to the commencement of trading in Index Fund Shares, the Phlx will issue a circular to members highlighting the characteristics of purchases in Index Fund Shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other

[5] The Amex's listing criteria were approved by the Commission on March 8, 1996. *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996). Pursuant to Rule 12f–5 under the Act, to trade a particular class or type of security pursuant to UTP, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for Index Fund Shares, and the Phlx's proposed rule change is designed to create similar standards for Index Fund Shares listed and/or trading on the Phlx.

[6] *See* Securities Exchange Act Release No. 43717 (December 13, 2000), 65 FR 80976 (December 22, 2000).

[7] *See* Amendment No. 1, *supra* note 3.

[8] Phlx Rule 746 will also apply to the trading of Index Fund Shares. That rule provides that every member is required either personally or through a general partner or an officer who is a holder of voting stock in his organization to use due diligence to learn the essential facts relative to every customer and to every order or account accepted by his organization.

[9] 17 CFR 240.19b–4(e).

[10] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[11] Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Supchapter M of the Internal Revenue Code. Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

[12] *See* Amendment No. 1, *supra* note 3.

[13] *Id.*

issues, will discuss what Index Fund Shares are, how they are created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing Index Fund Shares prior to or concurrently with the confirmation of a transaction, applicable Phlx rules, dissemination information, trading information, and the applicability of suitability rules.

In addition, the circular will inform members of the Exchange's policies about trading halts in such securities. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Phlx Rule 133 have been reached. Second, the circular will advise that, in addition to other factors that may be relevant, the Phlx may consider factors such as the extent to which trading is not occurring in a deposited security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

e. *Disclosure.* The Phlx will provide all purchasers of newly-issued Index Fund Shares with a Fund prospectus. Because the Units will be in continuous distribution, the prospectus delivery requirements of Section 5(b)(2) of the Securities Act of 1933 (''Securities Act'')[14] will apply to all investors in Index Fund Shares, including secondary market purchases on the Phlx in Index Fund Shares.[15] With respect to series of Index Fund Shares that are the subject of an order by the SEC exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (the ''1940 Act'')[16] and that are not otherwise subject to prospectus delivery requirements under the Securities Act,[17] the Phlx will inform members and member organizations regarding disclosure obligations with respect to a particular series of Index Fund Shares by means of a circular prior to commencement of trading in such series. For these exempted series, the Phlx requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Phlx. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares].''

A member or member organization carrying on omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

f. *Minimum Variation.* Index Fund Shares will trade in the appropriate minimum variation, pursuant to Phlx Rule 125. For Index Fund Shares traded pursuant to UTP, the minimum variation for any series of Index Fund Shares will be the minimum variation established by the primary market for such series. The Phlx proposes that the minimum fractional change for Index Fund Shares on the Phlx will be 1/16, 1/32, or 1/64 of $1.00 depending on the series of Index Fund Shares. In addition, the Phlx is proposing to set its minimum variation at $.01 for Index Fund Shares trading in decimals.

g. *Limitation of Exchange Liability.* The Phlx proposes a provision limiting potential liability of the Exchange, the Reporting Authority, and any agent of the Phlx in connection with Index Fund Shares.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with section 6(b)(5) of the Act [18] in that it is designed to promote just and equitble prinicples of trade, to foster cooperation and coordination with persons engaged in regulating securities translations, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Phlx has neither solicited nor received written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. 5552, will be available for inspection and copying in the Commission's Public Reference, Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–91 and should be submitted by February 28, 2001.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5).[19] Specifically, the Commission finds that the proposals to provide standards to permit listing and trading

[14] 15 U.S.C. 77e(5)(b)(2).

[15] *See* Amendment No. 1, *supra* note 3.

[16] 15 U.S.C. 80a–24(d).

[17] *See supra* note 3.

[18] 15 U.S.C. 78F(b)(5).

[19] 15 U.S.C. 78f(b)(5).

of Index Fund Shares will provide investors with a convenient and less expensive way of participating in the securities markets. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating or to a large extent representing the performance of several portfolios of stocks at negotiated prices throughout the business day.

In addition, the proposal to provide generic standards to permit listing and trading of Index Fund Shares pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under section 19(b) of the Act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market more quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act[20]

The Commission believes that the proposal to list and trade Index Fund Shares will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable underlying index. Index Fund Shares will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities. Although Index Fund Shares are not leveraged instruments, and therefore do not possess any of the attributes of stock index options, their prices will be derived and based on the value of the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of these Index Fund Shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for these Index Fund Shares is based on a portfolio of securities.

The Commission finds that the Phlx's proposal contains adequate rules and procedures to govern the trading of Index Fund Shares. Under Phlx rules, Index Fund Shares are subject to the full panoply of rules governing the trading of equity securities on the Phlx, including, among others, rules and procedures governing the priority, parity and precedence of orders, responsibilities of all types of market-makers, trading halts, disclosures to members, margin requirements, and customer suitability requirements. Further, the Commission notes that the Phlx will use surveillance procedures that incorporate and rely upon existing Phlx surveillance procedures governing equities, and the Commission believes that these procedures are adequate under the Act. In addition, the rules we are approving today contain specific listing and delisting criteria for Index Fund Shares that will help to ensure that the markets for Index Fund Shares will be deep and liquid to allow for the maintenance of fair and orderly markets. The Commission believes that these criteria should serve to ensure that the underlying securities of an Index Fund Shares series are well capitalized and actively traded, and that new series of Index Fund Shares do not contain features that are likely to impact adversely the U.S. securities markets.

In addition, the Exchange has designated that a minimum of two creation units will be required to be outstanding at start-up of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the Index Fund Shares in book-entry form through DTC, managing the distribution of dividends from net investment income, if any, and distributing capital gains, if any, are characteristics of Index Fund Shares that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market pursuant to section 6(b)(5) of the Act.[21]

Furthermore, the Commission believes that the Exchange's proposal to trade Index Fund Shares in minimum fractional increments of 1/16, 1/32 or 1/64 of $1.00 or .01 for Index Fund Shares trading in decimals is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in Index Fund Shares.

The Exchange represents that the Reporting Authority will disseminate for each Fund of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each Fund. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each Fund.

In addition, the Commission believes that the Index Fund Shares proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading Index Fund Shares. Index Fund Shares will be subject to a prospectus delivery requirement or, for series that have been granted relief from the prospectus delivery requirements of the 1940 Act[22] and are not otherwise subject to prospectus delivery requirements under the Securities Act, a product description delivery requirement. The requirement extends to a member or member organization carrying an omnibus account for a non-member broker-dealer, who must notify the non-member to make the product description available to its customers on the same terms as are directly applicable to members and member organizations. Finally, a member or member organization must deliver a prospectus to a customer upon request.

The Commission also notes that upon the initial listing of any Index Fund Shares under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and inform members of their responsibilities under Phlx rules in connection with customer transactions in these securities.

Rule 19b–4(e) under the Act provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4; if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules,

[20] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 80a–1, *et seq.*

procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[23] The Commission believes that the Phlx's proposal to adopt generic listing standards for Index Fund Shares and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those series of Index Fund Shares that satisfy those standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's and the Commission's regulatory burden, the Commission will maintain regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that Index Fund Shares it previously approved for listing under existing rules governing those securities would allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities. The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for Index Fund Shares and, therefore, can be listed under Rule 19b–4(e) without prior Commission approval, should produce the same benefits to the Phlx and to investors.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Index Fund Shares under Rule 19b–4(e). All series of Index Fund Shares listed under the generic standards will be subject to the full panoply of Phlx rules and procedures that now govern the trading of existing securities on the Phlx. Accordingly, any new series of Index Fund Shares listed and traded under Rule 19b–4(e) will be subject to Phlx rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, and margin.

In addition, the Phlx has developed specific listing criteria for series of Index Fund Shares qualifying for rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the Exchange has designated that a minimum of 100,000 shares of a series of Index Fund Shares will be required to be outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

The Exchange has also established that upon initial listing, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have a minimum market value of at least $75 million. Further, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio. The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks, and all securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market. Moreover, any series seeking to list under the generic standards must meet these eligibility criteria as of the date of the initial deposit of securities and cash into the trust or fund. The Commission believes that these criteria should serve to ensure that the underlying securities of these indexes and portfolios are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new series of Index Fund Shares under Rule 19b–4(e). These listing criteria also will make certain that new series of Index Fund Shares do not contain features that are likely to impact adversely the U.S. securities markets. Accordingly, the Commission finds that these criteria are consistent with section 6(b)(5) of the Act, because they serve to prevent fraudulent or manipulative acts, promote just and equitable principles of trade, 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.

In addition, as previously noted, all series of Index Fund Shares listed under the generic standards will be subject to the existing continued listing criteria for these securities. This requirement allows the Phlx to consider the suspension of trading and the delisting of a series if an event occurred that makes further dealings in such securities inadvisable. The Commission believes that this will give the Phlx flexibility to delist Index Fund Shares if circumstances warrant such action.

The Phlx will rely upon its existing surveillance procedures for supervision of trading in index Fund Shares. The Exchange also will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading Index Fund Shares under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[24]

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as Index Fund Shares is based. The proposal would require that in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

The Commission finds good cause for approving the proposed rule change (SR–Phlx–00–91), as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change is based on Amex Rule 1000A *et seq.*, and is similar to Boston Stock Exchange rules relating to Index Fund Shares, which the Commission approved in the past.[25] The Commission also observes that the proposed rule change concerns issues that previously have been the subject of a full comment period pursuant to

[23] *See* Securities Exchange Act Release No. 40761, 63 FR 70952 (December 22, 1998).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996); Securities Exchange Act Release No. 42988 (June 28, 2000), 65 FR 42041 (July 7, 2000).

section 19(b) of the Act.[26] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the previous filings. Further, the changes in Amendment No. 1 clarify: (1) The trading prices of Index Fund Shares; (2) the minimum number of creation units; (3) the minimum trading variations; and (4) the prospectus delivery requirements. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act, to approve the amended proposal on an accelerated basis.

### V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Phlx–00–91), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–3156 Filed 2–6–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SOCIAL SECURITY ADMINISTRATION

### Supplemental Security Income for the Aged, Blind and Disabled (SSI) Program Demonstration Project; Treatment of Cash Received and Conserved To Pay for Medical or Social Services

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice.

**SUMMARY:** The Commissioner of Social Security is extending the application of an existing SSA demonstration project which tests how certain altered resources counting rules might apply in the SSI program. The SSI program is authorized by title XVI of the Social Security Act (the Act). The rules to be tested apply to the treatment of cash received and conserved to pay for medical or social services.

Cash received to pay for medical or social services is not counted as income to the beneficiary when received. Conserved cash received for medical or social services (which is not a reimbursement for these services already paid for by the beneficiary) is not counted as a resource for the calendar month after the month of receipt, so long as it remains separately identifiable from other resources. Beginning with the second calendar month following the month of receipt, cash received for the payment of medical or social services becomes a countable resource used in the determination of SSI eligibility.

On November 2, 1998, the Commissioner of Social Security published a Notice in the **Federal Register** (63 FR 58802), which waives the rules for counting as resources conserved cash received for medical or social services for Cash and Counseling demonstration participants for five years. All participants in Arkansas, Florida and New Jersey who are members of a test group receive personal assistance services. Personal assistance services are help with the basic activities of daily living, including bathing, dressing, transferring, toileting, and eating, and/or instrumental activities of daily living such as housekeeping, meal preparation, shopping, laundry, money management and medication management. Consumers of personal assistance services who participate in the demonstration are empowered by purchasing the services they require (including medical and social services) to perform the activities of daily living. In order to accomplish the objective of the demonstration project, cash allowances and information services are provided directly to persons with disabilities to enable them to choose and purchase services from providers that they feel would best meet their needs. Participants are also free to engage a fiscal intermediary to assist with proper disbursement of these cash allowances.

This Notice extends the temporary resources counting rules for Cash and Counseling participants to participants in Oregon's similar Independent Choices demonstration project. All participants in the Independent Choices demonstration project are consumers of personal assistance services.

Medicaid is the predominant source of public financing for personal assistance services programs for the aged, blind and disabled. The Secretary of the Department of Health and Human Services (DHHS) will exercise her authority under section 1115 of the Act to waive certain Medicaid provisions to permit the State of Oregon to exercise its Independent Choices demonstration. Medicaid beneficiaries who participate in this demonstration will be given cash to purchase the services they need from traditional and nontraditional providers, as they deem appropriate. Assistance will be available to help these beneficiaries effectively use funds allotted for personal assistance services.

Many of the Medicaid beneficiaries who will participate in the Independent Choices demonstration are SSI beneficiaries or belong to coverage groups using eligibility methodologies related to those of the SSI program under title XIX of the Act. Under the Cash and Counseling demonstration project, the Commissioner of Social Security is testing the appropriateness of current SSI rules which require counting cash received for the purchase of medical or social services as resources if retained for more than one month after the month of receipt. This extension of the waiver of these SSI resources counting rules will help SSA obtain a larger test group of beneficiaries making provider hiring and payment decisions without a fiscal intermediary. Oregon will encourage participants to make their own fiscal decisions about providers. SSA will use these additional data for the evaluation of its policies on excluding cash received to purchase medical or social services. This SSA test will also assist the Secretary of DHHS in testing the possibility of providing greater autonomy to the consumers of personal assistance services by empowering them to purchase the services they require (including medical and social services) to perform their activities of daily living. In order to do so, the Commissioner has exercised his authority under section 1110(b) of the Act and waived SSI resources counting of cash received and conserved for future purchases of medical and social services.

The extension of this waiver of SSI resources counting rules will apply to participants in Oregon's Independent Choices demonstration project for the duration of their participation. Cash provided to participants for purchase of medical or social services must be conserved in a form that is separately identifiable from other resources that may be countable or excludable under title XVI of the Act. The cash received for medical or social services and conserved towards payment for those services by SSI beneficiaries who participate in this demonstration will not be included in SSI countable resources only for so long as the individual continues to participate in the Independent Choices demonstration project.

Existing SSI resource-counting rules are suspended only where application of such rules would adversely affect participation by SSI beneficiaries in the Independent Choices demonstration project.

[26] 15 U.S.C. 78s(b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

This notice is published in accordance with the requirement in 20 CFR 416.250(e).

**EFFECTIVE DATES:** This project will be effective for the period authorized by the Secretary of DHHS for Oregon's Independent Choices demonstration project. The date anticipated by the Secretary for the Independent Choices demonstration to begin is on or after January 1, 2001. According to the demonstration's plan, beneficiaries may participate throughout the period of the demonstration, up to five years. Thus, if the demonstration begins on January 2, 2001, the anticipated ending date for all participants will be no later than December 31, 2005.

Any cash for medical or social services received after an SSI beneficiary's participation in the demonstration has ended which has been conserved for more than one month will be counted as resources. Any cash for medical or social services that is received during participation in the demonstration and conserved subsequent to participation in the demonstration will be subject to regular SSI resources rules.

**FOR FURTHER INFORMATION CONTACT:** Craig Streett, Office of Program Benefits, 3–M–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–0001, (410) 965–9793, or through the Internet at Craig.Streett@ssa.gov.

**SUPPLEMENTARY INFORMATION:** Section 1612(a) of the Act defines what is income for purposes of the SSI program; section 1612(b) of the Act specifies exclusions from income. As explained in the regulation located at 20 CFR 416.1102, income counted for the purposes of the SSI program includes anything an individual receives in cash or in kind that can be used to meet basic needs, such as food and shelter. Regulations at 20 CFR 416.1103(a)(3) and (b)(1) explain that assistance provided in cash or in kind under a Federal, State, or local government program whose purpose is to provide medical care or services or social services, including vocational rehabilitation, is not income. Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy or by a nongovernmental social services program (except cash to cover food, clothing or shelter) is not income if it is either repayment for program-approved services for which the individual has already paid or a payment restricted to the future purchase of a program-approved service. This is explained by regulations at 20 CFR 416.1103(a)(5) and (b)(3).

As explained in regulations at 20 CFR 416.1201(a), resources are cash or other liquid assets or any real or personal property that an individual (or spouse) owns and could convert to cash to be used for support and maintenance. Regulations at 20 CFR 416.1207(d) explain that items received in cash or in kind during a month are evaluated first under the income counting rules. If they are retained until the first moment of the following month, they then are subject to the rules for counting resources.

Section 1613 of the Act addresses the exclusions from resources for purposes of the SSI program. Regulations at 20 CFR 416.1201(a)(3) also explain the temporary exclusion from resources for most conserved cash received for medical or social services that is separately identifiable from other resources. Cash received for medical or social services that is retained after the temporary exclusion period is a countable resource whether or not it is separately identifiable from other resources.

SSI regulations recognize that cash payments made specifically to enable people to pay for medical or social services are not income for SSI purposes, because they are assumed not to be available for support and maintenance. Those regulations recognize that the recipient is not always able to use the cash for payment for medical or social services in the month of receipt. Therefore, SSI regulations provide for not counting as resources any cash received to pay for medical and social services which is retained one full calendar month following the month of receipt, so long as it is separately identifiable from other resources. The rule permitting not counting such cash as resources does not encompass cash received as reimbursement for medical or social service bills the individual has already paid. Counting conserved cash as resources if retained after the month following the month of receipt is consistent with the purpose of the SSI program, which is to meet the current needs of beneficiaries such as the needs for food and shelter.

The Independent Choices demonstration project is designed to provide greater autonomy to the consumers of personal assistance services by empowering them to purchase the services they require (including medical and social services) to perform their activities of daily living. In order to accomplish the objectives of the demonstration project, cash allowances and information services will be provided directly to persons with disabilities to enable them to choose and purchase services from providers that they feel would best meet their needs.

Many of the consumers of personal assistance services are SSI beneficiaries. Under current SSI regulations, some SSI beneficiaries would not be able to participate in the Independent Choices demonstration project without risk to their continuing SSI eligibility due to the possibility that participants may receive cash to be conserved towards the future purchase of services. Section 1110(b) of the Act grants the Commissioner authority to waive certain requirements, conditions, or limitations of title XVI of the Act necessary to conduct experimental, pilot or demonstration projects. Unless the Commissioner exercises this authority, the remainder of cash received for future purchases of services by SSI beneficiaries who choose to participate in the demonstration will become countable resources two months following the month of receipt.

The consent of an SSI beneficiary to participate in this demonstration project is required under section 1110(b) of the Act. Oregon will obtain written consent from every participant who is an SSI beneficiary. That consent will stipulate that his or her participation is voluntary, and that he or she can revoke participation at any time. SSA will waive existing SSI rules for counting conserved cash received for the purchase of medical or social services as resources only where the application of existing rules would adversely affect the individual's SSI eligibility. Accordingly, an individual's participation in the Independent Choices project will not affect participants' eligibility for SSI or benefit amounts.

The objectives of SSA in conducting this demonstration project are to:

- Test the appropriateness of current SSI rules which require counting cash received for the purchase of medical or social services as resources if retained for more than one month after the month of receipt;
- Test alternative SSI rules for counting conserved cash received for the purchase of medical or social services when beneficiaries make their own provider hiring and payment decisions without a fiscal intermediary;
- Facilitate the ability of the Secretary, DHHS and the State of Oregon to engage in the Independent Choices demonstration project;
- Permit the Secretary, DHHS, and the State of Oregon to determine if cost savings can be realized from the Independent Choices demonstration project; and

• Empower participants in the Independent Choices demonstration project to demonstrate greater autonomy by allowing them to purchase their own personal assistance services.

The Secretary, DHHS and the State of Oregon will obtain measurements involving these objectives for the Social Security Administration.

The Commissioner's demonstration project will involve no or minimal new or additional program costs to the Federal government under title XVI of the Act or to the State of Oregon under section 1616 of the Act. SSI beneficiaries who choose to participate in this demonstration will purchase services which would ordinarily be provided by Medicaid and other Federal and State services programs at a potentially greater cost. If the Commissioner did not exercise his authority under section 1110(b) of the Act to waive certain resources rules for participants in the Independent Choices demonstration, SSI beneficiaries could choose not to participate in Oregon's demonstration and continue to receive services directly, rather than through the beneficiary's purchase. Continued SSI eligibility for beneficiaries who choose to participate in the demonstration project is not a new or additional cost related to the Commissioner's demonstration project.

SSI beneficiary participation in the Independent Choices demonstration should not affect SSI benefit amounts even if the beneficiary employs an ineligible spouse or ineligible parent as a provider of services, unless the beneficiary is an alien who employs the sponsor to provide these services. Generally, the income and resources of an eligible spouse or eligible child is deemed to include a portion of the income and resources of the ineligible spouse or parent under sections 1614(f)(1) and (2) of the Act. However, the Commissioner has exercised his discretion under those provisions. As a result, SSA does not deem the income of an ineligible spouse or ineligible parent paid under a Federal, State or local government program who provides an eligible spouse or eligible child with chore, attendant or homemaker services (described in regulations at 20 CFR 416.1161(a)(16)). The Commissioner has no similar discretionary authority for deeming from a sponsor to an alien.

If an SSI beneficiary employs his or her ineligible spouse or ineligible parent as a service provider, and the ineligible spouse or parent conserves all or part of those funds, the retained portion of those funds will become deemable resources the month after the month of receipt. (This is described in regulations at 20 CFR 416.1202.) SSA routinely explains the SSI resources limits and the rules concerning the deeming of resources to affected SSI beneficiaries. Instructions to SSA field offices in Oregon will reinforce the need to explain how payment to the ineligible spouse or ineligible parent could lead to an increase in deemable resources.

The State of Oregon will experience no or minimal new or additional costs under section 1616 of the Act for SSI beneficiaries who participate in the Independent Choices demonstration project. The demonstration project will not add new beneficiaries to either the SSI or State supplementary payments rolls, or artificially extend the eligibility of beneficiaries, or increase payment amounts of SSI or State supplementary payments to participants.

Statutory and Regulatory Provisions Waived: The Commissioner waives certain SSI resources counting rules for the duration of an individual's participation in Oregon's Independent Choices demonstration project where application of those rules would otherwise affect the eligibility of an individual for SSI. The specific statutory and regulatory provisions waived are those described in the preceding section.

**Authority:** Section 1110(b) of the Social Security Act.

(Catalog of Federal Domestic Assistance Programs No. 96.006–Supplemental Security Income)

Dated: January 18, 2001.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

[FR Doc. 01–3132 Filed 2–6–01; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Document Availability; Draft Supplemental Environmental Impact Statement, Cal Black Memorial Airport, Halls Crossing, Utah

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration has released, for public review and comment, the Draft Supplemental Environmental Impact Statement (DSEIS) to address issues arising from the 1993 10th Circuit U.S. Court of Appeals Decision concerning the closure of Halls Crossing Airport and the development and operation of Cal Black Memorial Airport, Halls Crossing, Utah. The DSEIS identifies the noise impacts associated with operation of Cal Black Memorial Airport, the probable impacts if Halls Crossing Airport had not been closed, and includes a survey of visitors to Glen Canyon National Recreation Area and their reaction to aircraft overflight noise.

**DATE AND ADDRESS FOR COMMENTS:** Comments concerning the DSEIS may be submitted by March 30, 2001, to Mr. Dennis Ossenkop, ANM–611, Federal Aviation Administration, Northwest Mountain Region, Airports Division, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

A public hearing may be requested by contacting Mr. Dennis Ossenkop at the address above. Persons desiring to review the DSEIS may do so during normal business hours at the following locations:

Federal Aviation Administration, Airports Division Office, Suite 315, 1601 Lind Avenue, SW., Renton, Washington

Federal Aviation Administration, Airports District Office, Suite 224, 26805 East 68th Ave, Denver, Colorado

San Juan County Courthouse, County Executive Office, 117 S. Main, Monticello, Utah

If you desire additional information related to this project, please contact Mr. Dennis Ossenkop at the above address.

Issued in Renton, Washington on January 29, 2001.

**Lowell H. Johnson,**

*Manager, Airports Division, Northwest Mountain Region.*

[FR Doc. 01–3106 Filed 2–6–01; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aging Transport Systems Rulemaking Advisory Committee; Meeting Cancellations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** The FAA is issuing this notice to advise the public that the February 8 and 9, 2001, meeting of the Aging Transport Systems Rulemaking Advisory Committee (66 FR 8842, February 2, 2001) has been cancelled. The meeting will be rescheduled and announced in a later **Federal Register** notice.

**FOR FURTHER INFORMATION CONTACT:** Gerri Robinson, Office of Rulemaking,

ARM–24, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9078, FAX (202) 267–5075, or e-mail at gerri.robinson@faa.gov.

Issued in Washington, DC on February 2, 2001.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

[FR Doc. 01–3308 Filed 2–5–01; 2:35 pm]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No.'s FRA–2000–6923 and FRA–2000–6924]**

### Cancellation of Public Hearing; CSX Transportation, Inc.

The Federal Railroad Administration (FRA) has cancelled the public hearing on the captioned block signal applications, because docketed applications FRA–2000–6923 and FRA–2000–6924 have been withdrawn by the railroad.

The hearing had been scheduled for February 6, 2001, in Cambridge, Massachusetts.

The withdrawn CSX Transportation, Incorporated's applications were seeking approval of the proposed discontinuance and removal of the manual block systems (DCS Operating Rules), on the single secondary track, between Weir, milepost 13.3 and Dock, milepost 28.2, near New Bedford, Massachusetts, New Bedford Subdivision, and on the single secondary track, between Swamp, milepost 0.0 and Wharf, milepost 12.0, near Fall River, Massachusetts, Fall River Subdivision, Albany Service Lane, and re-designation of the secondary tracks to industrial tracks. (See the original hearing notice in **Federal Register** Vol. 66, No. 9, Friday, January 12, 2001, page 2951.)

The FRA regrets any inconvenience occasioned by the cancellation of this hearing.

Issued in Washington, DC on January 31, 2001.

**Michael J. Logue,**

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 01–3130 Filed 2–6–01; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Federal Transit Administration National ITS Architecture Policy on Transit Projects; Delay of Effective Date

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice; delay of effective date.

**SUMMARY:** This action temporarily delays for 60 days the effective date of the policy titled, ''Federal Transit Administration National ITS Architecture Policy on Transit Projects,'' published in the **FEDERAL REGISTER** on January 8, 2001, at 66 FR 1455, in conjunction with the Federal Highway Administration's (FHWA) final rule titled, ''Intelligent Transportation System Architecture and Standards,'' also published on January 8, 2001, at 66 FR 1446. The FTA policy concerns conformance with the National ITS Architecture and Standards. The policy encourages the effective deployment of ITS projects and coordination of local ITS strategies and projects to help meet the national and local goals for mobility, accessibility, safety, security, economic growth and trade, and the environment.

FHWA is delaying the effective date of its rule in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, titled ''Regulatory Review Plan,'' published in the **FEDERAL REGISTER** on January 24, 2001. To avoid any inconsistency or confusion, FTA is choosing to delay the effective date of its policy by creating a new effective date that is the same as for the FHWA rule. This 60-day delay will allow FTA to further review, consider and coordinate the policy with FHWA.

**EFFECTIVE DATE:** The effective date of the policy published at 66 FR 1455, January 8, 2001, is delayed until April 8, 2001.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, Brian Cronin, Advanced Public Transportation Systems Division, (202) 366–8841. For legal issues, Richard Wong, Office of Chief Counsel, (202) 266–1936.

**SUPPLEMENTARY INFORMATION:** The temporary 60-day delay in the effective date of the FTA policy is consistent with the effective date of the FHWA rule. In conjunction with FHWA's review of its rule, FTA will have the opportunity to further review, consider, and coordinate FTA's National ITS Architecture policy. We are making this change effective immediately because the original effective date of the FTA policy would have led to potential confusion given the delay in the effective date of the FHWA rule.

Issued On: February 2, 2001.

**Hiram J. Walker,**

*Acting Deputy Administrator.*

[FR Doc. 01–3264 Filed 2–5–01; 11:11 am]

BILLING CODE 4910–57–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2001–8797]**

### Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Proposed information collection.

**SUMMARY:** The Department of Transportation has submitted the following emergency processing public information collection request to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35.) This notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

**DATES:** OMB approval has been requested by January 29, 2001

**FOR FURTHER INFORMATION CONTACT:** Dennis Utter, NHTSA, 400 Seventh Street, SW., Room 6125, NRD–31, Washington, DC 20590. Mr. Utter's telephone number is (202) 366–5351.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration

*Title:* National Automotive Sampling System Tire Pressure Special Study.

*OMB Control Number:* New.

*Frequency:* One-time only.

*Affected Public:* Passenger Motor Vehicle Operator Users of Gasoline Stations

*Abstract:* The National Automotive Sampling System Tire Pressure Special Study is being conducted to respond to Section 13 of the Transportation Recall Enhancement, Accountability, and

Documentation (TREAD) Act of 2000. The act directs the Department of Transportation to complete rule making to require a warning system in new motor vehicles to indicate under-inflated tires within one year of enactment. The stringent requirement for enactment of the rule requires that needed data on the frequency and pervasiveness of underinflation be collected and provided in a short period. This study will assess the extent to which passenger vehicle operators are aware of the recommended air pressure for their tires, if they monitor air pressure, and to what extent actual tire air pressure differs from that recommended by the vehicle manufacturer.

*Estimated One-Time Burden:* 1,568 hours.

*Number of Respondents:* 13,440.

**Raymond P. Owings,**

*Associate Administrator for Research and Development.*

[FR Doc. 01–3105 Filed 2–6–01; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33996]**

### Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc.

Kern W. Schumacher and Morris H. Kulmer (collectively applicants), have filed a notice of exemption to continue in control of SF&L Railway, Inc. (SF&L), upon SF&L's becoming a Class III railroad.

The transaction was scheduled to be consummated on or shortly after January 17, 2001.

This transaction is related to STB Finance Docket No. 33995, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL,* wherein SF&L is seeking an exemption to acquire an operating easement over, and the rail, ties, and improvements of, a line of railroad approximately 71.5 miles long in Hancock, McDonough, Fulton and Peoria Counties, IL.

Applicants currently indirectly control three existing Class III railroads: Tulare Valley Railroad Company, which is authorized to operate in the State of California; Kern Valley Railroad Company, which is authorized to operate in the State of Colorado; and V and S Railway, Inc., which is authorized to operate in the State of Kansas.

Applicants state that: (i) The rail lines of SF&L will not connect with any other lines of railroad under their control or within their corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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.[1]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33996, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

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. 01–3057 Filed 2–6–01; 8:45 am]

**BILLING CODE 4915–00–P**

[1] On January 16, 2001, a petition to stay the effectiveness of the exemptions filed in this proceeding and in STB Finance Docket No. 33995 was filed by Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board. The petition for stay was denied by the Board in *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL,* STB Finance Docket No. 33995, and *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc.,* STB Finance Docket No. 33996 (STB served Jan. 16, 2001).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33969]**

### Lancaster and Chester Railway Company—Lease and Operation Exemption—Norfolk Southern Railway Company

Lancaster and Chester Railway Company (L&C), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease, with an option to purchase, from Norfolk Southern Railway Company and operate approximately 30.8 miles of rail line in Kershaw and Lancaster Counties, SC. The line extends from approximately milepost SB–58.7, at the Kershaw station, to approximately milepost SB–89.5, at the Catawba station. The line connects to L&C's existing rail line at L&C Chester District Connection, at approximately milepost SB–76.4, near Lancaster.

Because the projected revenues of the rail lines to be operated will exceed $5 million, L&C certified to the Board, on December 1, 2000, that the required notice of its proposed transaction was sent to the national offices of all labor unions representing employees on the lines and was posted at the workplace of the employees on the affected lines. *See* 49 CFR 1150.42(e). The transaction is expected to be consummated during the first quarter of 2001, but in no event earlier than the February 1, 2001 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33969, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner Brodsky Sidman Kider, PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

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. 01–2961 Filed 2–6–01; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33995]**

### SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL

SF&L Railway, Inc. (SF&L), a noncarrier,[1] has filed a notice of exemption under 49 CFR 1150.31 to acquire from Toledo, Peoria and Western Railway Corporation (TPW), an operating easement over, and the rail, ties, and improvements of, a 71.5-mile segment of track, extending between milepost 194.5 at La Harpe 61450 and milepost 123.0 at Peoria 61607, serving the intermediate points of Blandinsville 61420, Sciota 61475, Good Hope 61438, Bushnell 61422, New Philadelphia 61459, Smithfield 61477, Cuba 61427, Canton 61520, Glasford 61533 and Mapleton 61547, in Hancock, McDonough, Fulton and Peoria Counties, IL. Under this transaction, TPW will retain the realty underlying the line, subject to a permanent and unconditional easement to permit SF&L to fulfill its obligations as a railroad common carrier. SF&L will employ TPW as a contract operator, although SF&L will be responsible for rendering service. SF&L states that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and its revenues are not projected to exceed $5 million.

The transaction was scheduled to be consummated on or shortly after January 17, 2001.

This transaction is related to STB Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc.*, wherein Kern W. Schumacher and Morris H. Kulmer are seeking an exemption to continue in control of SF&L upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.[2]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33995, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

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. 01–3056 Filed 2–6–01; 8:45 am]

BILLING CODE 4915–00–P

[1] SF&L had acquired authority from Missouri Pacific Railroad Company to operate in Ellis and Hill Counties, TX, and has since received Board authorization to abandon these lines pursuant to decisions in *SF&L Railway, Inc.—Abandonment Exemption—In Ellis and Hill Counties, TX*, Docket No. AB–448 (Sub-No. 1X) (ICC served Dec. 11, 1995; STB served, July 30, 1996, and Dec. 30, 1999).

[2] On January 16, 2001, a petition to stay the effectiveness of the exemptions filed in this proceeding and in STB Finance Docket No. 33996 was filed by Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board. The petition for stay was denied by the Board in *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995, and *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc.*, STB Finance Docket No. 33996 (STB served Jan. 16, 2001).

# Corrections

**Federal Register**

Vol. 66, No. 26

Wednesday, February 7, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43799; International Series Release No. 1244; File No. SR–Phix–00–111]**

### Self–Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Temporarily Rule 1063(a) and Options Floor Procedure Advices A–10 and C–1, Which Address Trading in Foreign Currency Options

January 3, 2001.

*Correction*

In notice document 01–791, beginning on page 2469, in the issue of Thursday, January 11, 2001, make the following correction:

On page 2469, in the second column, the date heading is corrected to read as set forth above.

[FR Doc. C1–791 Filed 2–6–01; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43846; File No. SR–PCX–00–37]**

### Self–Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc., To Increase Fines for Members, Floor Brokers and Market Makers for Violating Exchange Rules Under the Minor Rule Plan

*Correction*

In notice document 01–1971, beginning on page 7526, in the issue of Tuesday, January 23, 2001, make the following correction:

On page 7527, in the first column, under the heading, **IV. Solicitation of Comments**, the ninth line from the bottom, ''[insert date 21 days from the date of publication].'' should read ''February 13, 2001''.

[FR Doc. C1–1971 Filed 2–6–01; 8:45 am]

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Federal Register

Wednesday,
February 7, 2001

## Part II

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Arroyo Toad; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018—AG15**

## Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Arroyo Toad

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the arroyo toad (*Bufo californicus*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 73,780 hectares (182,360 acres) in Monterey, Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties, California, is designated as critical habitat.

Critical habitat identifies specific areas that are essential to the conservation of a listed species and, with respect to areas within the geographic range occupied by the species, that may require special management considerations or protection. The primary constituent elements for the arroyo toad are those habitat components that are essential for the primary biological needs of foraging, breeding, growth of larvae (tadpoles) and juveniles, intra-specific communication, dispersal, migration, genetic exchange, and sheltering. All areas designated as critical habitat for the arroyo toad contain one or more of the primary constituent elements.

We have not designated critical habitat on lands covered by an existing, legally operative, incidental take permit for the arroyo toad under section 10(a)(1)(B) of the Act, except for one area that has activities not covered by the habitat conservation plan (HCP). Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that the benefits of excluding HCPs from the critical habitat designation for the arroyo toad will outweigh the benefits of including them.

In areas where HCPs have not yet had permits issued, we have designated critical habitat for lands essential to the survival and conservation of arroyo toads and that may require special management considerations or protections.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. 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. We solicited data and comments from the public on all aspects of the proposal, including data on the economic and other impacts of designation and our approaches for handling HCPs. We revised the proposal to incorporate or address new information received during the comment periods.

We also correct the list of endangered species to account for a change in the taxonomy of the arroyo toad.

**DATE:** This rule becomes effective on March 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** For information about Monterey, San Luis Obispo, Santa Barbara, and Ventura Counties, northern Los Angeles County and the desert portion of San Bernardino County, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California, (telephone 805/644–1766; facsimile 805/644–3958). For information about southern Los Angeles and urban and montane San Bernardino Counties, and Riverside, Orange, and San Diego Counties, contact Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 760/431–9440; facsimile 760/431–9624).

**SUPPLEMENTARY INFORMATION:**

### Background

The following discussion is adapted from the final recovery plan for the arroyo toad (Service 1999), which is available from the addresses above. The arroyo toad *(Bufo californicus)* is one of three members of the southwestern toad *(B. microscaphus)* complex, in the family of true toads, Bufonidae. At the time it was listed, the arroyo toad was considered a subspecies of the southwestern toad, *B. microscaphus californicus*. The taxonomy of the complex has been examined recently by Gergus (1998). Based on his genetic studies, the arroyo toad should be considered a separate species, *Bufo californicus*.

The arroyo toad is a small (adults: snout-urostyle (body) length 55 to 82 millimeters (mm) (2.2 to 3.2 inches (in.)), dark-spotted toad of the family Bufonidae, with females larger than males. Adult arroyo toads have a light-olive green or gray to tan dorsum (back) with dark spots and warty skin. The venter (underside) is white or buff and without dark blotches or spots. A light-colored, V-shaped stripe crosses the head and eyelids, and the anterior portion of the oval parotoid glands (just behind the eyes) are pale. There is usually a light area on each side of the sacral (pelvic) hump and in the middle of the back. The arroyo toad generally does not have a middorsal stripe, but if one is present, it extends only partway along the back.

The arroyo toad is found in coastal and desert drainages from Monterey County, California, south into northwestern Baja California, Mexico. These systems are inherently quite dynamic, with marked seasonal and annual fluctuations in climatic regimes, particularly rainfall. Natural climatic variations as well as other random events, such as fires and floods, coupled with the species' specialized habitat requirements, lead to annual fluctuations in arroyo toad populations. Human alterations of habitat can have unpredictable effects on arroyo toad populations. As a result of agriculture and urbanization, and the construction, operation, and maintenance of water storage reservoirs, flood control structures, roads, and recreational facilities such as campgrounds and off-highway vehicle parks, many arroyo toad populations have been reduced in size or extirpated (eliminated) due to extensive habitat loss from the 1920s into the 1990s. Jennings and Hayes (1994) believe that the loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species and habitat degradation from introduced plant species, caused arroyo toads to be extirpated from 76 percent of the previously occupied habitat in California.

Because the arroyo toad was often confused with the California toad *(Bufo boreas halophilus),* which is very common in the same region, detailed studies of the natural history of the arroyo toad were not begun until the 1980s and 1990s. The arroyo toad exhibits breeding habitat specialization that favors shallow pools and open sand and gravel channels along low-gradient reaches of medium to large-sized streams (Service 1999). These streams can have either intermittent or perennial streamflow and typically experience periodic flooding that scours vegetation and replenishes fine sediments. In at least some portions of its range, the species also breeds in smaller streams and canyons where low-gradient breeding sites are more sporadically

distributed. Populations in smaller drainages are likely to be smaller and at greater risk of extirpation than those on larger streams and in larger habitat patches (Service 1999).

Arroyo toads also require and spend most of their adult life in upland habitats. Individual toads have been observed as far as 2 kilometers (km) (1.2 miles (mi)) from the streams where they breed, but are most commonly found within 0.5 km (0.3 mi) of those streams (Service 1999; Griffin *et al.* 1999; Dan C. Holland, Camp Pendleton Amphibian and Reptile Survey, Fallbrook, California, unpublished data; Holland and Sisk 2000). Arroyo toads typically burrow underground during periods of inactivity and thus tend to utilize upland habitats that have sandy, friable (readily crumbled) soils. Although the upland habitat use patterns of this species are poorly understood, activity probably is concentrated in the alluvial flats (areas created when sediments from the stream are deposited) and sandy terraces found in valley bottoms of currently active drainages (Service 1999, Griffin *et al.* 1999, Sweet *in litt.* 1999, Ramirez 2000, Holland and Sisk 2000).

**Habitat Characteristics and Ecological Considerations**

Appropriate habitat for the arroyo toad is created and maintained by the fluctuating hydrological, geological, and ecological processes operating in riparian ecosystems and the adjacent uplands. The riparian/wash habitats as well as adjacent upland habitats are essential for this species' survival. Periodic flooding that modifies stream channels, redistributes channel sediments and alters pool location and form, coupled with upper terrace stabilization by vegetation, is required to keep a stream segment suitable for all life stages of the arroyo toad.

Specifically, arroyo toads require shallow, slow-moving streams, and riparian (areas near a source of water) habitats that are disturbed naturally on a regular basis, primarily by flooding. Periodic flooding helps maintain areas of open, sparsely vegetated sandy stream channels and terraces. Throughout their range, arroyo toads are typically found in medium- to large-sized streams, in stretches where riverbed gradients are low, there are adjacent alluvial terraces, and surface waters form shallow pools that persist at least through the early summer months (*e.g.*, into June). These habitat conditions are most prevalent in foothill valleys, but also occur in several drainages along the coastal plain and on the desert side of the Transverse Ranges.

Arroyo toads have specialized requirements for breeding habitats. Breeding, arroyo toads use open sites such as overflow pools, old flood channels, and shallow pools along streams. Such habitats rarely have closed canopies over the lower banks of the stream channel due to regular flood events. Heavily shaded pools are generally unsuitable for larval and juvenile arroyo toads because of lower water and soil temperatures and poor algal mat development. Episodic (temporary) flooding is critical to keep the low stream terraces relatively vegetation-free and the soils friable enough for juvenile and adult toads to create burrows. Pools less than 30 centimeters (cm) (12 in.) deep with clear water, flow rates less than 5 cm per second (0.2 foot (ft) per second), and bottoms composed of sand or well-sorted fine gravel are favored by adults for breeding.

Areas that are used by juveniles consist primarily of sand or fine gravel bars with varying amounts of large gravel or cobble with adjacent stable sandy terraces and streamside flats. Areas that are damp and have less than 10 percent vegetation cover provide the best conditions for juvenile survival and rapid growth (Service 1999).

The adjacent alluvial terraces used by subadults and adults for foraging and burrowing are typically sparsely to moderately vegetated with brush and trees such as mulefat (*Baccharis* spp.), California sycamore *(Platanus racemosa)*, cottonwoods (*Populus* spp.), coast live oak (*Quercus agrifolia*), and willow (*Salix* spp.). The understory of stream terraces may consist of scattered short grasses, herbs, and leaf litter, with patches of bare or disturbed soil, or have no vegetation at all. Substantial areas of fine sand, into which adult toads burrow, must be present, but can be interspersed with gravel or cobble deposits.

Upland habitats used by arroyo toads during both the breeding and nonbreeding seasons include alluvial scrub, coastal sage scrub, chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and oak woodland. Arroyo toads also have been found in agricultural fields (Griffin *et al.* 1999), which probably constitute sinks (areas where mortality rates are higher than reproduction rates) over the long term, due to tilling, pesticide and fertilizer applications, and heavy equipment use (Paul C. Griffin, University of Montana, Missoula, Montana *in litt.* 2000). When foraging, subadult and adult arroyo toads often are found around the driplines of oak trees. These areas often lack vegetation, yet have appropriate levels of prey. When active at night, toads often can be observed near ant trails feeding on passing ants, beetles, and other prey.

Males call from the streams during the breeding period, which is generally from late February to early July, although it can be extended in some years, depending on weather conditions. Males may remain at or near the breeding pools for several weeks and are particularly susceptible to predation at this time. Females apparently move to the breeding pools in the streams for only short time periods, in order to soak in the water and to breed (Griffin *et al.* 1999; Nancy Sandburg, Santa Barbara, California, pers. comm. 1999). Amplexus (mating embrace of the female by the male) and egg-laying generally occur at the site where the male was calling. Female arroyo toads apparently release their entire clutch of 2,000 to 10,000 eggs as a single breeding effort and probably are unable to produce a second clutch during the mating season. If conditions are unsuitable, females may not obtain sufficient food for egg production and will forgo breeding during that year. The eggs are laid on substrates of sand, gravel, or cobble generally located away from vegetation in the shallow margins of the pool. High water flows can wash the eggs out of pools, breaking up the egg strands and killing the developing embryos. Silt eroding into the streams from road crossings, adjacent roads, overgrazing, or mining activities can cover and suffocate eggs.

Larvae usually hatch in 4 to 6 days at water temperatures of 12 to 16 degrees Celsius (54 to 59 degrees Fahrenheit). Larvae may take 8 to 14 days to become free-swimming, depending on the water temperature. They are particularly susceptible to the effects of high water flows during this time period, and heavy rains or untimely releases of water from dams can kill thousands of tadpoles very quickly. The larval period for arroyo toads lasts about 65 to 85 days, depending on water temperatures. Metamorphosis may occur at any time between April and the beginning of September, depending on the time of breeding, weather, and water quality. Peak metamorphosis occurs from the end of June to mid-July in the northern part of the toad's range and from late April to mid-May in southern California, although it may be later, particularly at higher elevations. For several days before metamorphosis, arroyo toad larvae cease feeding and aggregate in shallow water along the edges of gravel or sand bars, often under or along stranded algal mats. The metamorphosing and newly

metamorphosed toads are extremely susceptible to predation, habitat disturbance, and activities in the streams during this period (Service 1999).

Juvenile arroyo toads remain in the saturated substrate at the edges of breeding pools for 1 to 3 weeks after metamorphosis. They are active during the day and can be exposed on the barren sand because they are too small to burrow into the substrate. During this period, many toads are lost due to predation unless they can find some cover, such as cobble, algal mats, or pieces of debris, under or beside which to hide. As the toads mature, they move further from the pools onto sand and gravel bars. Crushing of toads by humans and livestock can be a substantial source of mortality at this stage (Service 1999).

As the toads grow, they begin to dig shallow burrows in fine sand, and switch to a nocturnal (night-time) activity pattern, when they forage for ants and beetles. Suitable sandy habitat can be highly localized resulting in dense concentrations of juvenile toads. If the substrate is not friable enough, juvenile toads often disperse farther away from the breeding pool into nearby stands of woody riparian vegetation. Most toads will move into willows or other vegetation as they grow, and as the stream dries naturally. Thus, to provide optimal conditions for arroyo toad survival and recovery, it is necessary to maintain a patchwork of suitable habitats. This patchwork will be on several scales, with open stream pools and sand or gravel bars interspersed with patches of native vegetation.

Little is known of the seasonal and annual movements or physiological ecology of adults, but subadults and some adult males move along streams as much as 0.8 km (0.5 mi) and over 1.0 km (0.6 mi) in a few cases during a single breeding season (Griffin et al. 1999; Ramirez 2000). Dispersal movements along the stream channel may be over 8 km (5 mi), as evidenced by finding arroyo toads breeding along upper Piru Creek in 1999 and 2000 (U.S. Forest Service (Forest Service) 1999, Maeton Freel, Forest Service, pers. comm. 2000). The area had been surveyed numerous times in the past without finding the species (Sam Sweet, University of California, Santa Barbara, pers. comm. 1999, 2000).

The extent of arroyo toad movements away from the stream channel is influenced by rainfall amounts, availability of surface water, width of streamside terraces and floodplains, vegetative cover, and topography (Griffin *et al.* 1999; Ramirez 2000). In San Diego County, Griffin *et al.* (1999) found that, for toads radiotracked for more than 10 days, 14 female adult arroyo toads moved an average maximum distance of 135 meters (m) (443 feet (ft)) and a maximum of more than 300 m (984 ft) perpendicularly from streams, while 46 males moved an average maximum of 73 m (240 ft) from the streams. Thirty-three males along coastal streams with broad floodplains moved an average maximum of 92 m (302 ft) from the streams, while 13 in a narrower canyon moved only 23 m (75 ft) from the streambed (Griffin *et al.* 1999). Ramirez (2000) recorded a maximum distance from the stream of 37 m (121 ft) for 12 arroyo toads in one desert slope stream with a very narrow floodplain, and 200 m (656 ft) for an undisclosed number of toads in another desert slope system with a broader floodplain. Those distances probably underestimate the true range of movement distances due to the limited numbers and tracking season. The extent to which toads move away from streams may be partially regulated by climatic conditions; moderate stable temperatures and high humidity facilitate longer-distance movements into upland habitats (Service 1999). We do not have enough data to characterize fully overwintering activities and habitat use in all of the systems that arroyo toads inhabit.

Several land use activities may affect the hydrology of arroyo toad stream habitats and destroy or severely modify the dynamic nature of the riparian systems upon which arroyo toads depend for reproduction, development, and survival. Human activities that affect water quality influence the amount and timing of nonflood flows or frequency and intensity of floods, affect riparian plant communities, or alter sedimentation dynamics can reduce or eliminate the suitability of stream channels for arroyo toad breeding habitat. Degradation or loss of surrounding riparian and upland habitats reduces and eliminates foraging and overwintering habitat. The introduction of nonnative plant and animal species can reduce the quality of all habitats used by arroyo toads, lead to detrimental levels of competition and predation, or reduce the availability of toad food. Run-off from roads can decrease habitat quality for arroyo toads, and roads provide access for humans, domestic animals, and invasive species that can lead to additional habitat degradation.

The effects of such activities and factors may not become apparent until many years later when the habitat finally becomes sufficiently degraded that arroyo toads can no longer reproduce and survive. Combined with the normal climatic fluctuations in the arroyo toad's range, which can include consecutive years of extremely high or low rainfall, human impacts can cause temporary or permanent extirpations of toads from some areas. Human activities that may cause adverse impacts to arroyo toads include urbanization and agriculture within and adjacent to riparian habitats, the use of pesticides and herbicides within or adjacent to arroyo toad habitat, dam building and the resulting reservoirs, water flow manipulations, sand and gravel mining, suction dredge mining, road placement across and within stream terraces, livestock grazing, off-highway vehicle use of roads and stream channels, the placement of campgrounds and other recreational facilities in arroyo toad habitat (especially on stream terraces), and the use of stream channels and terraces for recreational activities.

**Previous Federal Actions**

We first included the arroyo southwestern toad as a Category 2 candidate species in the September 18, 1985, Notice of Review of Candidate Species (50 FR 37958). It was included under the same category in subsequent notices on January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). We were petitioned to list the arroyo toad under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), on December 30, 1992, and we published a proposed rule on August 3, 1993 (58 FR 41231). The arroyo toad was listed as endangered on December 16, 1994 (59 FR 64859). The designation of critical habitat was determined to be not prudent due to threats of vandalism and collection. A draft recovery plan for the arroyo southwestern toad was made available for public comment on May 6, 1998 (63 FR 25062), and we published the final recovery plan in September 1999.

At the time of listing, we concluded that designation of critical habitat for the arroyo toad was not prudent due to threats of vandalism and collection and because such designation would not benefit the species. We were concerned that critical habitat designation would likely increase the degree of threat from vandalism, collection, or other human-induced impacts. We were aware of at least one instance of the apparent collection of a group of breeding males that had occurred during the listing process, following the publication of information regarding an ongoing scientific study. During the development of the final recovery plan, concern was raised about collecting

activities on some public lands (Service 1999). However, we have determined that instances of vandalism have not increased since the listing of the arroyo toad, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational, potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas are also identified in the recovery plans as the focus of our recovery efforts for the arroyo toad.

On March 4, 1999, the Southwest Center for Biological Diversity (Center for Biological Diversity) and Christians Caring for Creation filed a lawsuit in the Northern District of California against the Service for failure to designate critical habitat for seven species including the arroyo southwestern toad (*Bufo microscaphus californicus*). On November 5, 1999, the district court dismissed the plaintiffs' lawsuit pursuant to a settlement agreement entered into by the parties. Under the settlement agreement, we agreed to submit a proposed determination of critical habitat for the arroyo toad by June 1, 2000, and to submit the final designation to the **Federal Register** by January 5, 2001. By further agreement with the plaintiffs, this final deadline was to extended to January 19, 2001, to allow us time to review and incorporate the comments received on the proposed designation and draft economic analysis.

On June 8, 2000, we published a proposed determination for the designation of critical habitat for the arroyo toad (65 FR 36512). A total of approximately 193,600 hectares (478,400 acres) was proposed as critical habitat for the arroyo toad in Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego Counties, California. The comment period was open until August 7, 2000. During this 60-day comment period we held two public hearings (Valencia on June 27 and Temecula on June 29, 2000). On November 9, 2000, we published a notice (65 FR 67334) announcing the reopening of the comment period and a notice of availability of the draft economic analysis on the proposed determination. The comment period was open an additional 30 days, until December 11, 2000.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat 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 consultation on Federal actions that are likely to result in the destruction or adverse modification of 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 would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of 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)).

Section 4 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.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. 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 (Vol.59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service 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, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, 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.

**Methods**

In determining areas that are essential to conserve the arroyo toad, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the arroyo toad undertaken by the local, state, Tribal, and Federal agencies operating within the species' range since its listing in 1994, and the identified steps necessary for recovery outlined in the final Recovery Plan for the Arroyo Southwestern Toad (Service 1999).

We have also reviewed available information that pertains to the habitat requirements of this species, including material received since completion of the recovery plan. The material included data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports; regional Geographic Information System (GIS) coverages; occupied and potential habitat maps developed by the Forest Service (Forest Service 2000); habitat evaluation models for the San Diego County Multiple Species Conservation Program (MSCP), the North San Diego County Multiple Habitat Conservation Program (MHCP), and the North County Subarea of the MSCP for Unincorporated San Diego County; and a predictive habitat suitability map for San Diego County (Barto 1999). Further, information provided in comments on the proposed designation and draft economic analysis were evaluated and taken into consideration in the development of this final designation.

**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 (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations and protection. These 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 (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The areas designated as critical habitat are designed to provide sufficient breeding and upland habitat to maintain self-sustaining populations and metapopulations of arroyo toads throughout its range, and provide of those habitat components essential for the conservation of the species. Due to the complex life history and dispersal capabilities of the toads, and the dynamic nature of the environment in which they are found, the critical habitat designations include a range of stream reaches and associated uplands. The critical habitat units are configured to provide for dispersal and migration corridors, as well as allowing room for population expansion.

The primary constituent elements of critical habitat for the arroyo toad include rivers or streams with a hydrologic regime that supplies sufficient flowing water of suitable quality and sufficient quantity and at the appropriate times to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads; low-gradient stream segments (typically less than 4 percent) with sandy or fine gravel substrates which support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; a natural flooding regime or one sufficiently corresponding to a natural regime that will periodically scour riparian vegetation, rework stream channels and terraces, and redistribute sands and sediments, such that adequate numbers and sizes of breeding pools and sufficient terrace habitats with appropriate vegetation are maintained; upland habitats (particularly alluvial streamside terraces and adjacent valley bottomlands that include areas of loose soil and dependable subsurface moisture where toads can burrow underground and avoid desiccation) of sufficient width and quality to provide foraging and living areas for subadult and adult arroyo toads; few or no nonnative species that prey upon or compete with arroyo toads, or degrade their habitat; stream channels and upland habitats where manmade barriers do not completely or substantially impede migration to overwintering sites, dispersal between populations, or recolonization of areas that contain suitable habitat; and habitats with limited human-related disturbance.

Arroyo toads are not distributed uniformly throughout the critical habitat units. Arroyo toad breeding habitat is patchily distributed along the stream courses, and the same is true of appropriate upland habitat. Some areas primarily provide for migration and dispersal between breeding and foraging habitats or allow for dispersal to additional breeding pools that will accommodate expanding populations. Habitat conditions within streams can change rapidly in response to streamflows and other factors, such as the development and shifting of sand and gravel bars, and creation and disappearance of pools. Terrace and upland habitats, although more stable than streambed and riparian habitats, may change as a result of rainfall, earthquakes, fires, and other natural events. These factors may cause the habitat suitability of given areas to vary over time, thus affecting the distribution of toads.

**Criteria Used To Identify Critical Habitat**

The final recovery plan (Service 1999) for the arroyo toad identified the specific recovery needs of the species and serves as a starting point for

identifying areas essential to the conservation of the toad. Those drainage basins identified in the final recovery plan as areas necessary to achieve arroyo toad recovery are generally reflected in this final critical habitat designation.

The recovery strategy for the arroyo toad focuses on providing sufficient breeding and upland habitat to maintain self-sustaining populations and metapopulations of arroyo toads across the historic range of the species in California. To recover the arroyo toad to the point where it can be downlisted or delisted, it is essential to preserve the species' genetic diversity as well as the variety of ecological environments in which it has persisted.

We are designating critical habitat on lands that are considered essential to the conservation of the arroyo toad. Using the recovery plan for guidance, we determined an area was essential if it had one or more of the following characteristics: (1) supports a substantial core population of arroyo toads; (2) supports at least a small toad population and possesses favorable habitat conditions for population expansion and persistence; (3) suitable habitat situated in a location that appears to be crucial for maintaining the viability of a larger metapopulation; (4) occupied habitat on the periphery of the arroyo toad's geographic range; and (5) occupied habitat in atypical or underrepresented ecological environments (e.g., high elevation or desert-edge populations). These areas have the primary constituent elements described above.

Areas supporting core populations or that have the potential to support large populations are essential because they represent the foundation for continued persistence of the species. Furthermore, some habitat areas that would not be considered essential if geographically isolated are in fact essential when situated in locations where they facilitate continued connectivity between surrounding populations or play a significant role in maintaining metapopulation viability (e.g., by providing additional areas of occupancy that provide resilience to periodic extirpations of adjacent habitat patches). Populations on the periphery of the species range or in atypical ecological environments are important for maintaining the genetic diversity of the species which could be essential to evolutionary adaptation to changing climatic and environmental conditions.

Arroyo toads are found in a variety of ecologically and geographically distinct areas. In order to preserve this diversity, the recovery plan identifies three recovery units—Northern, Southern, and Desert—that reflect distinct ecological and geographic regions within the range of the species. The recovery units as identified in the final recovery plan are provided for reference in Table 1.

TABLE 1.—RECOVERY UNITS FOR THE ARROYO TOAD

| Northern Unit |
|---|
| San Antonio River, Monterey County |
| Sisquoc River and tributaries, Santa Barbara County |
| Upper Santa Ynez River Basin (Indian, Mono, Agua Caliente), Santa Barbara County |
| Sespe Creek, Ventura County |
| Piru Creek (Upper and Lower), Ventura and Los Angeles counties |
| Upper Santa Clara River Basin, Los Angeles County |
| Upper Los Angeles Basin: (Big Tujunga, tributaries, Arroyo Seco), Los Angeles County |
| **Southern Unit** |
| Santiago Creek, Orange County |
| San Jacinto River and Bautista Creek, Riverside County |
| San Juan basin and Trabuco Creeks, Orange and Riverside counties |
| San Mateo and San Onofre Creek basins, San Diego and Orange counties |
| Lower Santa Margarita basin (De Luz, Roblar, and Sandia Creeks), San Diego County |
| Upper Santa Margarita basin (Temecula Creek, Arroyo Seco), Riverside and San Diego Counties |
| Lower and Middle San Luis Rey basin (below Lake Henshaw), San Diego County |
| Upper San Luis Rey basin (above Lake Henshaw), San Diego County |
| Santa Ysabel Creek, San Diego County |
| San Diego basin (including San Vicente Creek), San Diego County |
| Sweetwater River basin (including Viejas, Peterson Creeks), San Diego County |
| Cottonwood Creek basin, San Diego County |
| **Desert Unit** |
| Little Rock Creek, Los Angeles County |
| Upper Mojave River basin (Mojave, Deep, Horsethief, Little Horsethief), San Bernardino County |
| Whitewater River basin, Riverside County |

To identify and map areas essential to the conservation of the species, we used the characteristics of essential habitat described above, data on known arroyo toad locations, and criteria in the recovery plan for reclassification of the species. Spatial data on stream gradients were used to determine the extent of suitable breeding habitat in these areas. Stream reaches containing suitable breeding habitat are often patchily distributed and interspersed with higher gradient segments. These interspersed high-gradient segments were included in the mapped essential stream reaches because of their proximity to suitable breeding habitat and their importance in facilitating movement between breeding sites.

To delineate essential upland habitat areas, we used a GIS-based modeling procedure to identify alluvial terraces and valley bottomlands adjacent to the previously identified essential stream reaches. Lacking spatially explicit data on geomorphology, elevation above the stream channel was used as an indicator of the extent of alluvial habitat. After some experimentation, we determined

that areas up to 25 m (80 ft) in elevation above the stream channel were most likely to contain the primary constituent upland habitat elements that are essential to arroyo toads. In extremely flat areas we recognized that there is likely a distance from the stream channel beyond which arroyo toads seldom travel, so we truncated the upland habitat delineation at a distance of 1.5 km (0.9 mi) if the 25-m elevation limit had not yet been reached. This distance is based on reported observations of arroyo toads at least 1.2 km from the upland/riparian ecotone (Holland and Sisk 2000). As it turned out, the 25-m elevation limit was reached at distances less than 1.5 km from the mapped stream channel along more than 99 percent of the stream reaches, so the distance limit rarely was a factor.

This GIS-based modeling technique was effective at capturing alluvial areas associated with river valleys. Thus, the width of the upland component of critical habitat varies based on topography. The habitat widens in broad alluvial valleys and narrows in places where streams run through constricted canyons or between surrounding hills.

The boundaries of critical habitat in each drainage are mapped as contiguous blocks of 250-m-by-250 m cells that conform to a Universal Transverse Mercator (UTM) grid. We evaluated the effectiveness of this approach by overlaying known arroyo toad locations on these habitat boundaries and calculating the percent encompassed. More than 95 percent of all known locations fell within the critical habitat boundaries. However, the vast majority of known locations come from stream surveys done during the breeding season and thus are detections of toads in breeding habitat. To more rigorously evaluate the critical habitat model, we assessed its effectiveness at capturing documented toad locations from the one available study that focused specifically on surveying toads in upland habitats. Holland and Sisk (2000) established extensive pitfall trap arrays at discrete distances from two stream courses and operated these arrays at various periods throughout the year. They had 466 captures of arroyo toads, 35 (7.5 percent) of which were identified as being in upland areas. Those toads were captured at distances that ranged from 15 to 1,175 m from the upland-riparian ecotone (boundary) (Holland and Sisk 2000). For the two areas sampled in this study, our modeled critical habitat boundaries encompassed 88 percent of the pitfall trapping stations where arroyo toads were detected.

To identify critical habitat units, we first examined those lands under Federal jurisdiction. Those lands include areas managed by the Department of Defense (DOD), the Forest Service, the Bureau of Land Management (BLM), the Army Corps of Engineers (Army Corps), and the Service. We also considered the existing status of non-Federal and private lands in designating areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. With one exception, non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) for arroyo toads under section 10(a)(1)(B) of the Act are not designated as critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

We are including portions of the Soboba, Pala, Rincon, Capitan Grande, Viejas, and Sycuan Indian Reservations because they all contain areas of high-quality habitat within units that are essential to the conservation of arroyo toads. We have coordinated with the respective Tribes on this designation under the guidance of the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, which requires us to coordinate with federally recognized Tribes on a Government-to-Government basis.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for arroyo toad conservation. Our 250-meter UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. However, this minimum mapping unit does not exclude all developed areas, such as buildings, aqueducts, railroads, airports, and other lands unlikely to contain the primary constituent elements. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

**Critical Habitat Designation**

The approximate area encompassing the designated critical habitat by county and land ownership is shown in Table 2.

TABLE 2.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

| County | Forest Service | BLM | FWS | Military | State/Local | Tribal | Private | Total |
|---|---|---|---|---|---|---|---|---|
| Monterey | 0 | 0 | 0 | 2,900 ha (7,170 ac) | 0 | 0 | 20 ha (50 ac) | 2,920 ha (7,220 ac) |
| Santa Barbara | 3,415 ha (8,440 ac) | 0 | 0 | 0 | 0 | 0 | 2,365 ha (5,830 ac) | 5,780 ha (14,270 ac) |
| Ventura | 4,080 ha (10,090 ac) | 0 | 0 | 0 | 0 | 0 | 360 ha (900 ac) | 4,440 ha (10,990 ac) |
| Los Angeles | 4,505 ha (11,130 ac) | 10 ha (30 ac) | 0 | 0 | 20 ha (45 ac) | 0 | 3525 ha (8705 ac) | 8,060 ha (19,910 ac) |
| San Bernardino | 1,130 ha (2,790 ac) | 80 ha (200 ac) | 0 | 925 ha (2,290 ac) | 540 ha (1,330 ac) | 0 | 4,010 ha (9,910 ac) | 6,685 ha (16,520 ac) |
| Riverside | 970 ha (2,400 ac) | 620 ha (1,530 ac) | 0 | 0 | 90 ha (220 ac) | 155 ha (390 ac) | 4,360 ha (10,785 ac) | 6,195 ha (15,325 ac) |
| Orange | 325 ha (815 ac) | 0 | 0 | 30 ha (75 ac) | 1,090 ha (2,700 ac) | 0 | 3,375 ha (8,330 ac) | 4,820 ha (11,920 ac) |
| San Diego | 5,745 ha (14,190 ac) | 230 ha (575 ac) | 345 ha (860 ac) | 1,325 ha (3,270 ac) | 2380 ha (5870 ac) | 1,565 ha (3,870 ac) | 23,290 ha (57,570 ac) | 34,880 ha (86,205 ac) |
| Total | 20,170 ha (49,855 ac) | 940 ha (2,335 ac) | 345 ha (860 ac) | 5,180 ha (12,805 ac) | 4120 ha (10,165 ac) | 1,720 ha (4,260 ac) | 41,305 ha (102,080 ac) | 73,780 ha (182,360 ac) |

Critical habitat includes arroyo toad habitat throughout the species' range in the United States (*i.e.*, Monterey, Santa Barbara, Ventura, Los Angeles, Riverside, San Bernardino, Orange, and San Diego Counties, California). Lands designated are under private, local agency, county, State, Tribal, and Federal ownership. Lands designated as critical habitat have been divided into 22 Critical Habitat Units. A brief description of each unit, and reasons why they are essential for the conservation of the arroyo toad, are presented below. The units are generally based on geographically distinct river basins. In several instances, a river basin has been broken into two or more units based on human or natural landscape features that effectively separate portions of the basin (*e.g.*, a large reservoir or gorge). Based on observations recorded since 1985, each of these units is now occupied by arroyo toads.

Jennings and Hayes (1994) estimate that arroyo toads have lost 76 percent of their historic habitat. Although the linear measure of historically occupied streams may not be four times what is currently occupied, it is clear from museum records and data on extant populations that the habitats capable of supporting large numbers of arroyo toads have decreased dramatically in the last 100 years. The reaches that typically support or historically supported the highest densities of toads are those in the lower and middle portions of river basins, typically associated with third order or larger streams. Many of those reaches have been lost to or degraded by urban development, intensive agriculture, water diversions, sand and gravel mining operations, and reservoirs. For these reasons, we believe all of the areas we are designating may require special management considerations or protection.

**Northern Recovery Unit**

The following seven critical habitat units are located in the Northern Recovery Unit for the arroyo toad, as discussed in the final recovery plan. Most of the lands are Federally owned, and management needs are being addressed through the section 7 consultation process and the development of management plans and conservation strategies. Because the remaining toad populations have been reduced in size, and the habitat fragmented by road construction, dams, agriculture, and urbanization, it is essential to protect them to reduce further loss of genetic diversity and safeguard against the loss of any one population due to random natural or human-caused events.

**Unit 1: San Antonio River, Monterey County**

Unit 1 consists of the San Antonio River and adjacent uplands, from about 3 km (2 mi) upstream of the confluence with Mission Creek downstream to San Antonio Reservoir, a distance of about 27 km (17 mi), and includes portions of Mission Creek and other tributaries. The unit encompasses approximately 2,920 ha (7,220 ac), more than 99 percent of which is on the Fort Hunter Liggett Military Reservation. This is the northernmost known population of arroyo toads and is approximately 160 km (100 mi) north of the nearest documented extant population. The protection and recovery of this area are essential to maintain the complete genetic variability of the species and the full range of ecological settings within which it is found.

**Unit 2: Sisquoc River, Santa Barbara County**

Unit 2 consists of 44 km (27 mi) of the Sisquoc River and adjacent uplands, from Sycamore Campground downstream to just below the confluence with La Brea Creek. The unit encompasses approximately 3,385 ha (8,360 ac), of which 56 percent is private land and 43 percent is within the Los Padres National Forest. Upper stretches of the river are within the National Forest and mostly within the San Rafael Wilderness Area. Below the National Forest boundary, the river and adjacent uplands are on private lands. This long, unregulated stream is occupied arroyo toad habitat and is one of the few remaining major rivers in southern California with a natural flow regime. This area is essential to maintaining genetic diversity of the species. The protection of this population is essential as it is a core population. Arroyo toads from this population may be a suitable source for the reestablishment of populations outside critical habitat on the upper Salinas River, if appropriate habitat can be identified and protected.

**Unit 3: Upper Santa Ynez River Basin, Santa Barbara County**

Unit 3 is located upstream of Gibraltar Reservoir and incorporates portions of the upper Santa Ynez River, Indian Creek, Mono Creek, and adjacent uplands. The unit encompasses approximately 2,395 ha (5,910 ac) within the boundaries of Los Padres National Forest; 81 percent is on National Forest lands and 19 percent is on private inholdings. Designated portions of the upper Santa Ynez River extend 16 km (10 mi) from Jameson Reservoir downstream to Gibraltar Reservoir. Indian Creek is designated from the Buckthorn Creek confluence down to the Mono Debris Dam, a distance of 8 km (5 mi). Mono Creek and associated uplands are designated for 12 km (7.5 mi) from the first unnamed stream below The Narrows to its confluence with the Santa Ynez River. This area is essential to maintaining genetic diversity of the species. A substantial and well-studied arroyo toad population occurs in this area (Sweet 1992, 1993). It is likely the remnant of a much larger population that historically extended downstream below what is now Lake Cachuma and upstream into the area occupied by Jameson Reservoir. This area has favorable habitat conditions for population expansion and persistence; with the reduction of threats through management, this area should support a larger arroyo toad population.

**Unit 4: Sespe Creek, Ventura County**

Unit 4 includes 35 km (22 mi) of Sespe Creek and adjacent uplands, from the lower end of Sespe Gorge (elevation approximately 1,075 m (3,530 ft)) downstream to the confluence with Alder Creek. The unit encompasses approximately 2,340 ha (5,800 ac), of which 94 percent is on the Los Padres National Forest and the remainder is in private inholdings. A substantial arroyo toad population occurs in this unit (Service 1999) along an undammed stream in a watershed that is predominately National Forest land. This area is essential to maintaining genetic diversity of the species. It is a core population that can be expanded with appropriate management. In all likelihood, arroyo toad populations in units 4, 5, and 6 historically were part of a large Santa Clara River Basin metapopulation. Ecologically, these units provided a link between the more coastal populations on the Sisquoc and Santa Ynez rivers, and populations in the Desert Recovery Unit. Substantial barriers to toad movement now exist between these units, including dams, agriculture, and urban development.

**Unit 5: Piru Creek, Ventura and Los Angeles counties**

Unit 5 includes Piru Creek and adjacent uplands from the confluence with Lockwood Creek downstream to Pyramid Reservoir (Subunit 5a), and from Pyramid Dam downstream to Lake Piru (Subunit 5b). Subunit 5b also includes Agua Blanca Creek from Devil's Gateway downstream to the confluence with Piru Creek. The unit

encompasses approximately 2,975 ha (7,345 ac), 92 percent of which is within the Los Padres and Angeles National Forests, with the remaining on private inholdings. A substantial arroyo toad population occurs in this unit (Service 1999), although much of the historical arroyo toad habitat in the area is now inundated by the two reservoirs, this population should expand and become more stable, with appropriate management. Protection and recovery of this population is essential to maintain the range of ecological settings from the coast to the desert.

**Unit 6: Upper Santa Clara River Basin, Los Angeles County**

Unit 6 includes portions of Castaic and San Francisquito Creeks and adjacent uplands. The unit encompasses approximately 3,360 ha (8,305 ac), of which 68 percent is private land and 30 percent is within the Angeles National Forest. Subunit 6a includes Castaic Creek from Bear Canyon downstream to Castaic Lake and Fish Creek from Cienaga Spring to the confluence with Castaic Creek. Subunit 6b includes Castaic Creek below Castaic Lake to the confluence with the Santa Clara River. Subunit 6c includes San Francisquito Creek from Bee Canyon to the southern end of section 34 in township 5 N, range 16 W. Arroyo toads are found on Castaic Creek both above and below the reservoir, and recent surveys have found evidence of the species on San Francisquito Creek. The arroyo toad population on Castaic has expanded in recent years with changes in management, and San Francisquito Creek offers an excellent opportunity for further expansion. With appropriate management of nonnative plants and animals and habitat rehabilitation, the stability of the Upper Santa Clara River basin arroyo toad population should increase substantially. The Santa Clara River, as managed under the Natural River Management Plan (Valencia Company 1998) and associated conservation easements, is essential because it serves as a dispersal corridor for arroyo toads between Castaic Creek and San Francisquito Creek. This is the easternmost population in the Northern Recovery Unit, and as such provides the final link in the range of ecological settings for this recovery unit.

**Unit 7: Upper Los Angeles River Basin, Los Angeles County**

Unit 7 includes portions of Big Tujunga, Mill, Alder, and Arroyo Seco creeks, and adjacent uplands. The unit encompasses approximately 3,225 ha (7,970 ac), of which 62 percent is within the Angeles National Forest and 38 percent is private land. Subunit 7a includes 19 km (11.8 mi) of Big Tujunga Creek from below Big Tujunga Dam downstream to Hansen Lake. Subunit 7b encompasses: (1) approximately 13 km (8 mi) of upper Big Tujunga Creek from immediately above Big Tujunga Reservoir upstream to 2 km (1.2 mi) above the confluence with Alder Creek, (2) almost 6 km (3.7 mi) of Mill Creek from the Monte Cristo Creek confluence downstream to Big Tujunga Creek, and (3) 3 km (1.9 mi) of Alder Creek from the Mule Fork confluence downstream to Big Tujunga Creek. Subunit 7c includes 9.5 km (6 mi) Arroyo Seco Creek from the Long Canyon confluence downstream to the upper end of Devil's Gate Reservoir.

Arroyo toads have recently been documented (in the last 5 years) in each of these drainages and, collectively, they represent the only significant known population remaining in the coastal foothills of the San Gabriel Mountains. This unit is essential primarily because it is occupied and contains favorable habitat conditions for major population increases, particularly if the timing of water releases from Big Tujunga Dam can be adjusted to restore the seasonal habitat conditions necessary for successful arroyo toad breeding. In addition, populations in Alder, Mill, and Arroyo Seco creeks extend into high-elevation environments that are atypical for the arroyo toad and may be important to maintaining genetic diversity.

**Southern Recovery Unit**

The following 12 critical habitat units are located in the Southern Recovery Unit for the arroyo toad, as discussed in the final recovery plan. Arroyo toads probably occurred in and along the coastal plain portions of all the streams in this unit, but are now found on the coastal plain only in units 8, 10, 11, and 12.

**Unit 8: Santiago Creek, Orange County**

Unit 8 is located just above Irvine Lake where Black Star, Baker, and Silverado creeks join Santiago Creek. The unit encompasses approximately 500 ha (1,235 ac), 99 percent of which is private land; the remainder is within the Cleveland National Forest. A 3 km (1.9 mi) stretch of Black Star Creek and associated uplands are designated from near the southwest corner of Section 30 (T4S, R7W) downstream to Santiago Creek. A 3.5 km (2.2 mi) stretch of lower Baker Canyon is also included, as is approximately 1 km of Santiago Creek. This unit is predominantly within the North Ranch Policy Plan Area within the Orange County Central-Coastal NCCP/HCP. As discussed in more detail below, there is not yet an approved Implementing Agreement or section 10 (a)(1)(B) permit for the take of arroyo toads in the North Ranch Policy Plan Area, so we are including it in this final critical habitat designation. As an artifact of the mapping unit size used to designate critical habitat for the arroyo toad within the North Ranch Policy Plan area, a small portion of the Orange County Central-Coastal NCCP/HCP where take of the arroyo toad has been authorized is within the boundaries of this critical habitat unit. However, due to the conservation assurances and take authorization provided for the arroyo toad in this portion of the critical habitat unit, we hereby exclude it from designation as critical habitat.

With the current status of arroyo toads in this unit is poorly known, they were observed in lower Baker Canyon in 1985 (Robert Fisher, USGS, pers. comm. 1999). Surveys performed along Santiago Creek in 1997 failed to detect arroyo toads (Harmsworth Associates 1998), and reportedly no arroyo toads were detected during year 2000 surveys of Irvine Company land within this unit (Adrian Wolf, pers. comm. 2000). However, high-quality habitat still exists in this area (e.g., Baker Canyon) that likely was not covered in recent survey efforts.

Unit 8 is considered essential because habitat conditions are favorable for population expansion and long-term persistence. Maintaining a population in this unit should also enhance the viability of the larger arroyo toad metapopulation that extends across the lower slopes of the Santa Ana Mountains from Santiago Creek to San Mateo Creek (crossing into Units 10 and 11). We think there are opportunities for movement of individuals between occupied drainages in this area, which would positively influence populations in each drainage.

**Unit 9: San Jacinto River and Bautista Creek, Riverside County**

Unit 9 includes portions of the San Jacinto River, Indian Creek, Bautista Creek, and adjacent uplands, east of the town of Hemet. The unit encompasses approximately 1,710 ha (4,220 ac), of which 60 percent is private land, 22 percent is within the San Bernardino National Forest, 9 percent is within the Soboba Indian Reservation, and the remaining 9 percent is on other Federal or State owned lands. Subunit 9a covers 11 km (6.8 mi) of the San Jacinto River from the Sand Canyon confluence downstream to just below the confluence with Indian Creek and also includes the lower 1 km (0.6 mi) of

Indian Creek. Subunit 9b covers 11 km (6.8 mi) of Bautista Creek from near the middle of section 20 (T6S, R2E) downstream to near the middle of section 27 (T5S, R1E), where the stream enters a debris basin. In the proposal, we stated that while the current status of arroyo toads in this unit is poorly known, there are historic records from the 1970s and high quality habitat still exists in the area. Surveys conducted in the summer of 2000 confirmed the existence of arroyo toad populations on Bautista Creek (Lisa Lyren, USGS, *in litt.* 2000) and the San Jacinto River (Brock Ortega, Dudek & Associates, pers. comm. 2000) within the San Bernardino National Forest. These populations likely extend downstream onto private and tribal lands.

Approximately 155 ha (390 ac) of the Soboba Indian Reservation are included in this unit. High quality arroyo toad habitat exists within the reservation along lower Indian Creek to its confluence with the San Jacinto River. It is important to maintaining the integrity of the unit. Unit 9 is essential for arroyo toad conservation because it is occupied habitat with favorable conditions for population persistence in an area that is on the southeastern periphery of the species range. Decidedly isolated from other known populations, this is a substantial patch of suitable habitat which supports a population that is important for genetic diversity and has a high likelyhood of persistence.

**Unit 10: San Juan and Trabuco Creeks, Orange and Riverside counties**

Unit 10 includes portions of San Juan Creek, Bell Canyon, Trabuco Creek, and adjacent uplands. The unit encompasses approximately 3,745 ha (9,270 ac), of which 56 percent is private land, 29 percent is Orange County park land (Caspers Wilderness Park and O'Neill Regional Park), and 15 percent is on the Cleveland National Forest. Subunit 10a covers approximately 30 km (18.6 mi) of San Juan Creek from the bottom of Decker Canyon downstream to Interstate 5 and includes about 4 km (2.5 mi) of Bell Canyon from just below Crow Canyon downstream to the confluence with San Juan Creek. Subunit 10b covers approximately 8 km (5 mi) of Trabuco Creek from Falls Canyon downstream to the lower end of O'Neill County Park.

San Juan and Bell creeks are essential for conservation of the arroyo toad because they support a large core population, which is concentrated within Caspers Wilderness Park and private lands downstream (P. Bloom, *in litt.*). The designated stretch of Trabuco Creek is considered essential because it is currently occupied by arroyo toads (D. Holland, pers. comm.) and conditions there are favorable for population persistence. A population in this area should also help maintain connectivity between toads in Santiago Creek to the north and Bell Canyon to the south.

**Unit 11: San Mateo Basin, San Diego and Orange counties**

Unit 11 includes portions of San Mateo, Christianitos, Talega, Gabino, and La Paz creeks, and adjacent uplands. The unit encompasses approximately 1,820 ha (4,495 ac), of which 54 percent is within portions of the Camp Pendleton Marine Corps Base that are leased to outside parties for other land uses (i.e. San Onofre State Park and agricultural lands) and 43 percent is on private land. Portions of Camp Pendleton outside of the leased lands are excluded. Two disjunct sections of San Mateo Creek are included: Subunit 11b covers approximately 2 km (1.2 mi) within the Cleveland National Forest near Devils Canyon, and subunit 11a extends about 5 km (3.1 mi) from the Christianitos Creek confluence downstream to just below Interstate 5. Portions of Christianitos Creek are designated from just above Gabino Creek downstream to the confluence with San Mateo Creek. Approximately 5 km (3.1 mi) of Gabino Creek upstream from its confluence with Christianitos Creek are designated, including about 1 km (0.6 mi) of La Paz Creek. The unit also includes approximately 7 km (4.4 mi) of Talega Creek upstream from its confluence with Christianitos Creek and beyond the boundaries of Camp Pendleton.

San Mateo and Christianitos creeks support large core populations (Holland and Goodman 1998) and are essential to conservation of the species. An unusual and potentially important aspect of this unit is its close proximity to the coast. Historically, there were probably many near-coast populations, but few remain due to extensive urbanization and river channelization. Distinctive climatic conditions near the coast may provide different selective pressures on toads in this area, potentially favoring specific genetic characteristics.

**Unit 12: Lower Santa Margarita River, San Diego County**

Unit 12 includes approximately 20 km (12.4 mi) of the Santa Margarita River and adjacent uplands, from the lower end of Temecula Canyon to the boundary of Camp Pendleton (Subunit 12b) and almost 4 km of De Luz Creek from the town of De Luz to the boundary of Camp Pendleton (Subunit 12A). The unit encompasses approximately 1245 ha (3075 ac), of which 30 percent is within the Fallbrook Naval Weapons Station and 70 percent is on private land. Land within the Camp Pendleton Marine Corps Base is excluded from this unit (see Discussion in Exclusion Under Section 4(b)(2)).

Recent surveys of the Santa Margarita River and De Luz Creek immediately downstream of this unit have documented what is probably the largest known population of arroyo toads (Holland and Goodman 1998). Portions of these drainages within this unit are also occupied and considered essential because they supplement and adjoin the large population on Camp Pendleton and potentially provide connectivity to populations in the upper Santa Margarita River basin.

**Unit 13: Upper Santa Margarita River Basin, Riverside and San Diego counties**

Unit 13 is located above Vail Lake and includes portions of Temecula Creek, Wilson Creek, Arroyo Seco Creek, and adjacent uplands. The unit encompasses approximately 4,695 ha (11,610 ac), of which 89 percent is private land and 10 percent is within the Cleveland National Forest. Approximately 25 km (15.5 mi) of Temecula Creek are designated from Dodge Valley downstream to Vail Lake. The unit also includes 6 km (3.7 mi) of Wilson Creek from Lancaster Valley down to Vail Lake and 11 km (6.8 mi) of Arroyo Seco Creek from Crosley Homestead down to Vail Lake.

The broad, flat alluvial valleys found in this unit contain high-quality habitat for arroyo toads. The unit is essential because there are documented occurrences in Temecula, Wilson, and Arroyo Seco creeks, and habitat conditions are favorable for population expansion and long-term persistence.

**Unit 14: Lower and Middle San Luis Rey River Basin, San Diego County**

Unit 14 includes portions of the San Luis Rey River below Lake Henshaw and adjacent uplands, and includes sections of Pala and Keys creeks. The unit encompasses approximately 7,470 ha (18,455 ac), of which 79 percent is private land and 18 percent is Tribal land. Approximately 48 km (30 mi) of the San Luis Rey River are designated from the western edge of the La Jolla Indian Reservation downstream to the confluence with Guajome Creek near the city of Oceanside. It also includes approximately 5.5 km (3.4 mi) of Pala Creek and 2.7 km (1.7 mi) of Keys Creek

upstream from the confluence with the San Luis Rey River.

This long, low-elevation (all below 305 m (1,000 ft) in elevation) unit, situated in a broad, flat valley, is essential to arroyo toad conservation because it supports a large core population that, provided threat factors can be addressed, is capable of long-term persistence. Some of the best arroyo toad habitat in this unit occurs within the Pala and Rincon Indian Reservations.

The San Luis Rey River provides important high quality habitat for the arroyo toad. However, intensive urbanization and agriculture near the coast, and dams and water diversions in the upper end, have reduced habitat quality in the upper and lower portions of this unit. Approximately 18 percent of the identified remaining suitable habitat along the San Luis Rey is on Tribal land. The Pala and Rincon Reservations support broad alluvial floodplains that contain high quality habitat and recent surveys have documented a substantial arroyo toad concentration on both reservations. If habitats on these reservations are lost, the remaining population would be highly fragmented and vulnerable to extirpation.

**Unit 15: Upper San Luis Rey Basin, San Diego County**

Unit 15 includes the upper San Luis Rey River above Lake Henshaw, two of its headwater tributaries, and adjacent uplands. The unit encompasses approximately 4,525 ha (11,180 ac), of which 80 percent is private land and 20 percent is within the Cleveland National Forest. This unit consists of two subunits. Subunit 15a covers almost 14 km (8.7 mi) of the upper San Luis Rey River from the Indian Flats area downstream to the upper end of Lake Henshaw and includes about 12.5 km (7.8 mi) of Agua Caliente Creek from the western edge of section 13 (T10S, R3E) to the confluence with the San Luis Rey. Subunit 15b includes approximately 2.5 km (1.6 mi) of the West Fork of the San Luis Rey River where it runs through Barker Valley. Arroyo toads occur in each of these drainages, with the largest concentration found along Agua Caliente Creek.

This unit is essential because it contains a unique assemblage of several small, disjunct, high-elevation populations and one large, core population (on Agua Caliente Creek) in an area where in-stream and/or overland dispersal between populations is probably still possible.

**Unit 16: Santa Ysabel Creek, San Diego County**

Unit 16 includes portions of Santa Ysabel Creek and adjacent uplands, and includes portions of Santa Maria Creek, Guejito Creek, and Temescal Creek (Pamo Valley). The unit encompasses approximately 4,670 ha (11,545 ac), of which 87 percent is private land and 11 percent is within the Cleveland National Forest. The unit consists of three subunits. Subunit 16a includes approximately 13 km (8 mi) of Santa Ysabel Creek and adjacent uplands from Sutherland Reservoir downstream to the western boundary of the Cleveland National Forest near Boden Canyon (which is the eastern boundary of the San Diego MSCP area). Subunit 16a also includes approximately 7 km (4.3 mi) of Temescal Creek from the northern edge of Pamo Valley to the confluence with Santa Ysabel Creek. Subunit 16b includes approximately 12 km (7.5 mi) of Guejito Creek from the 610 m (2,000 ft) elevation contour downstream to the San Diego MSCP boundary near San Pasqual Valley. Subunit 16c covers approximately 10 km (6 mi) of Santa Maria Creek from the west side of Ramona to the San Diego MSCP boundary near San Pasqual Valley.

All of the drainages included in this unit are occupied by arroyo toads, and a large population exists along Temescal and Santa Ysabel creeks within Pamo Valley. This unit is essential to arroyo toad conservation because it supports a large core population and contains several additional populations that can remain viable and interconnected. This unit also provides an important linkage and genetic interchange with a core arroyo toad population in San Pasqual Valley, within the San Diego MSCP area.

**Unit 17: San Diego River/San Vicente Creek, San Diego County**

Unit 17 includes portions of the San Diego River and San Vicente Creek and adjacent uplands. The unit encompasses approximately 1,595 ha (3,935 ac), of which 75 percent is private land, 17 percent is within the Cleveland National Forest, and 6 percent is Tribal land. The unit is broken into four subunits—three disjunct sections of the San Diego River and one section of San Vicente Creek. Subunit 17a includes approximately 8 km (5 mi) of the San Diego River from Ritchie Creek downstream to the upper edge of El Capitan Reservoir and approximately 1 km (0.6 mi) of lower Cedar Creek. Subunit 17b includes 1.5 km (0.9 mi) of the San Diego River from El Capitan Reservoir to El Monte County Park. Subunit 17c covers almost 7 km (4.3 mi) of the San Diego River from approximately 2 km (1.2 mi) below El Monte County Park downstream to the confluence with San Vicente Creek. Subunit 17d includes 3.9 km (2.4 mi) of San Vicente Creek from the west side of San Diego Country Estates downstream to where the creek crosses Wildcat Canyon Road (the MSCP area boundary).

The upper San Diego River and San Vicente Creek are both occupied by arroyo toads. This unit is essential to arroyo toad conservation because it encompasses several significant populations and includes suitable habitat for population expansion, which increases the probability of long-term persistence. It also provides an important linkage to populations occurring within the San Diego MSCP area. Approximately 100 ha (245 ac) of the Capitan Grande Indian Reservation at the upper end of El Capitan Reservoir are included in this unit. High quality riparian and alluvial terrace habitats occur within the Reservation and they are important portions of the unit.

**Unit 18: Sweetwater River Basin, San Diego County**

Unit 18 includes portions of the Sweetwater River, Peterson Canyon, Viejas Creek, and adjacent uplands. The unit encompasses approximately 5,065 ha (12,540 ac), of which 55 percent is private land, 22 percent is on California State Park land, 13 percent is within the Cleveland National Forest, and 7 percent is on the San Diego National Wildlife Refuge. The unit is broken into four subunits—three disjunct sections of the Sweetwater River and one section of Viejas Creek. Subunit 18a covers approximately 32 km (20 mi) of the Sweetwater River from the top of Upper Green Valley in Cuyamaca Rancho State Park downstream to the San Diego MSCP area boundary. Subunit 18b includes approximately 1.2 km (0.7 mi) of the Sweetwater River between the MSCP boundary and Loveland Reservoir and 2.4 km (1.5 mi) of Peterson Canyon from just east of the Taylor Creek confluence downstream to the top of Loveland Reservoir. Subunit 18c encompasses approximately 26 km (16 mi) of the Sweetwater River, within the MSCP boundary, from immediately below Loveland Dam downstream to the upper edge of Sweetwater Reservoir. Subunit 18d covers 3.2 km (2 mi) of Viejas Creek and associated uplands from the western end of Viejas Valley downstream to the Congressional boundary of the Cleveland National Forest (which is the eastern boundary of the San Diego MSCP area).

The unit is essential to arroyo toad conservation because it supports several significant populations that can remain viable, and hopefully interconnected, over the long-term, provided suitable habitat conditions are maintained. The unit includes approximately 30 ha (80 ac) of the Viejas Indian Reservation along its southwestern boundary, and 40 ha (100 ac) on the south side of the Sycuan Indian Reservation. High quality riparian and alluvial terrace habitats occur along Viejas Creek (Viejas Reservation) and the lower part of Sycuan Creek (Sycuan Reservation) .

**Unit 19: Cottonwood Creek Basin, San Diego County**

Unit 19 includes portions of Cottonwood Creek, adjacent uplands, and portions of the following tributaries: Potrero Creek, Pine Valley Creek, Scove Canyon, Morena Creek, La Posta Creek, and Kitchen Creek. This large unit encompasses approximately 7,990 ha (19,740 ac), of which 41 percent is within the Cleveland National Forest, 46 percent is private land, and 11 percent is on land owned by San Diego County. The unit consists of four disjunct subunits—two sections of Cottonwood Creek and two sections of Pine Valley Creek. Subunit 19a covers 13 km (8 mi) of Cottonwood Creek from Buckman Springs (near Interstate 8) downstream to Morena Reservoir and includes approximately 6 km (3.7 mi) of La Posta Creek, 6 km (3.7 mi) of Morena Creek, and 2.5 km (1.6 mi) of Kitchen Creek. Subunit 19b covers almost 16 km (9.9 mi) of Cottonwood Creek from approximately 4 km (2.5 mi) below Morena Reservoir downstream to State Highway 94 (excluding Barrett Reservoir) and includes 15 km (9.3 mi) of Potrero Creek from approximately the 752 m (2,466 ft) elevation benchmark downstream to the confluence with Cottonwood Creek. Subunit 19c covers about 12 km (7.5 mi) of Pine Valley Creek from the north edge of section 12 (T15S, R4E) downstream to approximately 1 km (0.6 mi) south of Interstate 8 and includes approximately 4 km (2.5 mi) of Scove Canyon and 1 km (0.6 mi) of Noble Creek. Subunit 19d encompasses 13 km (8 mi) of Pine Valley Creek from the Nelson Canyon confluence downstream to Barrett Reservoir.

This unit encompasses a large number of distinct arroyo toad occurrences in an area where in-stream and/or overland dispersal between populations is probably still possible. It also provides an important linkage to populations occurring within the San Diego MSCP area. The unit is essential to arroyo toad conservation because it encompasses several large, populations and includes suitable habitat for population expansion, which increases the probability of long-term persistence.

**Desert Recovery Unit**

The following four critical habitat units are in the Desert Recovery Unit as described in the final recovery plan. Each of these units is isolated from each other and from any other units, making the issues of inbreeding, fragmentation, and random negative impacts of great concern. However, this unit also represents unique ecological conditions for arroyo toads, and possibly harbor significant genetic diversity.

**Unit 20: Little Rock Creek, Los Angeles County**

Unit 20 includes approximately 9.5 km (5.9 mi) of Little Rock Creek and adjacent uplands, from the South Fork confluence downstream to the upper end of Little Rock Reservoir (in the vicinity of Rocky Point Picnic Ground), and approximately 1.8 km (1.1 mi) of Santiago Creek and adjacent uplands upstream from the confluence with Little Rock Creek. The unit encompasses approximately 600 ha (1,480 ac), all of which is within the Angeles National Forest. Studies are currently under way to better determine the distribution of the arroyo toad population along the creek, monitor recruitment, and assess upland habitat use (Ramirez 2000).

Unit 20 is essential for arroyo toad conservation because it supports a unique, isolated population on the periphery of the species' range. If a natural hydrologic regime can be maintained and impacts from recreation activities can be minimized, the area has favorable habitat conditions for the persistence of a small, but viable, population.

**Unit 21: Upper Mojave River Basin, San Bernardino County**

Unit 21 includes portions of the Mojave River, the West Fork of the Mojave River, Horsethief and Little Horsethief creeks, Deep Creek, and adjacent uplands. The unit encompasses approximately 6,685 ha (16,520 ac), of which 17 percent is within the San Bernardino National Forest, 60 percent is private land, 8 percent is State or local public land, and 14 percent is U.S. Army Corps of Engineers-managed land associated with a flood control reservoir. The unit is divided into three separate subunits. Subunit 21a includes: (1) approximately 18 km (9.3 mi) of Deep Creek from near Holcomb Creek downstream to the confluence with the West Fork, (2) approximately 6.5 km (4 mi) of Little Horsethief Creek from near the western edge of section 28 (T3N, R5W) downstream to the confluence with Horsethief Creek, (3) approximately 5.5 km (3.4 mi) of Horsethief Creek from the Little Horsethief Creek confluence downstream to the West Fork confluence, (4) just over 7 km (4.3 mi) of the West Fork of the Mojave River from the Horsethief Creek confluence downstream to Mojave River Forks Dam, and (5) approximately 4 km (2.5 mi) of the Mojave River below Mojave River Forks Dam.

Subunit 21b includes approximately 18 km (11 mi) of the Mojave River from just above the Upper Narrows (section 14, T5N, R4W) downstream to approximately 6 km (3.7 mi) below the Lower Narrows (section 13, T6N, R5W). Subunit 21c includes almost 3 km (1.9 mi) of the upper West Fork of the Mojave River, above Silverwood Lake, from near the 1462 m (3,613 ft) elevation benchmark downstream to the upper end of the lake.

All of the designated drainages in this unit are occupied by arroyo toads. Summit Valley, which encompasses the lower portions of Horsethief Creek and the West Fork of the Mojave River, is a broad, flat, alluvial valley that supports a substantial arroyo toad population (Ramirez 1999).

Unit 21 is essential to arroyo toad conservation because it supports the largest population of the species on the desert side of the mountains. If adequate streamflows and upland alluvial habitats can be maintained, this is the one desert unit that has favorable conditions for long-term persistence of a large toad population.

**Unit 22: Whitewater River, Riverside County**

Unit 22 includes approximately 9.5 km (5.9 mi) of the Whitewater River and adjacent uplands, from near Red Dome downstream to where the Colorado River Aqueduct crosses the river (south half of section 2, T3S, R3E). The unit encompasses approximately 865 ha (2,150 ac), of which 62 percent is BLM land and 38 percent is private land. The current status of arroyo toads in this unit is poorly known. They were observed and photographed in the drainage in 1992 (Jennings and Hayes 1994), but were not relocated in surveys conducted during the 2000 breeding season (Jones & Stokes 2000). However, 2000 was generally a bad year for arroyo toad breeding activity, particularly in the southern half of the species range, because of below average precipitation and subsequent low streamflows. Given the relatively recent documentation of arroyo toads in this drainage, and the

continued presence of suitable habitat in the area, we belive it is likely that this unit is still occupied.

Unit 22 is essential for arroyo toad conservation because it supports a unique, isolated desert population on the eastern periphery of the species' range. Also, if a natural hydrologic regime can be maintained and impacts from recreation activities can be minimized, the area has favorable habitat conditions for the persistence of a small, but viable, population.

**Effects of Critical Habitat Designation**

**Section 7 Consultation**

Section 7(a)(2) 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, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act, 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 activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial 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 arroyo toad 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 Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), 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 and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the arroyo toad. Within critical habitat, this pertains only to those areas containing primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the arroyo toad is not likely to result in a regulatory burden above that already in place due to the presence of the listed species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. 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 any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal lands (such as those managed by the Service, Forest Service, DOD, or BLM);

(4) Regulation of grazing, mining, and recreation by the BLM, DOD, Army Corps, or Forest Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers, facilities operations and maintenance on Fort Hunter Liggett and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service (INS);

(8) Licensing of construction of communication sites by the Federal Communications Commission; and,

(9) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

All lands designated as critical habitat are within the geographic range of the species occupied by the species and are likely to be used by the arroyo toad, whether for foraging, breeding, growth of larvae and juveniles, intra-specific communication, dispersal, migration genetic exchange and sheltering. Thus, we consider all critical habitat units 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.

**Exclusions Under Section 3(5)(A) Definition**

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection.

Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat. As the bases where we identified habitat essential for the conservation of the arroyo toad, including Marine Corps Base Camp Pendleton, Fallbrook Naval Weapons Reserve, and Fort Hunter Liggett, do not have INRMPs that meet the criteria, we did not exclude them under the section 3(5)(A) definition.

**Exclusions Under Section 4(b)(2)**

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. For the following reasons, we believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them.

**(1) Benefits of Inclusion**

The benefits of including HCP lands in critical habitat are normally 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. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementation agreements. These HCPs and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and through the consultation on the HCP. Our experience is also that, 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.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

**(2) Benefits of Exclusion**

The benefits of excluding HCPs from being designated as critical habitat may be more significant. During two public comment periods on our critical habitat policy, we received several comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with the Service and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat, should critical habitat be designated within the HCP boundaries.

The benefits of excluding HCPs include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Most regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under Section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in the range of the arroyo toad on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

**Relationship to Habitat Conservation Plans**

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of Habitat Conservation Plans (HCPs) for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the arroyo toad, while directing development and habitat modification to nonessential areas of lower habitat value.

A number of habitat conservation planning efforts have been completed within the range of the arroyo toad. Principal among these are the NCCP/HCP efforts in San Diego and Orange counties. The San Diego MSCP, and its approved subarea plans, provide measures to conserve known populations of the arroyo toad within Santa Ysabel Creek in San Pasqual Valley, San Vicente Creek above San Vicente Reservoir, Sweetwater River, Otay River, and Cottonwood Creek in Marron Valley. Area-specific management directives for MSCP subarea plans must address the conservation of the arroyo toad by protecting and maintaining sufficient, suitable low-gradient sandy stream habitat to meet breeding requirements, preserving sheltering and foraging habitats within 1 km (0.6 mi) of occupied breeding habitat within designated preserve lands, controlling nonnative predators, and controlling human impacts within designated preserves. Several of these plans are currently under development, including ones for Marron and San Pasqual valleys.

One exception to the HCP exclusion concerns the reach of the Sweetwater River between Loveland and Sweetwater Reservoirs within the County of San Diego's MSCP plan. This area is affected by activities (e.g., reservoir water transfers) that are outside the authority of and, therefore, are not subject to the approved County's MSCP plan. Therefore, we have included this limited reach of the Sweetwater River as critical habitat.

We have also approved the Orange County Central Coastal NCCP/HCP, which will result in the conservation of 15,677 ha (38,738 ac) of Reserve lands, including habitat suitable for the arroyo toad. We issued an incidental take permit under section 10(a)(1)(B) of the Act that provides conditional incidental take authorization for the arroyo toad for all areas within the Central-Coastal Subregion except the North Ranch

Policy Plan area. This take authorization only applies to smaller arroyo toad populations, reintroduced populations or populations that have expanded due to NCCP Reserve management and requires implementation of a mitigation plan to relocate toads to protected areas within the Reserve.

The North Ranch Policy Plan area was excluded from the take authorization provided by the Central Coastal NCCP/HCP due to a lack of detailed biological information and specific conservation commitments at the time of adoption of the NCCP/HCP. Further, the NCCP/HCP does not require future adoption of a management plan for the North Ranch Policy Plan area. We have determined that available arroyo toad habitat within the North Ranch Policy Plan area is essential to the conservation of the arroyo toad by helping to support a viable Santa Ana Mountain arroyo toad population. Because the NCCP/HCP affords no long term conservation commitments for this area, we have included a portion of the North Ranch Policy Plan area as critical habitat.

The benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in the implementation agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including these HCPs in critical habitat for the arroyo toad include increased educational benefits and minor additional management protections and measures. The benefits of excluding HCPs from being designated as critical habitat for the arroyo toad include the additional conservation measures for the arroyo toad and other listed species, preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of critical habitat. The benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the species. We have already completed section 7 consultation on the impacts of these HCPs on the species. We have determined that they will not jeopardize the continued existence of the species, which means that they will not appreciably reduce likelihood of the survival and recovery of the species. Consequently, these lands have not been designated as critical habitat for the arroyo toad.

Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the arroyo toad, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the arroyo toad. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of proposed HCPs and proposed projects under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the arroyo toad and appropriate conservation and management actions. Several HCP efforts are currently under way that address listed and nonlisted species in areas within the range of the arroyo toad and in areas we propose as critical habitat. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule and provide for the conservation of the covered species. If an HCP that addresses the arroyo toad is ultimately approved, the Service will reassess the critical habitat boundaries in light of the HCP. The Service will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

During the public comment period for the proposal, Marine Corps Base Camp Pendleton (Camp Pendleton) submitted comments concluding that critical habitat designation on the base is unnecessary based on existing Marine Corps management plans that provide adequate special management and protection for the species. Arroyo toad numbers on Camp Pendleton are significant and are inclusive of the few remaining populations along the coastal plain. In light of these factors, we proposed 15,445 ha (38,150 ac) of the approximately 50,000 ha (125,000 acre) base as critical habitat for the arroyo toad.

Camp Pendleton's programmatic conservation plan for riparian and estuarine/beach ecosystems does not address arroyo toads in upland habitats. Moreover, the programmatic instructions and conservation measures in the plan need to be revised to avoid and minimize potential adverse effects to the arroyo toad. As the Service indicated in a letter dated February 9, 2000, these revisions include, ''but are not limited to, implementation of a base-wide non-native predatory species control program, removal of non-essential road crossings, modification of existing and new road crossings, removal of unnecessary structures and hardscape within arroyo toad breeding and non-breeding habitats, and guidelines on the use of toad exclusion fencing.'' To address endangered and threatened species issues within upland habitats on base, on March 30, 2000, at the request of the Marines, we initiated formal consultation with Camp Pendleton on their uplands activities. These activities include military training, maintenance, fire management, real estate, and recreation programs. Because of the immense complexity of dealing with a multitude of hard-to-define upland activities and numerous federally listed plants and animals, we expect completion of the consultation and issuance of our biological opinion to take several months to a year. Upon completion, this consultation will address the 93 percent of the base not included in our 1995 opinion concerning the base's programmatic conservation plan for riparian and estuarine/beach ecosystems (U.S. Fish and Wildlife Service 1995).

The proposal included upland and riparian habitats within key training areas on Camp Pendleton that represent about 30 percent of the base. If this area is included in the final designation of critical habitat for the arroyo toad, the Marines would be compelled by their interpretation of the Endangered Species Act to significantly curtail necessary training within the area designated as critical habitat, to the detriment of mission-critical training capability, until the programmatic uplands consultation is concluded, up to a year from now. Avoiding areas

designated as critical habitat would greatly restrict use of the base, severely limiting the Camp Pendleton's utility as a Marine training site. The Marines have no alternative site suitable for the kinds of training that occur on the base.

In contrast, the benefits of designating critical habitat on the base now are small. The primary benefit of designation is the prohibition on destruction or adverse modification of critical habitat under section 7 of the Act. However, we believe that section 7 consultation on any proposed action on the base that would result in an adverse modification conclusion would also result in a jeopardy conclusion, and we are now engaged in formal consultation with the Marines on their activities in upland habitats on the Camp Pendleton. In addition, the Marines have a statutory obligation under the Sikes Act to complete an INRMP for Camp Pendleton about 10 months from now; we expect that, when completed and adopted, this INRMP will provide equal or greater protection to arroyo toad habitat on the base than a critical habitat designation.

The INRMP for Camp Pendleton will be completed by the statutory deadline of November 17, 2001. We will consult with the Marines under section 7 of the Act on the development and implementation of the INRMP. Today, as neither the INRMP nor the programmatic uplands consultation have yet to be completed and approved, the lands proposed as arroyo toad critical habitat on the base still meet the definition of critical habitat. Nevertheless, we conclude that the benefits of excluding Camp Pendleton exceed the benefits of including the base in the critical habitat designation; further, we have determined that excluding the base will not result in the extinction of the arroyo toad, as numerous areas supporting arroyo toad populations remain within the final critical habitat designation and sections 7(a)(2) and 9 still apply to the activities affecting arroyo toads on Camp Pendleton. Thus, we have determined that it is appropriate to exclude Camp Pendleton from this critical habitat designation under section 4(b)(2). The main benefit of this exclusion is ensuring that the mission-critical military training activities can continue without interruption at Camp Pendleton while the INRMP and programmatic uplands consultation are being completed. This exclusion does not include that part of Camp Pendleton leased to the State of California and included within San Onofre State Park (including San Mateo Park) and those agricultural leased lands adjacent to San Mateo Creek. Because these lands are used minimally, if at all, by the Marines for training, the lands proposed within the state park and agricultural leases are retained in the final designation.

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 because they no longer meet the definition of critical habitat, 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.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura or Carlsbad Fish and Wildlife Offices (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

## Summary of Comments and Recommendations

In the June 8, 2000, proposed rule, (65 FR 36512), we requested all interested parties to submit comments on the specifics of the proposal including information, policy, treatment of HCPs, and proposed critical habitat boundaries as provided in the proposed rule. The first comment period closed on August 7, 2000. The comment period was reopened from November 9 to December 11, 2000 (65 FR 67334), to allow for additional comments on the proposed rule and comments on the draft economic analysis of the proposed critical habitat. We entered comments received from August 8 to November 9, 2000, into the administrative record for the second comment period.

We contacted appropriate Tribes, State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers in southern California: Santa Maria Times, Los Angeles Times, Daily News-Press (Victorville), Orange County Register, The Press-Enterprise, North County Times, and the San Diego Union-Tribune. The inclusive dates of these publications were June 10 and 12, 2000, for all papers. In these notices and the proposed rule, we announced the dates and times of two public hearings that were to be held on the proposed rule. These hearings were in Valencia (June 27, 2000) and Temecula (June 29, 2000), California. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We requested five herpetologists and conservation biologists who have familiarity with the arroyo toad or related species and reserve design to peer review the proposed critical habitat designation. Two of the peer reviewers submitted comments on the proposed critical habitat designation.

We received a total of 155 comments, 38 oral and 117 written, from 131 commenters during the 2 comment periods. Of these comments, 12 of the commenters who submitted oral testimony also submitted duplicative or additional written comments, and 14 commenters submitted written material during both comment periods. In total, oral and written comments were received from 5 Federal agencies, 3 Tribes or their representatives, 2 State agencies, 19 local governments or their representatives, and 105 businesses, organizations or individuals. We reviewed all comments received for substantive issues and new data regarding critical habitat and the arroyo toad. Comments of a similar nature are grouped into 6 general categories relating specifically to the proposed critical habitat determination and draft economic analysis of the proposed determination. These are addressed in the following summary.

*Issue 1: Comments on previous Federal actions, the Act and implementing regulations*

(1) *Comment:* There were several comments regarding the listing of the toad, the data on which the listing was based, and the lack of data cited in the critical habitat proposal documenting the habitat losses and threats.

*Service response:* The purpose of this document is not to re-examine the data and threats on which the listing was based. Within the proposed rule, we provided information on the status of and threats to the toad to provide background for the critical habitat proposal. The losses and threats are documented in the rule to list the toad and in the recovery plan, and the supporting documentation is in the files at the Ventura and Carlsbad Fish and Wildlife Offices (see **ADDRESSES** section).

(2) *Comment:* One commenter stated that, as the arroyo toad was only

recognized as a separate species in the 1980s (sic), it could not have lost 75 percent of its habitat in that time as there has been a net gain in wetlands during the 1990s.

*Service response:* The original description of the arroyo toad as a separate species was made in 1915. At the time it was listed, we recognized it as a subspecies of the southwestern toad. Based on information discussed in the Background section we now know that the arroyo toad is a separate species. We have corrected the table to reflect this change. The arroyo toad has inhabited the coastal streams and rivers of California and Baja California del Norte, Mexico, for a long time. The habitat loss that it has suffered from dam construction over the past 70 years has been compounded in some portions of its range by agricultural activities and increased urbanization, both of which continue to place pressure on the remaining toad habitats. Although there may have been a net gain of wetlands in California in the 1990s, this was not in habitats used by arroyo toads, but in other types of systems, such as salt and fresh-water marshes, neither of which are suitable for arroyo toads.

(3) *Comment:* One commenter stated that the Act expired in 1993 and no listings since then are valid, and that the Secretary has failed to promulgate regulations on listings and critical habitat designations. The commenter then claimed that no listings are valid, and as critical habitat can only be designated ''concurrently and after'' a species is listed, we can't designate critical habitat for the arroyo toad or any other species.

*Service response:* We disagree. The Act remains in effect, even in the absence of a multi-year authorization, and Congress continues to appropriate funds to implement the administrative provisions of the Act in each year. Regulations on listing threatened and endangered species and on designating critical habitat are found at 50 CFR part 424, specifically at sections 424.11 and 424.12.

(4) *Comment:* Several commenters stated that it is inappropriate or illegal to designate unoccupied areas as critical habitat.

*Service response:* Section 3(5)(A) of the Act defines critical habitat for threatened and endangered species as specific areas both within and outside the geographical area occupied by the species at the time it is listed that are essential to the conservation of the species; this definition is reiterated in the Code of Federal Regulations (CFR) at 50 CFR 424.02(d). Thus the Act expressly authorizes the designation of both occupied and unoccupied habitat as critical habitat. In the Act, conservation is defined as the use of all methods and procedures needed to bring a species to the point at which the measures provided by the Act are no longer necessary. This process is also termed ''recovery.'' We have not designated any critical habitat units outside the geographical area currently or historically occupied by the species. In addition, all of the units designated as critical habitat contain areas of known arroyo toad occupancy. However, the extent of occupancy in each unit has not been fully determined.

(5) *Comment:* One commenter stated that it is inappropriate to use a recovery standard to define critical habitat, thus the proposed designation is overly broad, contradictory to 1978 legislative history directives (of narrow application), and does not meet statutory standards.

*Service response:* The Act defines critical habitat, in part, as areas on which are found those physical or biological features essential to the conservation of the species. Conservation is defined in the Act as the use of all methods and procedures needed to bring a species to the point at which the measures provided by the Act are no longer necessary, that is, to recover the species. The purpose of a recovery plan is to describe site-specific actions necessary to achieve conservation of listed species, criteria by which conservation can be measured (that is, recovery standards), and estimates of time and costs necessary to achieve recovery. In cases where recovery plans have been developed before critical habitat is designated, those plans can be very useful, as they identify the recovery criteria (standards) and the actions and habitats necessary to meet those criteria. Recovery plans also receive public and peer review. Therefore, we believe it is appropriate to use an approved recovery plan for determining areas for designation as critical habitat.

(6) *Comment:* One commenter stated that, according to the Tenth Circuit Court of Appeals finding in *Catron County Board of Commerce, New Mexico* v. *United States Fish and Wildlife Service*, 75F.3d 1429 (10th Cir 1996) (*Catron* v. *FWS*) we are required to prepare an environmental assessment or environmental impact statement before designating critical habitat.

*Service response:* The commenter is correct, in that the Tenth Circuit Court of Appeals determined that an environmental assessment or environmental impact statement should be prepared before designating critical habitat. However, the finding in *Catron* v. *FWS* does not apply to California, which is in the Ninth Circuit. In making critical habitat determinations in California, we follow the Ninth Circuit Court of Appeals decision in *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995). In that case the Court held that NEPA does not apply to the Secretary's decision to designate critical habitat for an endangered or threatened species under the ESA because (1) Congress intended that the ESA critical habitat procedures 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 ESA would further the purposes of neither statute.

(7) *Comment:* One commenter stated: ''Designating critical habitat triggers specific legal protections * * *'' and toads and habitat outside the 25 m (80 ft) elevational limit and 1.5 km distance would ''be denied these protections.'' Another commenter referred to ''restrictions imposed by critical habitat.''

*Service response:* Critical habitat receives protection under section 7 of the Act only through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. 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. On the other hand, it should also be understood that exclusion of an area from critical habitat does not mean that such habitat is unimportant or may not, in the future, be determined to be necessary for recovery for the species. Areas outside the critical habitat designation will continue to be subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibitions, and such areas may also be the recipients of conservation actions implemented under sections 7(a)(1) and 10(a)(1). Section 7(a)(1) requires that Federal agencies contribute to the conservation of listed species, section 10(a)(1)(A) addresses recovery actions through research and Safe Harbor agreements, and section 10(a)(1)(B) covers incidental take permits issued in conjunction with approved HCPs.

*Issue 2: Life history, habitat characteristics, and ecological considerations*

(8) *Comment:* We received several comments relative to the soils that toads use for burrowing or travel when migrating or dispersing. Some commenters stated that toads only use sandy or loamy sand soils; others stated that toads use compacted soils.

*Service response:* The best available information documents that arroyo toads use sandy and loamy sand soils, as well as compacted soils, although in different ways. Data and information we have received since the publication of the proposal support our conclusion that toads primarily burrow in loose sandy or loamy sand soils and that areas of such soils are important habitat components in both the riparian and upland zones. Arroyo toads do cross other soil types during dispersal and migration, and, under suitable conditions, may burrow into these for shelter.

(9) *Comment:* One commenter stated that grazing is not harmful to arroyo toads; intensive grazing is beneficial and should be encouraged, as the species needs open, nonvegetated sandy stream channels and terraces and wide-spread sedimentation due to overgrazing, and other agricultural activities will improve habitat for the toad.

*Service response:* We agree that some properly managed grazing in riparian areas may be compatible with toad survival and conservation, but conclude that intensive grazing is detrimental to the conservation of the arroyo toad. It is well documented that intensive grazing of riparian areas degrades stream and riparian habitat, decreases water quality, and causes direct mortality of arroyo toads. The arroyo toad does need open stream channels and terraces, but it also requires some vegetation in which to hide. Excessive cover by non-native plant species such as arundo (giant reed) and tamarisk do not provide appropriate conditions for arroyo toad breeding and survival. Improperly managed grazing can denude stream banks and terraces entirely, leading to increased erosion, and thus siltation of the sandy substrate toads prefer; total removal of streamside vegetation also leaves toads no place in which to escape from predators, high temperatures, and other threats. The Service, other land mangers, and livestock owners can work together to establish appropriate management plans for arroyo toads and their habitat in areas where grazing does or is likely to occur.

*Issue 3: Critical habitat and primary constituent elements descriptions, criteria, and methodology*

(10) *Comment:* One commenter stated that the language used to describe the primary constituent elements was ambiguous.

*Service response:* The commenter referred specifically to the definition of primary constituent elements as contained in the Act, which are general in nature and provide a framework for determining what features and processes of the habitat are essential to provide for the conservation of a species. The primary constituent elements for the arroyo toad are identified in detail in both the proposal and this final rule.

(11) *Comment:* One commenter requested that we clarify how habitat changes may result from natural processes and how that relates to designating critical habitat in areas that do not support primary constituent elements.

*Service response:* We are not designating critical habitat in units that are not occupied or do not support primary constituent elements. All units support all of the primary constituent elements. While some specific areas within a unit may provide only breeding habitat, only upland habitat, or only migration and dispersal habitat, the unit is properly evaluated as a whole, not by isolating small sections of it. The statement regarding the changes that may occur in the characteristics and suitability of upland habitat was for the purpose of presenting a comprehensive picture of the dynamic systems in which the toad has evolved. Relative to actual on-the-ground critical habitat, processes such as fires, floods, and earthquakes may cause excessive fine silts to be deposited in a documented breeding site one year, making it unsuitable for breeding that year (and possibly for several years) but that would not mean that the area would not still be essential for arroyo toad conservation. Natural hydrologic processes would remove the fine silt over time, restoring the area to suitable breeding habitat. Toads may use what would ordinarily be deemed marginal breeding habitat for that time period, or may forgo breeding altogether. It is essential for this species' conservation that a patchwork of habitats be recognized as actually or potentially occupied at any given time.

(12) *Comment:* We received a request that we clarify how to treat habitat that does not support ''all'' primary constituent elements. Specifically, the commenter asked whether or not hard-surface roads and stream crossings constitute critical habitat.

*Service response:*s Habitat does not need to contain all of the primary constituent elements to qualify as critical habitat. For example, upland areas do not contain suitable breeding habitat, and some areas used as migration and dispersal corridors may contain little burrowing habitat. Although the hard-surface areas do not provide burrowing habitat for arroyo toads, they can be used as foraging sites, and smaller roads (i.e., one-and two-lane roads, and dirt roads) and stream crossings do not constitute barriers to arroyo toads. Therefore, hard-surface roads and stream crossings can be considered critical habitat. We have by definition excluded areas such as buildings, aquaducts and airports, because they do not contain any of the primary constituent elements.

(13) *Comment:* One commenter stated that the presence of non-native predators and plants makes habitat unsuitable and inappropriate for designation as critical habitat.

*Service response:* Several non-native plant and animal species are identified as threats to arroyo toads in the recovery plan and in the critical habitat proposal. The presence of non-native competitors or predators does not automatically preclude designation of an area as critical habitat, if the area contains primary consetituent elements. Such areas clearly are in need of special management as contemplated in the definition of critical habitat in the Act, to decrease the numbers of non-natives present and to correct, as appropriate, the habitat conditions that allowed them to become established.

(14) *Comment:* Some commenters stated that areas where water flows have been modified due to dams or other water management activities are unsuitable and should not be designated, and requested removal of specific areas as unsuitable for breeding due to habitat changes. Conversely, other commenters stated that water diversions and quality should be evaluated as part of the analysis of effects when issuing incidental take permits under section 10 of the Act or conducting consultations under section 7. Some of the latter also stated that the Service should establish instream flow regime guidelines.

*Service response:* We have successfully worked with several water management agencies to modify their flow regimes in such a manner to meet their needs and goals as well as the needs of arroyo toads and other native species. We believe additional efforts along these lines will be successful in

allowing expansion or reestablishment of toad populations, while meeting the needs of the water management agencies. We reviewed specific recommendations, and revised the critical habitat units as we determined to be appropriate. Some areas that commenters identified as unsuitable were determined, on further evaluation, to be non-essential for the survival and conservation of the arroyo toad, and so were removed from critical habitat. Some areas were specifically included because they serve as essential migratory or dispersal areas between breeding areas or potential breeding areas, or between breeding and upland habitats. Other areas remained in the final designation because we believe that they are essential to stabilize and expand existing populations, the primary goal of the recovery plan. These areas have been retained because they are essential for the conservation of the species.

The impacts of water diversions and water management actions, as well as other issues of water quality, are evaluated for their effects on arroyo toads and other listed species during consultations and review of HCPs. Instream flow regime guidelines have been established for some streams during the consultation process. As other water management agencies enter into the consultation process, such guidelines will be established as appropriate for those streams.

(15) *Comment:* Some parties commented on the fragmentation of upland habitats by road construction projects. One commenter stated their belief that State Highway 76, along the San Luis Rey River in San Diego County, constitutes an impassable barrier to arroyo toads and that critical habitat should not extend beyond that road.

*Service response:* We also are concerned about direct and indirect effects of road construction on arroyo toads and their habitat, and continually seek ways to avoid or reduce such impacts. Highway 76 is a two-lane road with relatively low traffic volume during late-night and pre-dawn hours, which should allow for some toads to cross it safely. In addition, there are numerous undercrossings that allow toads to move up tributary drainages and then into the uplands. Therefore, we believe that Highway 76 will not seriously impede migration and dispersal.

(16) *Comment:* The broad scale of the proposed critical habitat maps is not specific enough to allow for reasonable public comment and therefore violates the Act. The proposal does not identify specific areas and defers designation of geographically specific areas to future consultations.

*Service response:* We identified specific areas in the proposed determination that are referenced by UTM coordinates, which are found on standard topographic maps. We also made maps available at the public hearings and at the Ventura and Carlsbad Fish and Wildlife Offices with the proposed critical habitat units superimposed on 7.5 minute topographic maps and aerial photos. Further, we distributed GIS coverages and maps of the proposed critical habitat units to everyone who requested them. We believe the information made available to the public was sufficiently detailed to allow for informed public comment. This final rule contains the legal descriptions of areas designated as critical habitat as required under 50 CFR 424.12(c). All lands within the boundaries established by the listed UTMs are designated as critical habitat. If additional clarification is necessary, contact the Ventura or Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

(17) *Comment:* The scope of the proposal was overly broad, in that too wide a zone on either side of the streams was proposed, and too much marginal or unsuitable habitat was included; there was a lack of accuracy and detail in mapping leading to the concern that developed areas and infrastructure are within the boundaries and will be considered critical habitat.

*Service response:* We recognize that not all parcels of land within designated critical habitat will contain the habitat components essential to arroyo toad conservation. We are required to describe critical habitat (50 CFR 424.12(c)) with specific limits using reference points and lines as found on standard topographic maps of the area. The approach to developing the proposed critical habitat was based on the best available scientific information, and on the development of a scientifically supportable model for predicting arroyo toad habitat. While some commenters believe that no habitat they judge to be marginal or unsuitable should be included within the critical habitat boundaries, the primary constituent elements include not just sandy soils and breeding habitat, but the processes that will allow appropriate breeding conditions to persist over time. Therefore, we take a broader view of the essential components of arroyo toad habitat than do some of the commenters. The hydrologic regimes (including natural flooding), scouring and depositional events, and other processes that have caused specific habitats to develop and be maintained must continue to operate for the arroyo toad to persist over the long term. Because such processes and their maintenance are necessary for the persistence of suitable habitat for the arroyo toad, we could have proposed entire watersheds for designation as critical habitat. Doing so would have involved much more extensive areas than we proposed. We concluded that designation of smaller areas would accomplish the goal of maintaining the processes on which arroyo toad habitat is dependent.

Given that the systems the toad inhabits are dynamic, and that specific breeding and burrowing sites can change from year to year, and because of the need to provide routes for migration and dispersal, areas are included that do not now appear to or may never be appropriate breeding habitat or burrowing habitat. However, these areas still fulfill an essential role in the arroyo toad's life history pattern, and are essential for the conservation of the species.

Due to the time constraints imposed by the Court, and the absence of detailed GIS coverages during the preparation of the proposed determination, a 1 km UTM grid was used to delineate the proposed critical habitat boundaries. This resulted in the inclusion of some areas that are not essential to the conservation of the arroyo toad. In preparing the final determination, we used more detailed GIS coverages that allowed us to reduce our minimum mapping unit to a 250 m UTM grid square. This resulted in more refined critical habitat boundaries that exclude many areas which do not contain the primary constituent elements for arroyo toads. The smaller minimum mapping unit used in defining the final critical habitat boundaries still did not allow us to exclude all developed areas such as towns, housing developments, airports, or other developed lands unlikely to provide habitat for the arroyo toad. However, because these developed areas do not contain the primary constituent elements for the arroyo toad, we believe that activities occurring on them will not affect critical habitat and thus will not trigger a section 7 consultation.

(18) *Comment:* Some commenters believe that the Service did not use the best available information, and failed to consider information obtained since the listing.

*Service response:* We disagree. We are under a Court order to finalize this critical habitat designation by January 19, 2001. When developing any listing

proposal or proposed critical habitat designation we use the best information available at the time, and we solicit information from a variety of sources. We use information that is in our files, and we request information from Federal and state agencies, consultants, and researchers during the development of the proposal. The recovery plan for the arroyo toad incorporated information obtained since the species was listed, as well as earlier information. The critical habitat proposal incorporated information obtained since the drafting and finalization of the recovery plan, as documented by the incorporation of references from 1999 and 2000. The public comment periods provided additional opportunities to collect information. Comments received on the proposed designation and the draft economic analysis and additional information received during the comment periods have been taken into account in the development of this final determination. Further, 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.

(19) *Comment:* One commenter made several suggestions: reevaluate the upland habitat requirements of the arroyo toad, conduct further surveys, and incorporate published information from a wider range of scientists in our evaluation of the necessity of uplands to the species' survival.

*Service response:* We have evaluated all of the available information collected by or provided to us by researchers, consultants, surveyors, land managers, and interested parties. None of the documents concerning movements of toads and the upland they habitat use consist of peer-reviewed, published papers. They consist of annual reports filed by permit holders, reports submitted to the Service and other agencies by individuals conducting surveys and studies, and unpublished data and information submitted to us by those same individuals.

Properly functioning watersheds are integral to the survival and recovery of the arroyo toad, and upland habitats are crucial to the survival of the species. The primary constituent elements consist of an appropriate hydrologic regime that includes a natural flooding regime, the presence and replenishment of proper substrates, upland habitats sufficient to support foraging and non-breeding activities, a lack of non-native species (plants and animals), barrier-free dispersal and migration corridors, and undisturbed habitats. The only way appropriate hydrologic regimes can be maintained and appropriate depositional processes ensured is by having healthy upland habitats. The primary constituent elements, therefore, go beyond the simple needs of the toad for breeding, foraging, and dispersal, and incorporate landscape level and geological time-scale processes.

(20) *Comment:* Some commenters expressed their opinion that reliance on one habitat model (Barto 1999) was inadequate.

*Service Response:* We did not rely solely on the habitat model developed by Barto (1999). An approach similar to that used by Barto was used to identify stream reaches that contain appropriate breeding habitat, but we went beyond that in determining upland habitats, dispersal and migration corridors. We incorporated information used to develop the recovery plan and additional information received since that time, including predictive habitat maps developed by the Forest Service and several planning efforts in Southern California, more recent field studies, and information from a variety of sources.

(21) *Comment:* One commenter stated that the critical habitat proposal was not developed through a scientifically valid process, and that the use of GIS technology is scientifically questionable and illegal. Referencing the June 14, 1999, notice requesting comments on how the Service designates critical habitat, the commenter stated that we cannot use GIS to determine critical habitat boundaries unless the public has an opportunity to comment on the use of the technology.

*Service Response:* The development of predictive models has been used for decades in numerous fields, including hydrology, economics, air quality management, and wildlife habitat management. GIS technology is an effective tool for using spatial data to evaluate species-habitat relationship. It is appropriate to use such tools to determine the location and extent of habitat a species needs to meet stated conservation goals. The Act and implementing regulations do not constrain the methods to be used in determining critical habitat boundaries, but do state that the best available scientific and commercial information shall be used. The GIS layers represent the best available information on topography, stream gradient, soil types, floodplain width, and other parameters that we have for many of the areas where toads exist. As such, using GIS technology to determine critical habitat boundaries is consistent with the law, our policies, and guidance.

(22) *Comment:* One commenter believes the critical habitat proposal was not developed through a legally valid process, stated that the designation of critical habitat requires field visits, and was opposed to the use of GIS maps as legal descriptions.

*Service Response:* We followed the implementing regulations, our policy and guidance in determining the areas to propose for inclusion in critical habitat for the arroyo toad. The Act and implementing regulations do not require that we make on-site visits to determine the suitability of habitat. We do, to some extent, rely on our partner agencies and the commenters to provide us with more detailed information during the comment period. After the comment period, we review the proposed boundaries and make modifications as appropriate. The GIS maps are not the legal descriptions of the habitat. We provided legal descriptions, as required by regulation (50 CFR 424.12(c)), with specific limits using reference points (UTM coordinates) as found on standard topographic maps of the areas. There is no requirement in the law or regulation that the boundaries of critical habitat be surveyed and delineated on the ground.

(23) *Comment:* Some commenters believe that, because most toad sightings are within 500 m (0.3 mi) of streams, the upland habitat distance should be reduced to 500 m (0.3 mi).

*Service response:* Although most arroyo toad sightings may have been within 500 m (0.3 mi) of the streams, there are numerous sightings beyond that distance. The shorter distance for the majority of sightings is likely due to several factors, including sampling artifacts (*i.e.*, habitats further away were not sampled), reduced availability of upland habitats in the areas where telemetry studies have been conducted, and the difficulty in detecting toads during dispersal and migration. There are a sufficient number of sightings of toads beyond 500 m from streams that the experts' evaluation is that arroyo toads regularly use available habitat beyond that distance. They may use the land for estivation, overwintering, foraging, dispersal to new or adjacent breeding areas, and migration from breeding to non-breeding habitats.

It is also important to remember that, in managing for the arroyo toad and in designating critical habitat, we need to ensure that natural hydrological, fluvial and geomorphological processes can continue. This will require thorough review of activities that occur within not only the critical habitat boundaries, but elsewhere in the designated watersheds and other watersheds in which arroyo toads live. It does not

mean that all projects within critical habitat boundaries or designated watersheds will be precluded, but that not only the direct, but also the indirect effects on the toad's habitat must be evaluated.

(24) *Comment:* One commenter stated that using the 25m (80 ft) elevational limit excludes the majority of upland habitat records.

*Service response:* Based on our analysis of available arroyo toad location data, which is described in this rule and included in the administrative record, over 85 percent of documented upland habitat locations are within the final critical habitat boundaries.

(25) *Comment:* One commenter stated that the Service ignored the potential for arroyo toads to disperse over distances in excess of 2 km (1.2 mi).

*Service response:* We did consider the possibility of such movements, and cite dispersal movements of approximately 6 to 8 km (4 to 5 mi) along a stream corridor. We do not have sufficient data to estimate with any reliability the proportion of toads that may make long-distance overland movements. About half of the critical habitat units are separated from the next closest unit by distances in excess of 10 km (6 mi); the distances between the centers of toad populations or areas with the highest concentrations of toads are even greater. Based on the available information, which is cited in the rule, we believe overland dispersal movements are unlikely to occur between such widely separated populations. Therefore, we believe it is unnecessary to include large extents of upland habitat between units in this designation. We believe that the designated critical habitat is sufficient to provide for the long term survival and conservation of the toad.

(26) *Comment:* One commenter stated that the Service did not discuss dispersal enough and should do so for each critical habitat unit.

*Service response:* We recognize the importance of dispersal in maintaining viable arroyo toad populations and incorporated available information in determining the distribution and boundaries of the critical habitat units. Several of the units, particularly those in the northern and desert recovery units, are isolated from each other by distances of 10 to 160 km (6 to 100 mi). The only two critical habitat units in the northern recovery unit that have centers of toad populations less than 10 km (6 mi) apart are separated by Interstate 5, which we consider an impassable barrier in terms of overland migration. We clearly stated in the proposal that we expect dispersal to occur along streams, and between streams if the habitat is suitable and the streams are close enough. At this time, we do not have enough information to predict, with any degree of certainty, the minimum or maximum distances toads will travel overland in different environments. We noted particular units in which we believe overland dispersal is likely to occur between critical habitat units, between subunits, or between tributaries within units. We did not ignore the possibility that overland dispersal may occur in units in which we did not discuss it, but we do not believe there are sufficient data available to make claims that overland dispersal does or will occur between units that are separated by 10 km (6 mi) or more.

(27) *Comment:* One commenter stated that insufficient areas were designated to provide for the recovery of the arroyo toad, and stated that we ignored ''known'' populations of arroyo toads in our designation, particularly those on Amargosa Creek in Los Angeles County, the lower San Luis Rey River in San Diego County, and '' * * * other areas * * * particularly in Riverside County.'' Other commenters made specific suggestions regarding areas they thought should be designated, including all tributaries of the Santa Clara River in Los Angeles and Ventura counties; the Cucamonga and Cajon watersheds, San Bernardino County; additional portions of San Mateo Creek, San Diego and Riverside counties; Temescal Creek, Orange County; and portions of Temecula Creek, Riverside County.

*Service response:* We disagree that insufficient land has been designated to provide for the recovery of the arroyo toad. All of the critical habitat areas are considered essential to the species' conservation, and the critical habitat closely follows the recommendations of the recovery plan. Exceptions are primarily those areas where it was recently determined that arroyo toads do not occur currently and most likely did not occur historically (*e.g.*, Pinto Wash in Imperial County, San Felipe and Vallecitos Creeks in San Diego County). In addition, several areas identified for recovery actions, such as the upper Salinas River and the Otay River basin, are not included in this designation. By evaluating the downlisting and delisting criteria in the ''Recovery Plan for the Arroyo Southwestern Toad'' relative to the designated critical habitat units, we determined that the critical habitat units as designated will provide adequately for the survival and recovery of the arroyo toad in each of the recovery units. Sufficient land is designated within each of the targeted drainages or basins to provide multiple opportunities to protect toad populations.

We did not include all of the specific lands listed above in the proposal because, at the time of proposal, we concluded that these lands were not essential for the conservation of the arroyo toad or did not meet the definition of critical habitat, as discussed below. Also, the Act states, at section 3(5)(C), that except in particular circumstances determined by the Secretary ''critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.'' We did not designate critical habitat in the upper Salinas River watershed, the entire length of or all tributaries to currently occupied rivers or watersheds, or areas that have arroyo toads but that we did not deem essential to the conservation of the species.

Regarding the first commenter's suggestions, no documentation of the populations referred to was provided. We are aware of the supposed sighting on Amargosa Creek, and have tried for several years to obtain confirmation of the sighting. To date, we have been unable to obtain any documentation that confirms the sighting. We proposed nearly the entire length of the lower and middle stretches of the San Luis Rey River for inclusion in critical habitat, excluding only heavily urbanized portions downstream of the confluence of the San Luis Rey and Guajome Creek (unit 14); we believe the populations to which the commenter was referring are included. Regarding the suggestion that we should include additional unspecified areas in Riverside County, we believe we have identified all appropriate essential habitat in the county.

Not all tributaries of the Santa Clara River contain suitable breeding or upland habitat for the arroyo toad, nor do they provide dispersal corridors from one area of breeding habitat to another. We determined that many tributaries to the Santa Clara River, Cucamonga Wash, and portions of upper San Mateo Creek, Temecula Creek and the upper San Luis Rey River are not essential to the conservation of the species. Therefore, we did not propose critical habitat for those areas.

It is not the intent of the Act, nor is it within the law, our policy or guidelines, to designate critical habitat for every population and every documented historic location of a species. The recovery goal for the arroyo toad is to conserve the phenotypic and genetic diversity of the toad in each of the recovery units, as discussed in the *Critical Habitat Designation* section. We

have determined that the critical habitat units we have designated will, when properly managed, provide sufficient habitat to support enough self-sustaining populations of arroyo toads across the historic range of the species to meet the downlisting and delisting criteria.

The Cajon Wash sighting was made after the publication of the proposal. Significant additions to the proposed critical habitat would require an additional public comment period. Because we did not propose the area as critical habitat and provide members of the public an opportunity to comment on its inclusion, and we are under a Court order to finalize this critical habitat designation by January 19, 2001, we are not including Cajon Wash in this final designation. If, on further evaluation, we determine that these or other populations and areas are essential for the conservation of the arroyo toad and that the areas need special management or protection, we will propose them for inclusion, given workload and budgetary constraints.

(28) *Comment:* One commenter stated that we should not include the lower Sisquoc River as second and third order streams are the most productive arroyo toad habitats, not sixth order streams.

*Service response:* The commenter provided no data to support the statement that second and third order streams are more productive arroyo toad habitat than sixth order streams. We do have data on at least one sixth order stream, Santa Margarita River in San Diego County, that supports a large arroyo toad population. The lower Sisquoc River, and other fifth and sixth order streams (for example, the Santa Clara and San Luis Rey Rivers), have been strongly affected by intensive agriculture, urbanization, and sand and gravel mining operations. Each system was evaluated to determine if it is essential to the conservation of the arroyo toad and if it needs special management or protection. Those systems that met both criteria have been included in this final designation.

*Issue 4: Military Lands*

(29) *Comment:* The Department of Defense (DOD) requested that their lands be excluded from the critical habitat designation because protections and management afforded the arroyo toad under Integrated Natural Resource Management Plans (INRMPs) pursuant to the Sikes Act and under existing programmatic biological opinions were sufficient, thereby resulting in their lands not requiring special management or protection and not meeting the definition of critical habitat.

*Service response:* We address the issue of military lands in detail in the previous section entitled ''Benefits of Exclusion''. As discussed in that section, subsection 4(b)(2) of the Act allows us to exclude areas where the benefits of exclusion outweigh the benefits of inclusion. Our analysis of the costs and benefits of inclusion of military lands led us to conclude that the benefits of excluding certain military lands outweigh the benefits of including them. Please refer to that section of this document for the details. We are involved in discussions with DOD to ensure that the arroyo toad is adequately addressed under existing programmatic biological opinions or through ongoing programmatic consultations covering training activities, construction, controlled burning, wildfire management and other activities on the military reserves. In addition, DOD is in the process of developing INRMPs and Endangered Species Management Plans (ESMP) for the arroyo toad and other listed species on their military reserves.

(30) *Comment:* Certain commenters stated that we failed to consider the military mission and the cumulative effects of multiple critical habitat designations on the ability of the Department of Defense to achieve mission goals, and pointed out that military bases cannot be set aside as preserves, nor used to mitigate off-site impacts such as urbanization.

*Service response:* Marine Corps Base Camp Pendleton is the Marine Corps' only amphibious training base on the west coast. During the public comment periods for the proposal, the Marines informed us that the designation, if made final, had ''the potential to substantially degrade the military capabilities of both the installation and assigned operational forces.'' Although the areas proposed on Camp Pendleton are essential to the conservation of the toad, designation would significantly impair critical training. Therefore, we have excluded Camp Pendleton from this final designation. Our rationale for this exclusion is discussed in more detail in the section ''Exclusions under section 4(b)(2)'', above.

The lands designated on Fort Hunter Liggett and Fallbrook Naval Weapons Reserve are essential for the conservation of the toad, and are not adequately addressed under existing management plans. Fort Hunter Liggett seemed most concerned in their comments about the inclusion of what they termed ''marginal and unsuitable'' habitat and the resulting consultation requirements, and the perceived need to reinitiate consultation on certain actions. We believe we have adequately addressed much of their concern by eliminating the northernmost reach of the river that was proposed, and by the reduction in grid cell size to eliminate such marginal habitat (see Changes from the Proposal section). Several of the consultations they mentioned would not need to be reinitiated, as there will clearly be no effect on the habitat (*e.g.* bullfrog removal program). They have already begun the process of reinitiating consultation on their programmatic biological opinion, which was necessitated by new information on the toad and by the recent listing of the purple amole, *Chlorogalum purpureum*, not by the proposal of critical habitat for the toad.

A primary concern expressed by Fallbrook Naval Weapons Station is that the designation of critical habitat within certain developed areas will impose additional restrictions on their operations. However, existing structures, ordnance storage magazines and bunkers, and other developed areas do not provide the primary constituent elements necessary for the arroyo toad and thus by definition are not critical habitat. Federal actions limited to these areas would not trigger a section 7 consultation, unless they might affect individual arroyo toads and/or the primary constituent elements in adjacent critical habitat.

*Issue 5: Relationship of critical habitat to HCPs, NCCP program, section 7, and section 404*

(31) *Comment:* Some commenters were supportive of the policy that lands covered by approved and future HCPs that provide take authorization for the arroyo toad should be excluded from critical habitat. Several commenters suggested that designated critical habitat be removed concurrently with approval of the HCP because they are concerned that additional consultations would be required as a result of critical habitat. Another suggested that the Service adopt a regulation that would allow the removal of the critical habitat designation upon the formulation and adoption of ''a regional conservation cooperative.''

*Service response:* We recognize that critical habitat is only one of many conservation tools for federally listed species. HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the

extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for all legally operative HCPs issued for the arroyo toad.

We anticipate that future HCPs in the range of the arroyo toad will include it as a covered species and provide for its long term conservation. We expect that HCPs undertaken by local jurisdictions (*e.g.,* counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the arroyo toad. As discussed above in the ''Exclusions Under Section 4(b)(2)'' section.

(32) *Comment:* Some commenters suggested that HCP exclusions should include planning areas of pending HCPs and lands enrolled in the NCCP program, and areas that have approved ''environmental documents, either CEQA or NEPA, that have included biology reports and FWS review in which'' no arroyo toads have been found. In one case, commenters claimed that because the lands are already ''enrolled'' in the NCCP program they are already subject to regulation, and the section 7 process provides enough protection in this area.

*Service response:* While we trust that jurisdictions will fulfill their commitment to complete conservation plans, this voluntary enrollment does not assure that such plans will be completed. Protections for arroyo toad habitat provided through participating jurisdiction's enrollment in the NCCP process are temporary and are not assured; such protections may be lost if the jurisdiction elects to withdraw from the NCCP program. NCCP Guidelines direct habitat loss to areas with low long-term conservation potential that will not preclude development of adequate NCCP plans and ensure that connectivity between areas of high habitat value will be maintained.

(33) *Comment:* Some commenters stated that the designation of critical habitat removes incentives to participate in NCCP, HCP and Special Area Management Plan (SAMP) processes, in part because it is impossible to provide assurances needed to participate in such processes following the designation of critical habitat.

*Service response:* The designation of critical habitat should not deter participation in the NCCP or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859). The development of new HCPs or NCCPs or any SAMPs should not be affected by designation of critical habitat primarily because the Service views the standards of jeopardy for listed species and of adverse modification for critical habitat as being virtually identical. We discuss these standards in detail in the section in this document entitled ''Critical Habitat'' and in our response to Comment 53.

(34) *Comment:* One commenter said we should rely on the Corps' 404 program, protections under section 7 of the Act, and enrollment in the NCCP program to protect the arroyo toad and its habitat.

*Service response:* Please see comment (35) for our response to the section 7 issue, and comment (31) for enrollment in the NCCP program. The Corps, section 404 program does not address impacts to upland habitat except in a very few cases and thus does not assure protection for such upland areas essential to the conservation of the arroyo toad.

(35) *Comment:* Some commenters suggested that, as with lands covered by an HCP, the Service should exclude from critical habitat lands covered by a biological opinion issued as a result of consultation under section 7 of the Act.

*Service response:* HCPs typically provide for greater conservation benefits to a covered species by assuring the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242), the HCP No Surprises regulation (63 FR 8859), and relevant regulations governing the issuance and implementation of HCPs. However, such assurances are typically not provided in connection with Federal projects subject to section 7 consultations which, in contrast to activities on non-Federal lands covered by HCPs, often do not commit to long-term special management or protections. Thus, a consultation unrelated to an HCP typically does not accord the lands it covers the extensive benefits an HCP provides.

(36) *Comment:* One commenter stated that the 1.5 kilometer upland habitat distance is inconsistent with the 1 km distance in approved HCPs.

*Service response:* The 1.5 km extent for upland habitat is the maximum distance we used in describing the habitat in which the primary constituent elements are most likely to be found. Because the elevational limit of 25 m (80 ft) above the stream bed takes precedence, the 1.5 km limit is less than 2 percent of the areas designated.

(37) *Comment:* Some commenters stated that surveys for the San Diego MSCP were conducted at a scale (at the landscape level rather than the parcel level) that makes it inappropriate to equate the protections afforded through the HCP process to those afforded through the designation of critical habitat. One commenter stated that areas within the MSCP planning area should be included in critical habitat, as there are no special management considerations or protections for the arroyo toad in this area. That commenter also stated that, currently, the only measures proposed are control of non-native predators and human impacts and that area-specific management directives were to have been developed by July 1998, but those tasks have not been done.

*Service response:* There are several implications to these comments. The first is the implication that the landscape scale is not appropriate for determining areas that should be protected for the arroyo toad. The second is that the critical habitat evaluation was conducted at a parcel level. The third implication is that critical habitat provides for a higher standard of conservation and protection than HCPs and the accompanying section 7 consultations, and the fourth is that the provisions of the MSCP do not provide adequate protection for the arroyo toad and its habitat.

The MSCP planning effort utilized the best scientific information available. Survey information included both landscape level scale for vegetation mapping and habitat evaluation modeling and parcel specific information, where available, on known locations of species, including the arroyo toad. Both the development of the recovery plan and drafting of the proposed critical habitat designation evaluated existing known toad populations and remaining toad habitat in a landscape context. It would be

infeasible to evaluate critical habitat on a parcel-by-parcel basis.

Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continue 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. The MSCP requires a Framework Management Plan and Area Specific Management Plans for preserved lands. These plans must address both species-specific requirements and preserve management. Therefore, we believe that the arroyo toad will be adequately served by the MSCP without the designation of critical habitat.

*Issue 6: Economic impacts and analysis; other relevant impacts*

(38) *Comment:* Some commenters felt that critical habitat should not have been proposed before an economic and other relevant impacts analysis was completed.

*Service response:* Pursuant to 50 CFR 424.19, we are not required to conduct an economic analysis at the time critical habitat is initially proposed. We published the proposed determination in the **Federal Register** (65 FR 36512), invited public comment, and held two public hearings. We evaluated and used comments received on the proposed critical habitat to develop the draft economic analysis, as appropriate. On November 9, 2000 (65 FR 67334), we published a notice in the **Federal Register** announcing the availability of the draft economic analysis and reopening the public comment period for 30 days. We were unable to provide a longer comment period given the short time frame ordered by the Court. In making this final critical habitat designation, we used the economic analysis and took into consideration comments and information submitted during the public hearings and public comment periods.

(39) *Comment:* One commenter stated that we made an inappropriate finding of less than $100 million impact before completing the economic analysis.

*Service response:* In the proposed rule, we made a preliminary finding that the economic impact of the critical habitat designation would be less than $100 million. This preliminary finding was made pursuant to Executive Order 12866, which requires that for significant regulatory actions, the issuing agency shall assess the potential costs and benefits of the regulatory action. The executive order defines significant regulatory actions, in part, as rulemakings that have an annual effect on the economy of $100 million or greater. The Office of Information and Regulatory Affairs, within the Office of Management and Budget, is required to review all significant rulemakings. We based our preliminary finding in the proposed rule on our experience with similar critical habitat designations because, at the time of proposal, our economic analysis had not yet been finalized.

Also in the proposed rule, under the discussion of the Small Business Regulatory Enforcement Fairness Act (SBREFA), we noted that we would conduct an economic analysis to determine if the critical habitat designation would have a significant effect on a substantial number of small entities. As discussed above, in response to comment (38), we developed and made available for public review a draft economic analysis. In this draft economic analysis we concluded that the critical habitat designation as proposed would result in an economic impact of less than $1 million, significantly below the $100 million threshold in Executive Order 12866. Our draft economic analysis also concluded that our proposed rule would not have a significant effect on a substantial number of small entities in part because the analysis found that the proposed rule would have an overall insignificant effect on the local and regional economies where critical habitat was being proposed. Based on this draft economic analysis, public comment, and our changes to the proposal, including reducing the acreage included and the stream length of many units, we made our final determination required under Executive Order 12866 that the economic impact of this final critical habitat designation will be less than $100 million and under SBREFA that the final rule would not have a significant economic effect on a substantial number of small entities.

(40) *Comment:* Several commenters were concerned that our proposed rule did not include a Regulatory Flexibility Analysis and felt that the economic analysis was incorrect to assume that a Regulatory Flexibility Analysis was not required.

*Service response:* The Regulatory Flexibility Act, as amended by the SBREFA, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment requirements of 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 in fact 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 the arroyo toad, and because the arroyo toad is already federally listed, other Federal agencies are already required to consult with us on activities that they authorize, fund, permit, or carry out that have the potential to jeopardize the species. Any associated costs related to these consultations, including project modifications, will therefore be attributable to the listing of the species and not to designation of critical habitat. In a few instances, completed (or near-complete) consultations may have to be reinitiated once the critical habitat designation is finalized to ensure Federal agencies' responsibilities under section 7 are met; as a result, the critical habitat designation could result in an economic effect associated with any delays to complete these consultations. Most decreases in property values, to the extent that they can be attributed to the arroyo toad and result from actual restrictions on land use, would be a result of its listing and not because of

critical habitat designation. We recognize that the market response to a critical habitat designation, due to the perception of an increased regulatory burden, may lower real estate values on lands within the designation; however, we expect this decrease in value to be temporary. Our draft and final economic analyses further discuss how we arrived at our conclusion regarding impacts to small entities.

(41) *Comment:* One commenter suggested we review an economic analysis of the California gnatcatcher critical habitat designation commissioned by the law offices of Nossaman, Guthner, Knox and Elliott, LLP, representing The Transportation Corridor Agencies, Forest Lawn Memorial-Park Association, and other interested parties, that reported the estimated economic impacts attributable to designating critical habitat for the gnatcatcher could result in impacts between $300 million and $5.5 billion. According to the study, critical habitat designation will impact between 1 to 5 percent of future expected growth in the area. Another commenter submitted an economic analysis of critical habitat designation commissioned by the law offices of Nossaman, Guthner, Knox, and Elliott LLP, representing the Foothill/Eastern Transportation Corridor Agency and the Raymond Basin Management Board, that reported estimated economic impacts attributable to designating critical habitat for the arroyo toad could result in impacts between $117 million and $875 million. According to the study, critical habitat designation will impact from 1 to 7.5 percent of future expected growth.

*Service response:* The first referenced document was prepared in response to the gnatcatcher critical habitat and is not specifically relevant to this designation of critical habitat for the arroyo toad. We have reviewed the second economic study cited, prepared by Dr. Janczyk, of Empire Economics, on behalf of the commenter; we disagree with the study's conclusions and the approach used to derive the estimates discussed in the comment. The author (Dr. Janczyk) asserts that critical habitat designation will impact future planned growth in Southern California between 1 and 7.5 percent. This mistaken assertion appears to be based on several biological opinions cited in the report pertaining to the least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and the California desert tortoise (*Gopherus agassizii*) (Service 1997a, b, c). We believe the analysis is faulty because of the author's reliance on these few biological opinions to support his assertion that critical habitat designation will affect future planned growth, while ignoring the thousands of other biological opinions that have allowed proposed projects without separate mitigation requirements for critical habitat.

The use of the Tequesquite Landfill Flood Protection Levee project biological opinion (Service 1997a) to estimate the impacts of designating critical habitat for the arroyo toad is inappropriate for two reasons. First, this opinion addressed impacts to the least Bell's vireo and the southwestern willow flycatcher, not the arroyo toad. Second, the ratios used in that opinion are in keeping with those employed for projects affecting wetland/riparian habitats along the Santa Ana River, regardless of occupancy by listed species and/or inclusion within critical habitat. As a result, the unfortunate choice of words in this opinion linking mitigation ratios and critical habitat for two riparian birds should not be used as a predictor of future consultations involving arroyo toad critical habitat. (For additional detail concerning this biological opinion, see 65 FR 63680, October 24, 2000.)

Regarding the second biological opinion, the author fails to note that this opinion was developed in response to the BLM's request for a programmatic opinion regarding desert tortoise critical habitat. Specifically, the opinion reflects the thresholds proposed by the BLM as to what types of impacts would trigger section 7 re-initiations, with which we agreed (see Service 1997b, page 2: ''To ensure that significant amounts of desert tortoise habitat are not disturbed under this biological opinion, the BLM proposes to track the cumulative amount of habitat disturbed by small actions and to reinitiate formal consultation should habitat loss reach 10 acres per year in desert tortoise critical habitat within a recovery unit''). To date, this standard has not resulted in reinitiation, suggesting insignificant economic impacts to the region.

The author's analysis also references a third biological opinion (1–8–97–F–46), again related to the desert tortoise, along with the BLM's and California Department of Fish and Game's (Department) California Statewide Desert Tortoise Management Policy (BLM and Department 1992), which the author believes supports his assertion that we place higher mitigation requirements on impacts affecting critical habitat. In referring to these documents, two pertinent issues are ignored. First, as stated above, the BLM, not the Service, proposed the mitigation requirements. The compensation policy was issued by the BLM in 1991, three years before we proposed and designated critical habitat for the desert tortoise. Again, to quote our biological opinion, ''Compensation for affected desert tortoise habitat will be based on Bureau-designated categories for areas within the California Desert Conservation Area, designated critical habitat within the Mojave National Preserve and Nevada, and additional Bureau guidance in Nevada'' (Service 1997c).

The study also ignores the fact that the National Park Service (NPS) included compensation as part of the proposed action, and proposed that compensation ratios for affected critical habitat be based on those ratios used for the BLM's Category 1 habitat (Service 1997c). The proposal additionally included, as project mitigation, off-site compensation by AT&T for unavoidable impacts to desert tortoise habitat in the areas of cable removal. Critical habitat for the desert tortoise largely overlaps the BLM's Category I and II habitats. Consequently, if we had not designated critical habitat for the desert tortoise, the NPS would have required compensation based on the formula and maps developed years earlier by the BLM and other agencies. Critical habitat for the desert tortoise was not the ultimate determining factor for the compensation ratios included in the NPS's request for formal consultation.

The author also cites an article by Houck (1993) which he believes supports his claim that we impose greater mitigation obligations where critical habitat is present. Contrary to the author's assertion, Houck found, in a review of over 71,560 informal and 2,000 formal consultations that were conducted under the Act, only 18 projects that were ultimately terminated. In other words, out of all the activities that we consulted on, less than 0.03 percent of projects were terminated (Houck 1993, p. 318). Furthermore, of 99 jeopardy opinions issued by the Service, we issued ''reasonable and prudent alternatives'' in nearly all of these opinions that allowed the projects to proceed (Houck 1993, p. 319). Houck found that ''(T)he few opinions that did not identify such alternatives involved small-scale, private development directly in habitat essential to the species (although not always designated as critical). No major public activity, nor any major federally-permitted private activity was blocked'' (Houck 1993, p.320). Houck also reported that a common theme in all the jeopardy opinions that he reviewed was our determination to find an alternative within the economic means, authority,

and ability of the applicant that would allow the project to proceed (Houck 1993, p.320).

We are also aware of several other more recent studies to support our assertion that critical habitat designation has had an insignificant effect on local economies. Recently, a study commissioned by the Coalition for Sonoran Desert Protection examined the impact of designating habitat for the cactus ferruginous pygmy-owl in southern Arizona (McKenney 2000). Performed one year after the designation, the study found that dire predictions made by developers in that region have not materialized. Specifically, high-density housing development has not slowed, the value of vacant land has risen, land sales have continued, and the construction sector has continued its steady growth. Similarly, another study that analyzed the effects of logging curtailments for the northern spotted owl in the Pacific Northwest found that it had an insignificant effect on the region's economic growth (Niemi *et. al.* 1999).

Consequently, we believe that the available evidence supports our assertion that, in general, critical habitat designation has not caused any significant impact on future economic growth and would reach the same conclusion with regard to the proposed critical habitat designation for the arroyo toad.

(42) *Comment:* Several commenters stated that the draft economic analysis is wrong to assume that all of the areas proposed as critical habitat are ''occupied'' by the arroyo toad.

*Service response:* The determination of whether or not proposed critical habitat is within the geographic range occupied by the toad is part of the biological decision-making process and lies beyond the scope of an economic analysis. For a discussion of the biological justification of why we believe the area being designated is within the geographical area occupied by the toad, see our response to Comment 4.

(43) *Comment:* Several commenters stated that the economic analysis inadequately analyzes the effect that other pre-existing regulations may have (especially regulations implementing the California Environmental Quality Act (CEQA)) if critical habitat is designated.

*Service response:* We disagree with this assertion. Our economic analysis discusses the effect that existing State and local regulations have on current activities in proposed critical habitat units. Specifically, CEQA requires identification of significant environmental effects of proposed projects that have the potential to harm the environment. The lead agency (typically the California State agency in charge of the oversight of a project) must determine whether a proposed project would have a ''significant'' effect on the environment.

Section 15065 of Article 5 of the CEQA regulations states that a finding of significance is mandatory if the project will ''substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of an endangered, rare or threatened species, or eliminate important examples of the major periods of California history or prehistory.'' If the lead agency finds a project will cause significant impacts, the landowners must prepare an Environmental Impact Report (EIR). Any economic impacts identified by the EIR process are due to the presence of a particular species on the project land, regardless if it is designated critical habitat.

Review of the CEQA statute and conversations with the California Resources Agency (one of the agencies responsible for administering CEQA) revealed that, when a species is known to occupy a parcel of land, the designation of critical habitat alone does not require a lead agency to pursue any incremental actions. In the case of the arroyo toad, the recovery plan made available to the public a description of the habitat areas essential to the conservation of the arroyo toad. Therefore, economic impacts generated by CEQA on arroyo toad habitat areas are part of the baseline and not attributable to the designation of critical habitat. Furthermore, because the Service has only proposed occupied habitat as critical habitat, the effects of the designation are minimal to non-existent due to the existing requirement on Federal agencies to ensure that current and future land-use activities do not jeopardize the toad.

(44) *Comment:* One commenter stated that the economic analysis was flawed because while, in their opinion, the economic analysis provided a methodology for reviewing economic impacts of critical habitat designation, it did not actually analyze the impacts.

*Service response:* We disagree with the commenter that the economic analysis failed to analyze the economic impacts of critical habitat designation. The analysis first identifies the potential impacts that may be associated with critical habitat designation in a general framework and then discusses actual expected impacts by critical habitat units and by land use activities.

(45) *Comment:* One commenter stated that the Service must not rely on the public to provide information concerning the potential impacts of critical habitat designation.

*Service response:* In conducting our economic analysis, we relied on data and information provided by the Service, other Federal land management and consulting agencies, and State and local government officials. Our draft economic analysis acknowledged that predicting the number and type of future section 7 consultations that could be attributed to critical habitat designation was difficult, even with the input provided by these sources, and consequently, while we attempted to measure the effect of proposed critical habitat designation, we invited public comment that could provide us with more specific information that would allow us to make better estimates. Our document states that the Service will consider all comments submitted on the draft economic analysis and would revise estimates, as appropriate, based on any additional data provided by the public. However, it does not solely rely on the public to provide us with the information needed to make an adequate determination of proposed critical habitat designation.

(46) *Comment:* One commenter stated that the economic analysis did not consider potential costs under section 10 of the Act that may be created as a result of the critical habitat designation.

*Service response:* The Service must internally consult, pursuant to section 7(a)(2) of the Act, on the issuance of any section 10(a)(1)(B) permit. The effects of permit issuance on critical habitat must be considered in the consultation. We do not anticipate that designation of critical habitat would add to the costs of a section 10(a)(1)(B) permit. First, section 10(a)(1)(B) permits address incidental take; the Act does not address the take of critical habitat. Although we must consider the effects of permit issuance on critical habitat, we believe that the jeopardy standard for listed species and the adverse modification standard for critical habitat are virtually identical and would not therefore result in additional costs to the applicant.

Second, one of the functions of critical habitat is to inform the public of areas that may require special management considerations or protection. Regardless of the designation of critical habitat, the Service must ensure that the issuance of any section 10(a)(1)(B) permit does not compromise the survival and recovery of any listed species. This process includes

identifying key areas that are necessary to ensure the conservation of the listed species, which we would do whether or not critical habitat has been designated. Viewed in this sense, the designation of critical habitat is another tool for identifying key areas. We also encourage applicants to allow us to participate as much as possible in the development of applications for section 10(a)(1)(B) permits so we can identify and conserve these key habitat areas, whether or not they have been designated as critical habitat.

(47) *Comment:* One commenter stated that the economic analysis failed to consider costs incurred by other Federal agencies as a result of critical habitat designation.

*Service response:* We disagree. Our estimates for costs associated with future section 7 consultations that may be attributable to critical habitat designation does include costs that may be incurred by the Federal action agencies.

(48) *Comment:* Several commenters stated that we should have quantified potential property value effects and that the economic analysis incorrectly assumes that development projects will continue despite any incremental costs.

*Service response:* Our economic analysis acknowledged that critical habitat designation may, in some instances, have short-term effects on private property values. However, as we stated in the analysis, we did not attempt to quantify such effects due to their highly speculative nature, lack of real observable data, and propensity to likely have offsetting effects. Since we conducted the draft economic analysis, a study was released by the Coalition for Sonoran Desert Protection that examined the impact of designating habitat for the cactus ferruginous pygmy-owl in southern Arizona. Performed one year after the designation, the study found that dire predictions made by developers in that region have not materialized. Specifically, high-density housing development has not slowed, the value of vacant land has risen, land sales have continued, and the construction sector has continued its steady growth. We similarly believe that critical habitat designation for the toad will also not likely exert any real influence on real estate development within the critical habitat areas.

(49) *Comment:* Some commenters stated that we should have estimated the cumulative effect of the critical habitat designation for the toad along with the effect of future pending and proposed critical habitat for other species in the area.

*Service response:* We are not required to estimate the cumulative effect of multiple critical habitat designations as part of our rulemaking procedures. We are required to consider only the effect of the proposed government action, which in this case is the designation of critical habitat for the arroyo toad. The appropriate baseline to use in an analysis of a Federal action, which in this case is the designation of critical habitat for the arroyo toad, is the way the world would look absent the proposed regulation. Against this baseline, we attempt to identify and measure the *incremental* costs and benefits associated with the government action. Because the toad is already a Federally protected species, any effect this listing has on the regulated community is considered part of the baseline scenario, which remains unaffected by our critical habitat designation. Future pending and proposed critical habitat designation for other species in the area will be part of separate rulemakings and, their economic effects will be considered separately.

(50) *Comment:* Some commenters were concerned that, while we discussed impacts that are more appropriately attributable to the listing of the toad than to the proposed designation of critical habitat, we did not include in the baseline costs attributable to the listing or provide quantified estimates of the costs associated with the listing.

*Service response:* We do not agree that the economic impacts of the listing should be considered in the economic analysis for the designation of critical habitat. The Act is clear that the listing decision be based solely on the best available scientific and commercial data available (section 4(b) of the Act). Congress also made it clear in the Conference Report accompanying the 1982 amendments to the Act that ''economic considerations have no relevance to determinations regarding the status of species.'' If we were to consider the economic impacts of listing in the critical habitat designation analysis it would lead to confusion, because the designation analysis is meant to determine whether areas should be excluded from the designation of critical habitat based solely upon the costs and benefits of the designation, and not upon the costs and benefits of listing a species. Additionally, because the Act specifically precludes us from considering the economic impacts of the listing, it would be improper to consider those impacts in the context of an economic analysis of the critical habitat designation. Our economic analyses address how the actions we are currently considering may affect current or planned activities and practices; they do not address impacts associated with previous Federal actions, which in this case includes the listing of the toad as an endangered species. This method is consistent with the standards published by the Office of Management and Budget for preparing economic analyses under Executive Order 12866.

(51) *Comment:* Several commenters believed that the economic analysis underestimated potential future section 7 consultations with other Federal agencies and questioned how we developed our estimates.

*Service response:* Section 7 of the Act requires other Federal agencies to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. To develop the estimate of potential future section 7 consultations that may be attributable to critical habitat designation, Service personnel were first asked to identify, for each critical habitat area, current and potential future land-use activities. In some cases we also contacted various Federal, State, and local representatives to clarify our understanding of some of these activities. Service personnel were then asked to consider how these activities affect the listed species and their habitat. For those activities that may affect a species or its habitat, we attempted to determine whether or not a Federal nexus existed that could lead to a section 7 consultation.

Incremental section 7 consultations were then estimated based on previous consultation histories in the area. In areas for which consultation had already occurred, we looked at the potential that such a consultation would need to be reinitiated if critical habitat is designated. For other areas where activities had not yet been the subject of consultation, we estimated potential future section 7 consultations likely attributable to critical habitat designation based on the presence of the toad and other listed species in the area, the likelihood of a Federal nexus, and the likelihood that a Federal agency would need to consult on such an activity based on the concerns of Service personnel along with the section 7 consultation history in the vicinity of the proposed critical habitat areas. In developing our estimates, we contacted personnel in other Federal agencies that have conducted section 7 consultations with the Service, or may in the future,

for their opinions on how critical habitat designation may or may not affect their perceived need to consult on current and future activities.

(52) *Comment:* Some commenters believe that the draft economic analysis underestimated the potential costs of critical habitat designation.

*Service response:* In preparing the economic analysis, we made an honest attempt to estimate the potential effects from critical habitat designation. As previously stated, we believe that many of the effects perceived by the public to be attributable to critical habitat would actually occur regardless of a critical habitat designation because the toad is a Federally protected species. Because we are attempting to estimate potential future effects from critical habitat designation, our estimates are based on potential future activities that are typical for the area. In reality, some individuals may experience impacts greater than we estimated, while others experience less. We were only able to identify the types of impacts likely to occur regarding the proposed critical habitat designation. The potential impacts we identified that could result include new or reinitiated section 7 consultations, and perhaps some prolongment of ongoing consultations to address critical habitat concerns, as required under section 7 of the Act. In some cases, it is possible that we might suggest reasonable and prudent alternatives to the proposed activity that triggered the consultation, which would also be an impact. Also associated with consultations is the length of time required to carry out consultations, which may result in costs associated with project delays.

We recognize 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 the critical habitat designation is subject to additional constraints. In truth, this is not the case because critical habitat designation for the toad does not add any extra protection, nor impact landowners beyond that associated with the listing of the species under the Act. As a result, we believe that any resulting distortion will be temporary and have a relatively insignificant effect on the real estate market as it should become readily apparent to market participants that critical habitat for the toad does not impose any additional constraints on landowners beyond those associated with the species' listing.

(53) *Comment:* Some commenters disagreed with the assumption applied in the economic analysis that the designation of critical habitat will cause no impacts above and beyond those caused by the listing of the species within occupied habitat and that ''adverse modification'' and ''jeopardy'' are different, will result in different impacts, and should be analyzed as such in the economic analysis.

*Service response:* We disagree with the commenters' assertion that ''jeopardy'' and ''adverse modification'' represent materially different standards. 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 a 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 within the geographic area occupied by the toad and that has already been identified in the recovery plan as essential habitat. Furthermore, we believe that other Federal agencies are aware of our concern for the toad within these areas and, as a consequence, the designation of proposed critical habitat will not result in any appreciable increase in section 7 consultations.

(54) *Comment:* One commenter stated that the economic analysis did not address the economic impacts that critical habitat designation would have on regional water authorities.

*Service response:* We disagree with this comment, and believe that the economic analysis does address the potential effects that critical habitat designation could have on regional water authorities. We specifically identified water authorities that are already consulting with us, as well as those that may need to consult in the future. We also discuss the estimates of future section 7 consultations in the economic analysis.

(55) *Comment:* Several commenters requested that we consider the economic and other benefits of reducing development, and to keep in mind the identified beneficial uses of water in the designated drainages. They noted additional benefits of the critical habitat designation, such as reducing urban run-off, purifying run-off , allowing riparian vegetation to recover, and protecting recharge areas.

*Service response:* Critical habitat designation only has the potential to benefit watershed drainages if it somehow affects either current or planned uses of the area under the ''without critical habitat'' baseline scenario. In most instances, we do not believe that critical habitat designation for the arroyo toad will have any significant effect on land use activities or management practices and, as a result, we believe that the designation will also have limited economic or environmental benefits above the listing.

(56) *Comment:* Some commenters stated that the proposal focuses on agriculture as causing problems for the arroyo toad when, in reality, predation and roadkill are the biggest threats to the arroyo toad, and the Service is ignoring those. One commenter questioned our statements that agriculture has had negative effects on the arroyo toad and its habitat, and another stated that ongoing farm and ranch practices should be exempt from regulation. In particular, some commenters implied that the critical habitat designation would cripple the agricultural industry. Specifically, one commenter stated that agricultural revenue in affected counties is $7.8 billion when a 5:1 multiplier is applied, and that this output is placed at risk by the critical habitat designation.

*Service response:* We agree that predation by non-native species is a significant threat to arroyo toads. However, we disagree with the assertion that it has been or is at this time the greatest threat to the continued survival of the species. We have acknowledged the problems of predation or roadkill, and do not think that the proposal is solely focused on the issue of agriculture. All three topics are discussed extensively in the recovery plan, which we reference numerous times in this final rule. Historically, the greatest impacts to arroyo toad populations have been the construction of dams and the accompanying water management practices. More recently, intensive agriculture and urbanization have contributed greatly to the loss, degradation, and fragmentation of arroyo toad habitat. We received no new information during the public comment period to contradict this finding. Sand and gravel mining, improper livestock management practices, suction dredge mining, the invasion of non-native plant species, human recreational activities,

and non-native predators, combined with the losses of habitat, are significant threats to the species. The exact role each plays in the persistence of any given population varies depending on the presence and magnitude of each of the other threats. We are aware of the threat of predation by non-native species, and are working with several land management agencies to decrease the numbers of bullfrogs and non-native fish found in many watersheds. Simultaneously, we are working with the same and other agencies to reduce the impacts from water and livestock management practices, recreational activities, sand and gravel mining, roads, and non-native plants. The Service takes a multidisciplinary, multi-pronged, ecosystem level approach to the management of endangered species and their habitats.

We disagree that the entire agricultural revenue stream is jeopardized, as the areas proposed for critical habitat do not cover the entire landscape in any county in which it is proposed, nor most of the agricultural land in those counties. Additionally, by designating critical habitat for the arroyo toad we are not precluding any lands from being farmed now or in the future. We do not exert any influence over land-use decisions on private property conducted by non-Federal government entities, unless such action results in a take of a federally listed species or requires a Federal action. As most agriculture in the counties in which critical habitat is designated for the arroyo toad occurs on private, not Federal, lands, there will be very limited effects on agriculture overall.

(57) *Comment:* The designation of critical habitat for the arroyo toad will have a serious negative effect on the ability of the building industry to meet the demand for affordable housing.

*Service response:* We are aware that some of the land that we have proposed as critical habitat for the arroyo toad faces significant development pressure. Development activities can have a significant effect on the land and the species dependent on the habitat being developed. We also recognize that many large-scale development projects are subject to some type of Federal nexus before work actually begins. As a result, we expect that future consultations, in part, will include planned and future real estate development.

However it is very unlikely that these resulting consultations will take place solely in regard to critical habitat issues. While it is certainly true that development activities can adversely affect designated critical habitat, we believe that our future consultations regarding new housing development will take place because such actions have the potential to adversely affect a federally listed species. Such planned projects would require a section 7 consultation regardless of the critical habitat designation. Section 7 of the Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out can jeopardize a listed species or adversely modify its critical habitat.

(58) *Comment:* One commenter was concerned because of the perceived effect of critical habitat on implementation of the Southern California Association of Governments (SCAG) regional transportation plans.

*Service response:* Because we have determined that the lands designated as critical habitat are within the geographic range occupied by the arroyo toad, this designation does not present any significant additional regulatory burdens upon Regional transportation projects beyond those attributable to the listing of the arroyo toad as a federally endangered species. Consequently, we do not believe that the designation of critical habitat for the arroyo toad adds any significant additional economic burden within critical habitat boundaries. In some cases, where an existing consultation is completed, a conference opinion has not been completed, the project not yet implemented, and the Federal action agency retains discretion (or such discretion is provided by law), agencies may need to reinitiate consultation to address possible impacts to critical habitat.

(59) *Comment:* Some commenters asked why the burden of past losses is put upon those now undertaking activities in remaining arroyo toad habitat, or expressed the concern that certain groups of people are being unfairly targeted by the designation of critical habitat.

*Service response:* We are sensitive to the concerns of the commenters, and encourage them and other parties to contact us to discuss specific issues. The intent of Congress in enacting the Endangered Species Act was to slow or halt the declines in the distributions and numbers of numerous species. These losses were most often due to habitat loss or degradation. Congress and the Act recognized the importance of both species and the ecosystems they depend on, and put in place prohibitions and mechanisms to recover those species at the risk of extinction. In many cases the agencies responsible for past losses of arroyo toads and their habitat have been required to alter their management practices to reduce direct losses of toads and to restore habitat to stabilize and expand existing populations. These include Federal agencies such as the Department of Defense and the Forest Service, as well as local agencies such as water districts. We are designating lands owned by Federal, State, and local agencies, as well as private lands in a wide variety of land use situations. No one landowner, land use category, or business category was focused on when we were selecting critical habitat.

(60) *Comment:* Exemption of roads, homes, and shopping centers is improper and discriminatory, in that it provides for different standards in evaluating urban versus rural uses.

*Service response:* We do not discriminate between projects or actions that are ''rural'' in nature, versus those that are ''urban'' in nature. As described elsewhere in this final rule, existing developments that no longer contain or support the primary constituent elements do not meet the criteria for critical habitat. In many cases, such development occurred before the species was listed. Federal agencies are not required to conference or consult with us until a species is proposed or listed, respectively. Development and activities that have taken place since the listing of the arroyo toad were reviewed and evaluated, as appropriate, under sections 7 and 10 of the Act. If a project or action was determined to be likely to have an effect on arroyo toads, a biological opinion or incidental take permit (the latter accompanied by an HCP) was issued. Such opinions and permits contain terms and conditions designed to avoid and minimize the adverse effects to the species.

(61) *Comment:* One commenter expressed concern about possible closures of fly-fishing waters.

*Service response:* We do not anticipate that any areas will be closed solely because they now fall within designated critical habitat boundaries. Current closures of areas inhabited by arroyo toads were made for several reasons. Some closures were to protect the toad and its habitat solely on the basis of the listing, others were due to generalized habitat degradation from recreational or other activities, some were triggered by massive landslides during the most recent El Niño events (1997–1998), and others were due to fires.

(62) *Comment:* Some landowners expressed concern about how critical habitat designation may affect their particular properties, what they would and would not be allowed to do in the future because of the designation, and whether they would need to seek

incidental take authorization from us for every type of action taken on their property.

*Service response:* We are sensitive to the concerns of individuals concerning their property rights. The designation of critical habitat for the arroyo toad does not impose any additional requirements or conditions on property owners beyond those imposed by the listing of the arroyo toad as a federally endangered species, nor does it establish a refuge, wilderness, reserve, preserve, or other special conservation area. 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 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.*

Furthermore, all Federal agencies are responsible to ensure that the actions they fund, permit or carry out do not jeopardize 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, either directly or indirectly, to reduce appreciably the likelihood of 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 toad, any activity that would result in an adverse modification of the toad's critical habitat would virtually always also jeopardize the continued existence of the species. Federal agencies must consult with us, pursuant to section 7 of the Act, on all activities that will adversely affect the toad both within and outside of designated critical habitat.

(63) *Comment:* The designation of critical habitat constitutes a taking by the Federal Government, and makes the government financially liable for losses in property values or due to prohibition of activities within the designated critical habitat.

*Service response:* 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 arroyo toad. 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 arroyo toad. Activities such as gold mining or recreational activities that occur within critical habitat are more likely to be restricted due to direct impacts to arroyo toads, rather than any incremental restrictions due to the designation of critical habitat.

(64) *Comment:* One commenter stated that private sector uses of public lands should continue.

*Service response:* Properly managed activities, whether on private or public lands, by private individuals or companies or by public agencies, can have varying levels and types of effects on arroyo toads and their habitat. It is incumbent on all of these entities to ensure that their activities do not take toads, either directly or indirectly, and Federal agencies must ensure that their activities do not destroy or adversely modify designated critical habitat. The Service is available to provide technical assistance to agencies and landowners in determining the most appropriate methods for avoiding take of arroyo toads and other listed species. If it is likely that take of arroyo toads or adverse effects to the critical habitat will occur, then it is incumbent on Federal agencies to enter into the consultation process. If it is likely that take of arroyo toads will occur on non-Federal lands without a federal nexus, then the project proponent should apply for an incidental take permit under section 10(A)(1)(b) of the Act. In most cases of private activities on public lands, there will be few, if any, additional terms and conditions due to the designation of critical habitat, as the presence of the arroyo toad itself makes it necessary for Federal agencies to consult with us before they issue permits for such activities. If we did not reach a jeopardy conclusion during the original consultation, it is highly unlikely that the reinitiation of consultation will result in a destruction or adverse modification conclusion.

(65) *Comment:* We received a request that critical habitat be limited to publicly owned occupied habitat only.

*Service response:* The Act requires us to identify, and if prudent, to designate those habitats that are essential to the conservation of the species and that may require special management, regardless of ownership. As we discuss in the section entitled *Criteria Used to Identify Critical Habitat,* we guided our selection of areas for designation, in part, by the information and analyses in the arroyo toad recovery plan. This plan identified rivers and streams where the protection and management of the toad and its habitat are necessary to achieve recovery goals. Once lands are identified as essential to the conservation of the species, we may designate or exclude areas based on economic and other impacts. While some lands have been excluded from this final designation, no single category of land ownership may be automatically excluded.

(66) *Comment:* Some commenters believe that the designation of critical habitat will encourage the conversion of private farms and ranches to urban development, and that farms and ranches should be exempt from designation, as these land uses preserve open space and prevent conversion to urban development.

*Service response:* We disagree with this comment. There are numerous programs available through the Fish and Wildlife Service and other Federal agencies to assist farmers and ranchers in developing appropriate management plans for lands that harbor threatened and endangered species, both where critical habitat is designated and where it is not. For example, the Landowner Incentive Program, provides funds for land management activities undertaken through Safe Harbor agreements. Such agreements provide assurances to landowners that additional regulatory burdens will not be placed upon them as a result of increased populations of listed species or the attraction of listed species to appropriately managed habitat. Numerous organizations can provide funding, technical assistance, and management oversight for lands on which conservation agreements have been established. We invite farmers and ranchers to continue to work with us and other agencies and organizations to ensure that imperiled species will have the space they need, farmers and ranchers will be able to retain their way

of life, and open space will not be lost to industrial and urban development.

(67) *Comment:* The Service must perform a complete analysis of cumulative impacts from current and planned development, mining operations, and other activities.

*Service response:* We are not required to estimate the cumulative effects of critical habitat designations as part of our rulemaking procedures. We are required to only consider the effect of the proposed government action, which in this case is the designation of critical habitat for the arroyo toad. The appropriate baseline to use in an analysis of a Federal action is the way the world would look absent the proposed regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with the government action. Because the toad is already a federally protected species, any effects the listing has on the regulated community is considered part of the baseline scenario, which remains unaffected by our critical habitat designation.

(68) *Comment:* One commenter indicated that the lower end of Bautista Creek (Unit 9)—from T5S, R1E Section 21 upstream to T5S, R1E Section 27—was not appropriate for critical habitat designation because the creek in this area flows first through a large debris basin and then into a concrete lined channel.

*Service response:* We have examined maps and photos of this area and determined that it is not essential habitat for conserving the arroyo toad. The critical habitat boundaries on Bautista Creek have been modified to exclude areas downstream of the center of Section 27.

(69) *Comment:* Several commenters suggested that the segment of the Whitewater River (Unit 22) below where the Colorado River Aqueduct crosses the river is not appropriate for critical habitat because of frequent water releases from the aqueduct into the river at this location to transport water to groundwater recharge basins in the Coachella Valley.

*Service response:* We have examined the situation in this area and determined that portions of the Whitewater River below the Colorado River Aqueduct crossing are not essential habitat for conserving the arroyo toad. The critical habitat boundaries on the Whitewater River have been modified to exclude areas downstream of the aqueduct.

(70) *Comment:* One commenter stated that it is not appropriate to consider Baker Canyon occupied by arroyo toads based on recent survey information and requested that we delete Baker Canyon from proposed critical habitat.

*Service response:* Robert Fisher observed and collected an arroyo toad within Baker Canyon in 1985 (R.N. Fisher, pers. comm.), and high-quality arroyo toad habitat still exists in this area. During 1997, surveys conducted at the Santiago Creek/Baker Canyon confluence did not detect the presence of arroyo toads (Harmsworth Associates 1998). However, this survey effort did not cover much of the area proposed as critical habitat, nor did it cover the area where the toad was observed in 1985. Reportedly, more comprehensive survey efforts within lower Baker Canyon during 2000 also failed to detect arroyo toads (Adrian Wolf, pers. comm.). Again, it is likely that portions of the area proposed as critical habitat were not covered by this effort, nor have the results been provided to us for our review. In many areas, breeding habitat conditions in 2000 were poor (e.g., dry stream courses) because of two consecutive years of below normal rainfall in southern California, leading to depressed arroyo toad breeding activity. During such conditions, we have found that protocol surveys can be ineffective at detecting arroyo toads, even in areas of known occupancy. Although it is possible that Baker Canyon is presently not occupied by arroyo toads, we regard this portion of critical habitat as essential to the conservation of the arroyo toad based on the need to safeguard a viable arroyo toad population within the Santa Ana Mountain portion of the species' range.

**Summary of Changes From Proposed Designation**

Based on a review of public comments received on the proposed determination of critical habitat for the arroyo toad, we re-evaluated our proposed designation of critical habitat for the arroyo toad. This resulted in several significant changes that are reflected in this final determination. These include: (1) A reduction in the minimum mapping unit for defining critical habitat boundaries, (2) the truncation of some stream reaches based on a determination that certain lands are not essential to the conservation of the arroyo toad or that such lands do not need special management, and (3) the exclusion under section 4(b)(2) of Camp Pendleton because the designation would significantly impair critical, ongoing training and related operations. A more detailed discussion of each of these issues follows.

We refined the minimum mapping unit for the designation, from the 1 km square grid cells used in the proposed rule to 250 m grid cells (1/16th the size of 1 km cells), so that lands essential to arroyo toad conservation are more precisely identified. We then superimposed the critical habitat boundaries on digital orthophoto quarter-quadrangle (DOQQ) imagery and to remove from critical habitat urban or developed areas that are not essential to the conservation of the arroyo toad. The final critical habitat designation covers 73,780 ha (182,360 ac), a reduction of 62 percent from the proposal.

Based on our evaluation of information received during the comment periods and site visits made to some of the proposed units, we reduced the extent of some of the stream reaches proposed as critical habitat. These changes were based on determinations that certain lands are not essential to the conservation of the arroyo toad or that such lands do not need additional special management. Specifically, we reduced the extent of the designated stream reaches in Unit 1, San Antonio River, Monterey County; Unit 2, Sisquoc River, Santa Barbara County; Unit 6, Upper Santa Clara River, Los Angeles County; Unit 9, San Jacinto River and Bautista Creek, Riverside County; Unit 17, San Vicente Creek, San Diego County; Unit 20, Little Rock Creek, Los Angeles County; and Unit 22, Whitewater River, Riverside County. The specifics for each unit are given below.

For Unit 1, the San Antonio River on Fort Hunter Liggett in Monterey County, we reduced the northern extent of the stream reach, which reduced the critical habitat unit by 1,300 ha (3,210 ac). The habitat in and adjacent to the reach from Forest Creek to just above Mission Creek is of lower quality than that of the remaining 27 km stretch of the river that is included. While the reach may provide breeding habitat for arroyo toads in years when other stretches are fully occupied, we do not believe it is essential to the recovery of the arroyo toad in the Northern Recovery Unit. If arroyo toads do occur there, the Army will have to conduct any activities in accordance with terms and conditions that will be established under a new programmatic biological opinion covering ongoing training, operations, and maintenance activities. The Army has opened discussions with us on their existing programmatic opinion, and recently submitted a draft management plan for the arroyo toad. When these documents are completed, the Service, if time and funding permit, will reassess the critical habitat boundaries in light of the plans. Until such time, we believe

the needs of the toads on Fort Hunter Liggett still require special management.

In Unit 2, the Sisquoc River in Santa Barbara County, we eliminated the lower portion of the river, from the confluence with the Santa Maria River to just below the confluence with La Brea Creek. This reduced the critical habitat unit by 4,300 ha (10,625 ac). We have very little information on arroyo toads in this area, and much of the habitat has been altered by ongoing agricultural and mining practices. We believe sufficient high-quality habitat is available in the remaining 3,385 ha (8,360 ac) of river and upland habitat to enable the stabilization and expansion of the arroyo toad population in this drainage.

In Unit 6, the Upper Santa Clara River basin, we have made substantial changes. Unit 6a has remained the same on the maps, although the description has changed to correct inaccuracies in the proposed rule. A large portion of the proposed Unit 6b, including the mainstem of the river and the lower portion of San Francisquito Creek, has been eliminated, reducing the critical habitat unit size by 7,000 ha (17,300 ac). The remaining portions are identified in this final rule as Unit 6b (Castaic Creek) and Unit 6c (San Francisquito Creek). We believe that, under the Natural River Management Plan (NRMP) (Valencia Company 1998), the river and creek will continue to function as a dispersal corridor for arroyo toads between Castaic Creek to San Francisquito Creek. We incorporated this area in the proposal to provide for such a corridor. We believe the geomorphology and natural hydrologic regime (deep sandy sediments with generally subsurface flow for much of the rearing period), coupled with human activities and changes, have precluded the establishment and maintenance of a breeding population. We do not believe it is in the best interests of the arroyo toad and other listed species to focus recovery efforts for the toad on the mainstem of the river. As the NRMP and associated conservation easements will not allow actions or activities that would impede migration, we believe that this area has sufficient special management in place. Castaic Creek upstream of the confluence with the Santa Clara River and San Francisquito Creek upstream of the NRMP boundary do not have adequate conservation easements or special management plans in place to provide adequately for arroyo toads in these areas. As with lands covered by an incidental take permit issued under section 10(a)(1)(B) and accompanying HCPs, if these areas are, in the future, protected with conservation easements or other management plans that do adequately address the needs of the toads, the Service will reassess the critical habitat boundaries in light of the easements and plans. The Service will try to undertake this review when the easement or plan is approved, but funding constraints may influence the timing of such a review. However, such agreements can proceed without a concurrent amendment to the critical habitat designation should all parties agree.

In Unit 9, San Jacinto River/Bautista Creek, we removed the lower 2 km (1.2 mi) stretch of Bautista Creek because it is channelized and no longer supports breeding habitat for the arroyo toad. Significant areas of developed lands were excluded because of the refined mapping unit, resulting in an overall reduction of about 3,660 ha (9,180 ac) in the unit size. We believe the remaining 1,710 ha (4,220 ac) will provide sufficient habitat for the conservation of the arroyo toads in this unit.

In Unit 17, San Diego River/San Vicente Creek, approximately 5 km (3 mi) of upper San Vicente Creek was removed from critical habitat boundaries because the creek flows through a dense residential development (i.e., San Diego Country Estates) in this area and we believe there is no longer sufficient upland habitat there to sustain arroyo toads. Along with the reduction in areal coverage resulting from the refined mapping unit, this resulted in the splitting of the proposed subunit 17a into two final subunits, 17a and 17d. The total reduction for this unit was approximately 3,500 ha (8,665 ac).

In Unit 19, Cottonwood Creek Basin, approximately 8 km (5 mi) of La Posta Creek were removed from critical habitat because there is no documentation (either recent or historic) of arroyo toads inhabiting the upper part of this drainage; thus, the area is not considered to be essential to the species' conservation. The unit was reduced from 18,000 ha (44,500 ac) in the proposed rule to 7,990 ha (19,740 ac) in the final designation. However, most of that reduction can be attributed to the smaller mapping unit.

In Unit 20, Little Rock Creek, approximately 5 km (3.1 mi) of Little Rock Creek below Little Rock Reservoir, a total of 1,000 ha (2,470 ac), was removed from critical habitat. Recent surveys by the Forest Service have not found arroyo toads downstream of the reservoir, and flow is subsurface in much of the stretch, making it unsuitable as rearing habitat. If arroyo toads are found on lands under Forest Service management, they will address these under appropriate management guidelines. If a population does become established in this area, we will reconsider the area as possible critical habitat, given time and funding constraints.

In Unit 22, the Whitewater River in Riverside County, we have removed the segment of proposed critical habitat downstream from the Colorado River Aqueduct, a stretch of approximately 3 km (2 mi). This reduced the unit size by about 700 ha (1,730 ac). The area is sparse in vegetative cover, channelized below Interstate 10, and subject to instantaneous and random changes in water levels. Water is periodically released from the Colorado River aqueduct into the Whitewater River to a series of percolation ponds for the purpose of recharging the Coachella Valley aquifer. The refined mapping unit eliminated approximately 800 ha (1,980 ac). We believe the remaining 10 km (6 mi) and 865 ha (2,150 ac) will provide sufficient habitat for the long-term conservation of the arroyo toad in this unit.

Marine Corps Base Camp Pendleton is the Marine Corps' only amphibious training base on the west coast. During the public comment periods for the proposal, the Marines informed us that the designation, if made final, had ''the potential to substantially degrade the military capabilities of both the installation and assigned operational forces.'' Because designation would significantly impair critical training, we excluded Camp Pendleton from this final designation. Our rationale for this exclusion is discussed in more detail in the section ''Exclusions under section 4(b)(2),'' above.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Economic effects caused by listing the arroyo toad as an endangered 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 benefit of the

critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of the proposed arroyo toad critical habitat designation was prepared (Industrial Economics, Incorporated, 2000) and made available for public review (November 9 to December 11, 2000; 65 FR 67334). 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 arroyo toad. 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 resulting from the determination. 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 appreciable 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. However, 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 the Ventura or Carlsbad offices (see **ADDRESSES** section).

## Required Determinations

*1. 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 more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The arroyo toad was listed as an endangered species in 1994. In fiscal years 1994 through 1999, the Ventura and Carlsbad Fish and Wildlife Offices conducted or are in the process of conducting, 27 and 55, respectively, formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the arroyo toad. No section 10(a)(1)(B) incidental take permits for arroyo toads have been issued by the Ventura office, although two HCPs are in the early planning stages. The Carlsbad office has issued six HCPs.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act (see Table 3).

TABLE 3.—IMPACTS OF ARROYO TOAD 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, degrading, or destroying arroyo toad habitat (as defined in the primary constituent elements discussion), whether by activities such as road construction, grading, and maintenance; fencing; off-road vehicle use; airport improvement activities; road right-of-way designation; overgrazing; mining activities including suction dredging; recreational activities including development of campgrounds; changes in long and short-term water flows including damming, diversion, alteration by agriculture and urbanization, and channelization; military training and maneuvers; licensing for construction of communication sites; chemical applications, or other means including herbicide or pesticide application, etc.); and appreciably decreasing habitat value or quality through indirect effects (edge effects, invasion of exotic plants or animals, or fragmentation that the Federal Government carries out). | None. |
| Private Activities Potentially Affected [4]. | Removing, degrading, or destroying arroyo toad habitat (as defined in the primary constituent elements discussion), whether by activities such as road construction, grading, and maintenance; fencing; off-road vehicle use; airport improvement activities; road right-of-way designation; overgrazing; mining activities including suction dredging; recreational activities including development of campgrounds; changes in long and short-term water flows including damming, diversion, alteration by agriculture and urbanization, and channelization; military training and maneuvers; licensing for construction of communication sites; chemical applications, or other means including herbicide or pesticide application, etc.); and appreciably decreasing habitat value or quality through indirect effects (edge effects, invasion of exotic plants or animals, or fragmentation) that require a Federal action (permit, authorization, or funding). | None. |

[1] This column represents the activities potentially affected by listing the arroyo toad as an endangered species (December 16, 1994 59 FR 64859) 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.

Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or 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 (however, 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 arroyo toad since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. 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 in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. This final determination follows the requirements for designating critical habitat contained in the Act.

*2. 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 rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 2 (see Critical Habitat Designation section), we designated property owned by Federal, Tribal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal lands (such as those managed by the Service, Forest Service, DOD, or BLM);

(4) Regulation of grazing, mining, and recreation by the BLM, Department of Defense, Army Corps, or Forest Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Military training and maneuvers and, facilities operations and maintenance on Fort Hunter Liggett and other applicable DOD lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the INS;

(8) Licensing of construction of communication sites by the Federal Communications Commission, and;

(9) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

Many of the 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. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of occupied areas as 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 rule will add no further restrictions.

*3. 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; 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. Please refer to the final economic analysis for a discussion of the effects of this determination.

*4. 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 be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(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.

*5. 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 arroyo toad. Due to current public knowledge of the specie's 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. Owners of areas

that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the arroyo toad.

*6. Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from and coordinated development of this critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the arroyo toad 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 making 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).

*7. 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 designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the arroyo toad.

*8. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act.

*9. National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination 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.

*10. Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) E.O. 13175, and 512 DM 2, we coordinated with federally recognized Tribes on a Government-to-Government basis. We determined that certain Tribal lands are essential for the conservation of the arroyo toad because they support essential populations and habitat, and activities conducted or planned on those lands may adversely affect the conservation of the arroyo toad. Therefore, we are designating critical habitat for the arroyo toad on some Tribal lands. Information relative to each reservation is included in the critical habitat unit descriptions. We have excluded some areas from critical habitat upon a determination that the lands did not meet the criteria for critical habitat. The changes are detailed in the Changes from the Proposed Rule section.

**Relationship to Mexico**

We are not aware of any existing national level regulatory mechanism in Mexico that would protect the arroyo toad or its habitat. Although new legislation for wildlife is pending in Mexico and Mexico has laws that could provide protection for rare species, there are enforcement challenges. Even if specific protections were available and enforceable in Mexico, the portion of the arroyo toad's range in Mexico alone, in isolation, would not be adequate to ensure the long-term conservation of the species.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from either the Field Supervisor, Ventura Fish and Wildlife Office, or the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

**Author(s)**

The primary authors of this rule are Grace McLaughlin (Ventura) and John Stephenson (Carlsbad) (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 ''Toad, arroyo southwestern'' under ''AMPHIBIANS'' 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 | | | | | | |
| * | * | * | * | * | * | | * |
| AMPHIBIANS | | | | | | | |
| * | * | * | * | * | * | | * |
| Toad, arroyo (= arroyo south-western). | *Bufo californicus* ..... | U.S.A. (CA), Mexico | Entire ..... | E | 568 | 17.95(d) | NA |
| * | * | * | * | * | * | | * |

3. Amend § 17.95(d) by adding critical habitat for the arroyo toad (*Bufo californicus*), in the same alphabetical order as the species occurs in § 17.11(h).

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(d) *Amphibians.*

* * * * *

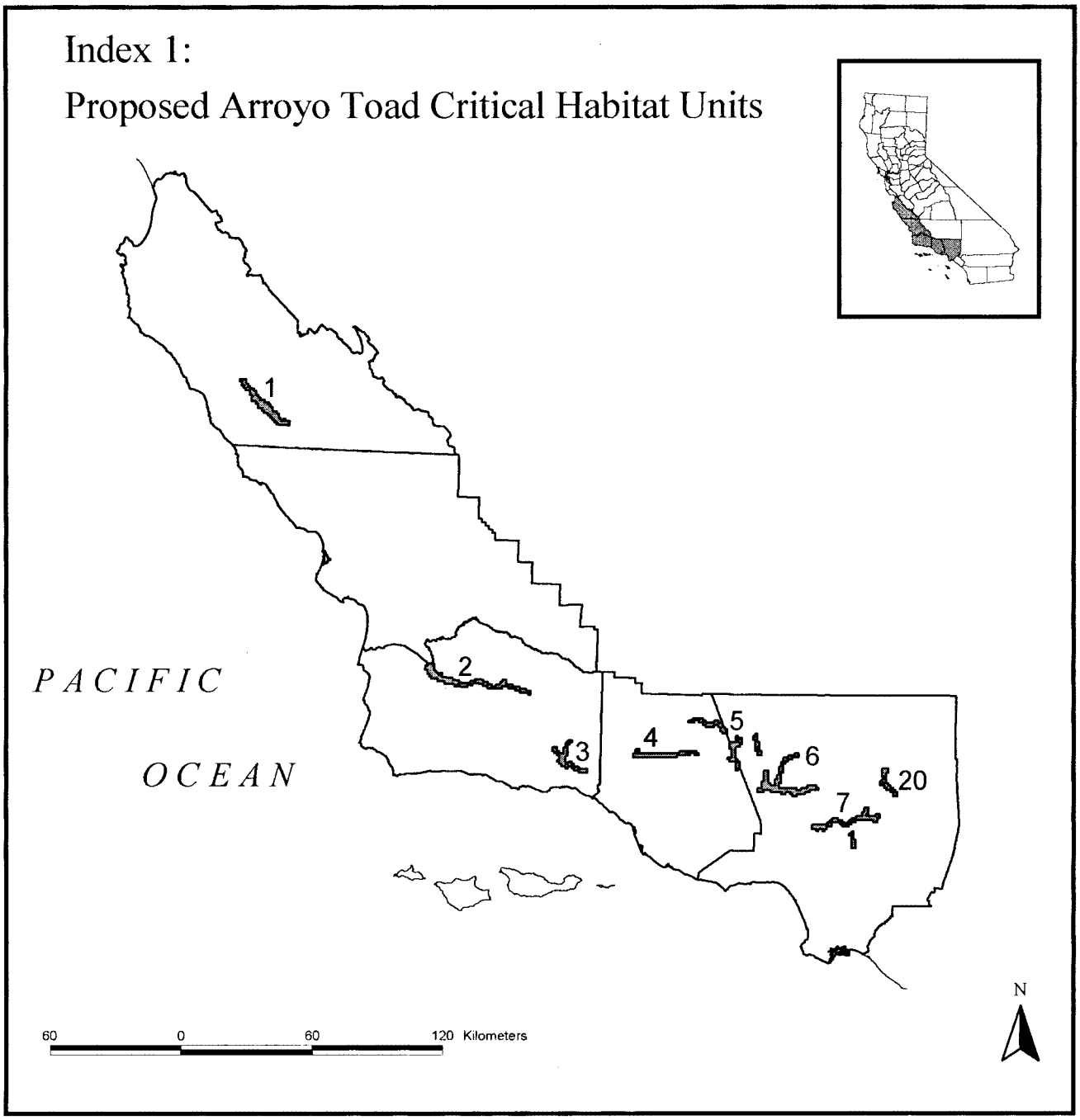
**Arroyo Toad (*Bufo californicus*)**

1. Critical habitat units are depicted for Monterey, Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, and San Diego counties, California, on the maps below.

2. Critical habitat includes stream and river courses, riparian habitats, and adjacent terrace and upland habitats.

3. Within these areas, primary constituent elements for the arroyo toad include a hydrologic regime that supplies sufficient flowing water of suitable quality at the appropriate times to provide space, food, and cover needed to sustain eggs, tadpoles, metamorphosing juveniles, and adult breeding toads; low-gradient stream segments (typically less than 4 percent) with sandy or fine gravel substrates which support the formation of shallow pools and sparsely vegetated sand and gravel bars for breeding and rearing of tadpoles and juveniles; a natural flooding regime or one sufficiently corresponding to a natural regime that will periodically scour riparian vegetation, rework stream channels and terraces, and redistribute sands and sediments, such that adequate numbers and sizes of breeding pools and sufficient terrace habitats with appropriate vegetation are maintained to provide for the needs of all life stages of the toad; upland habitats of sufficient width and quality (*i.e.,* with areas of loose, sandy soil where toads can burrow underground) to provide foraging and living areas for subadult and adult arroyo toads (loose, sandy soils are typically most prevalent on alluvial terraces and valley bottomlands and occur primarily, but not exclusively, within 1.5 km (0.9 mi) of the streamcourse and less than 25 m (80 ft) in elevation above the adjacent stream channel); few or no nonnative species that prey upon or compete with arroyo toads, or degrade their habitat; stream channels and upland habitats where manmade barriers do not completely or substantially impede migration to overwintering sites, dispersal between populations, or recolonization of temporarily unoccupied areas that contain suitable habitat; and habitats free of, or with limited levels of, land use activities that substantially reconfigure stream channels, remove or impede the deposition of sand and gravel deposits, compact soils, or crush individual toads (see maps labeled Index 1 and Index 2 for overview of proposed critical habitat).

4. Critical habitat does not include existing features and structures, such as building, aqueducts, airports, and other developed areas not containing one or more of the primary constituent elements.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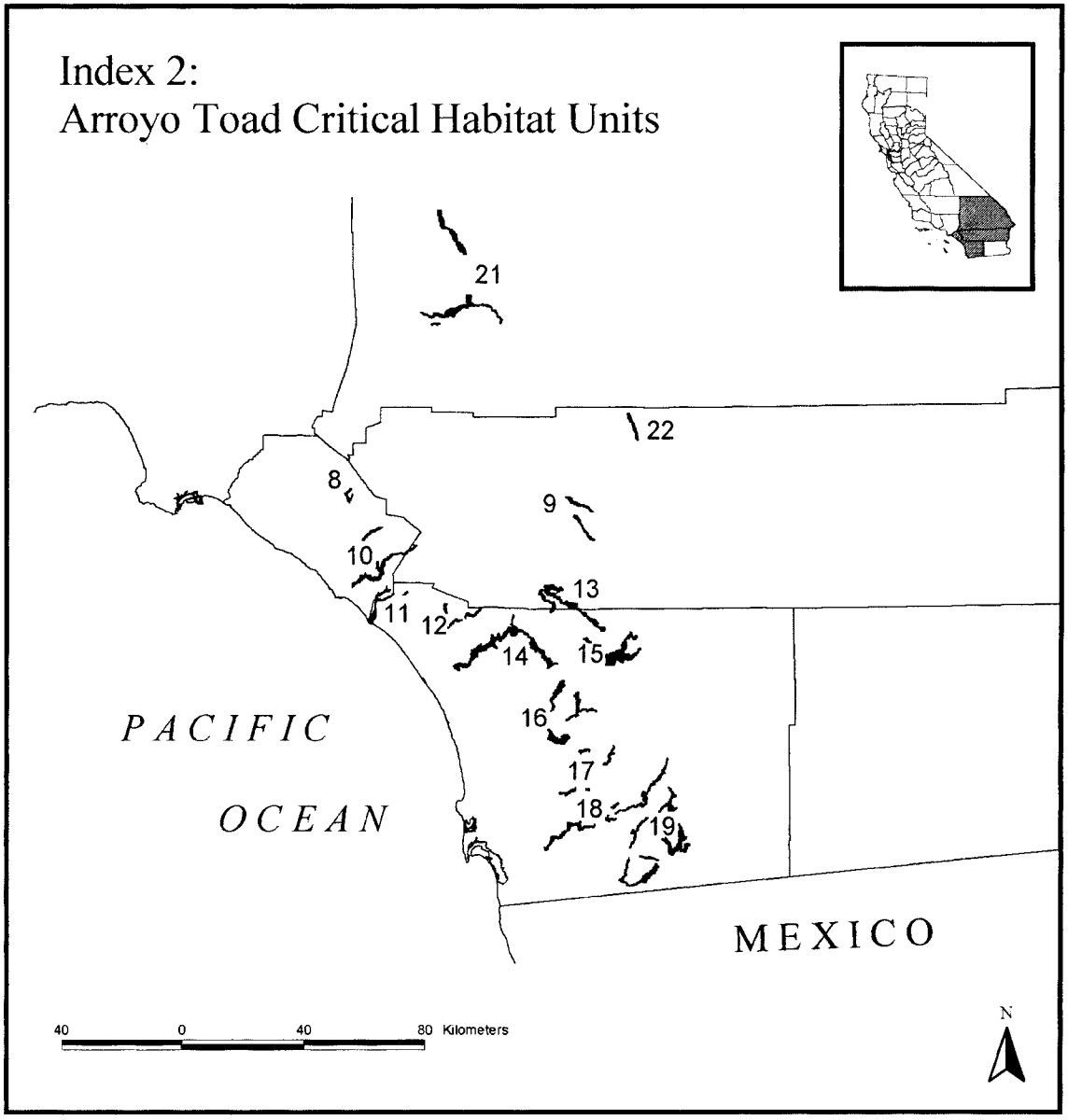
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Arroyo Toad Critical Habitat Units
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22
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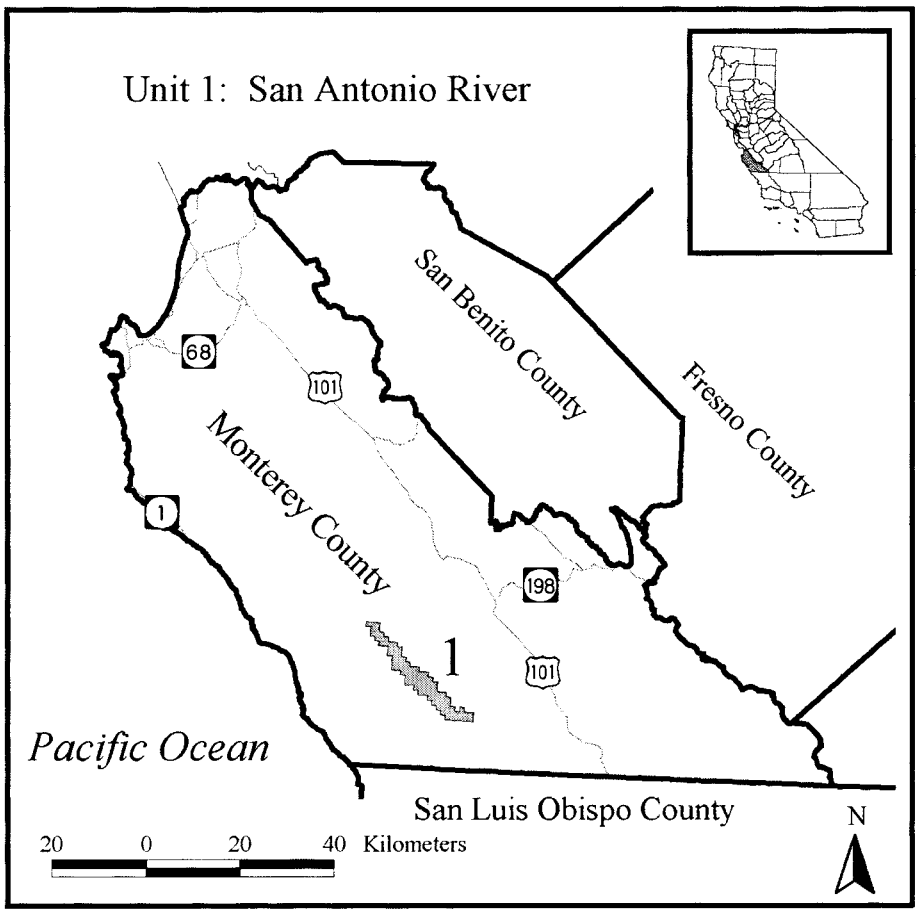
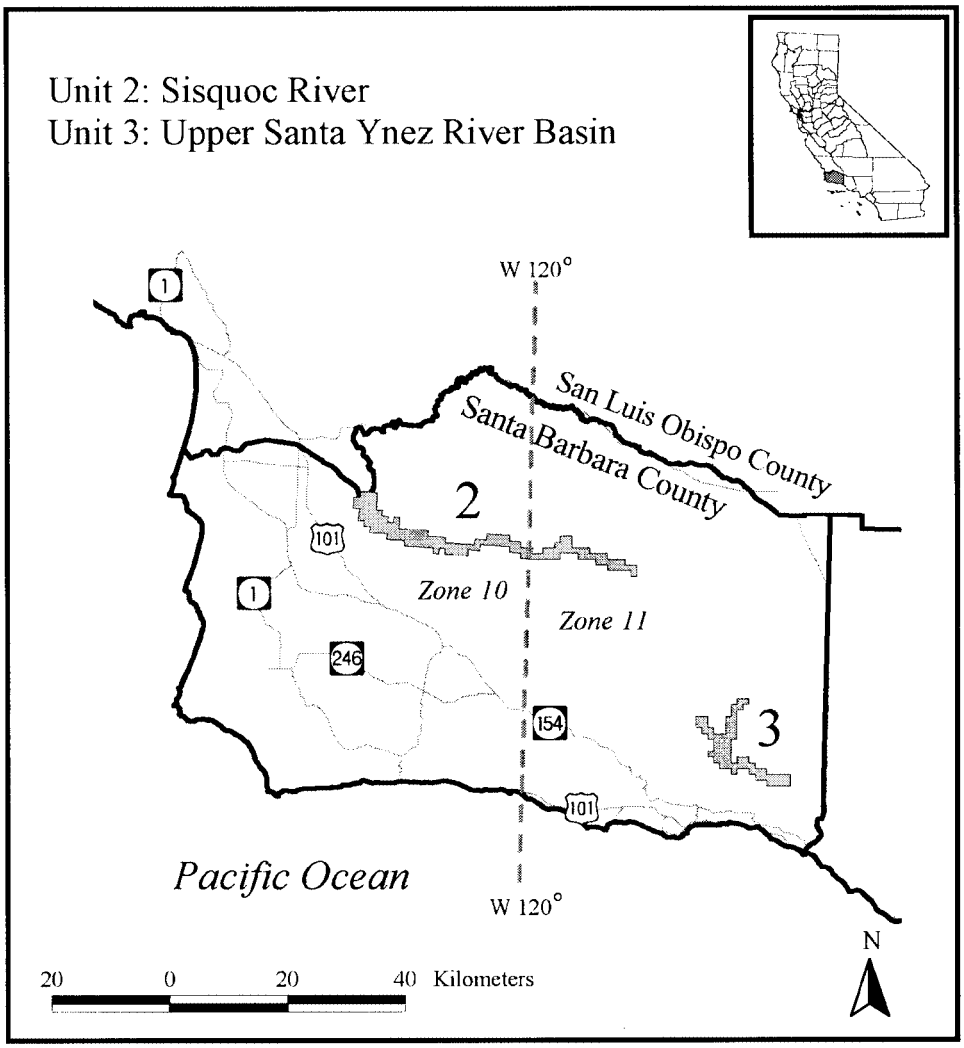



Map Unit 1: San Antonio River, Monterey County, California. From USGS 1:24,000 quadrangle maps Bear Canyon, Cosio Knob, Jolon, and Williams Hill, the lands bounded by the following Universal Transverse Mercator (UTM) zone 10, North American Datum 1927 (NAD27) coordinates (E, N): 656250, 3988250; 655500, 3988250; 655500, 3988750; 657000, 3988750; 657000, 3988250; 656750, 3988250; 656750, 3987750; 657000, 3987750; 657000, 3987000; 657500, 3987000; 657500, 3986500; 658000, 3986500; 658000, 3986000; 658250, 3986000; 658250, 3985750; 658500, 3985750; 658500, 3985500; 658750, 3985500; 658750, 3985000; 659000, 3985000; 659000, 3984500; 659500, 3984500; 659500, 3984000; 659250, 3984000; 659250, 3983750; 659750, 3983750; 659750, 3983500; 660000, 3983500; 660000, 3983250; 660500, 3983250; 660500, 3983000; 660750, 3983000; 660750, 3982750; 661000, 3982750; 661000, 3982500; 661750, 3982500; 661750, 3982250; 662250, 3982250; 662250, 3982000; 663000, 3982000; 663000, 3981500; 663750, 3981500; 663750, 3981250; 664000, 3981250; 664000, 3981000; 664250, 3981000; 664250, 3980750; 664500, 3980750; 664500, 3980500; 664750, 3980500; 664750, 3981000; 665250, 3981000; 665250, 3980000; 665500, 3980000; 665500, 3979750; 665750, 3979750; 665750, 3979250; 666000, 3979250; 666000, 3979000; 666750, 3979000; 666750, 3978500; 667000, 3978500; 667000, 3978000; 667250, 3978000; 667250, 3977750; 667500, 3977750; 667500, 3977500; 668500, 3977500; 668500, 3977000; 668250, 3977000; 668250, 3976500; 668500, 3976500; 668500, 3976250; 668750, 3976250; 668750, 3976000; 669250, 3976000; 669250, 3975250; 669750, 3975250; 669750, 3975000; 670500, 3975000; 670500, 3974750; 670750, 3974750; 670750, 3974500; 671250, 3974500; 671250, 3974250; 671500, 3974250; 671500, 3974000; 672000, 3974000; 672000, 3974250; 672250, 3974250; 672250, 3974500; 672500, 3974500; 672500, 3975000; 673000, 3975000; 673000, 3974750; 673250, 3974750; 673250, 3974500; 673500, 3974500; 673500, 3974250; 674250, 3974250; 674250, 3974000; 674500, 3974000; 674500, 3973750; 674750, 3973750; 674750, 3973000; 674000, 3973000; 674000, 3973250; 673750, 3973250; 673750, 3973500; 673000, 3973500; 673000, 3973750; 672500, 3973750; 672500, 3973250; 671250, 3973250; 671250, 3973500; 671000, 3973500; 671000, 3973750; 670500, 3973750; 670500, 3974000; 669500, 3974000; 669500, 3974250; 669000, 3974250; 669000, 3974500; 668500, 3974500; 668500, 3975250; 668250, 3975250; 668250, 3975500; 667750, 3975500; 667750, 3975750; 667500, 3975750; 667500, 3976250; 667250, 3976250; 667250, 3976500; 667000, 3976500; 667000, 3976750; 666750, 3976750; 666750, 3977000; 666250, 3977000; 666250, 3977250; 665750, 3977250; 665750, 3977500; 665500, 3977500; 665500, 3978000; 665000, 3978000; 665000, 3978250; 664750, 3978250; 664750, 3978750; 664500, 3978750; 664500, 3979000; 663750, 3979000; 663750, 3979250; 663500, 3979250; 663500, 3979750; 663250, 3979750; 663250, 3980000; 662750, 3980000; 662750, 3980250; 662500, 3980250; 662500, 3980500; 662000, 3980500; 662000, 3980750; 661750, 3980750; 661750, 3981000; 661250, 3981000; 661250, 3981250; 661000, 3981250; 661000, 3981500; 660500, 3981500; 660500, 3981750; 660000, 3981750; 660000, 3982000; 659750, 3982000; 659750, 3982250; 659500, 3982250; 659500, 3982500; 659250, 3982500; 659250, 3982750; 659000, 3982750; 659000, 3983000; 658500, 3983000; 658500, 3983250; 658250, 3983250; 658250, 3983500; 658000, 3983500; 658000, 3985000; 657750, 3985000; 657750, 3985250; 657500, 3985250; 657500, 3985750; 657250, 3985750; 657250, 3986250; 657000, 3986250; 657000, 3986500; 656500, 3986500; 656500, 3987250; 656250, 3987250; 656250, 3988250; excluding land bounded by 656250, 3988250; 656500, 3988250; 656500, 3988500; 656250, 3988500; 656250, 3988250.




Map Unit 2: Sisquoc River, Santa Barbara and San Luis Obispo Counties, California. From USGS 1:24,000 quadrangle maps Foxen Canyon, Zaca Lake, Bald Mtn., and Hurricane Deck. Beginning at 120 degrees West Longitude at UTM zone 10, NAD27 y-coordinate 3857500, the lands bounded by the following UTM zone 10, NAD27 coordinates (E, N): 773750, 3837500; 773750, 3858000; 772750, 3858000; 772750, 3858250; 772250, 3858250; 772250, 3858500; 771750, 3858500; 771750, 3859000; 771500, 3859000; 771500, 3859250; 770250, 3859250; 770250, 3859500; 769000, 3859500; 769000, 3859750; 768750, 3859750; 768750, 3860000; 768500, 3860000; 768500, 3859500; 767250, 3859500; 767250, 3859250; 767000, 3859250; 767000, 3859000; 766000, 3859000; 766000, 3858500; 765750, 3858500; 765750, 3858000; 764000, 3858000; 764000, 3857750; 763500, 3857750; 763500, 3858250; 762750, 3858250; 762750, 3858000; 762250, 3858000; 762250, 3857750; 761750, 3857750; 761750, 3857500; 760500, 3857500; 760500, 3857750; 760250, 3857750; 760250, 3858000; 759750, 3858000; 759750, 3858250; 759500, 3858250; 759500, 3858500; 759000, 3858500; 759000, 3858000; 758750, 3858000; 758750, 3857750; 758500, 3857750; 758500, 3858000; 757750, 3858000; 757750, 3858250; 757250, 3858250; 757250, 3858500; 756250, 3858500; 756250, 3858750; 755500, 3858750; 755500, 3858500; 753500, 3858500; 753500, 3859750; 753250, 3859750; 753250, 3860250; 754500, 3860250; 754500, 3860000; 755000, 3860000; 755000, 3860250; 756250, 3860250; 756250, 3860500; 756750, 3860500; 756750, 3859750; 757750, 3859750; 757750, 3859500; 758000, 3859500; 758000, 3859250; 758250, 3859250; 758250, 3859000; 758500, 3859000; 758500, 3858750; 758750, 3858750; 758750, 3859250; 759750, 3859250; 759750, 3859000; 760000, 3859000; 760000, 3858750; 760500, 3858750; 760500, 3858500; 761000, 3858500; 761000, 3858000; 761250, 3858000; 761250, 3858250; 761750, 3858250; 761750, 3858750; 762250, 3858750; 762250, 3859000; 762500, 3859000; 762500, 3858750; 762750, 3858750; 762750, 3859000; 763000, 3859000; 763000, 3858750; 764000, 3858750; 764000, 3858500; 765000, 3858500; 765000, 3858750; 765250, 3858750; 765250, 3859000; 765750, 3859000; 765750, 3859250; 766000, 3859250; 766000, 3859500; 766500, 3859500; 766500, 3859750; 767250, 3859750; 767250, 3860000; 767750, 3860000; 767750, 3860500; 768250, 3860500; 768250, 3860750; 769000, 3860750; 769000, 3860250; 770500, 3860250; 770500, 3860000; 771000, 3860000; 771000, 3859750; 772000, 3859750; 772000, 3859500; 772250, 3859500; 772250, 3859000; 773000, 3859000; 773000, 3858750; 773500, 3858750; 773500, 3858500; 774250, 3858500; 774250, 3858000; to 120 degrees West Longitude at UTM zone 10, NAD27 y-coordinate 3858000; excluding land bounded by 756750, 3859750; 756500, 3859750; 756500, 3859500; 756750, 3859500; 756750, 3859750; thence from 120 degrees West Longitude at UTM zone 11, NAD27 y-coordinate 3858000; the lands bounded by the following UTM zone 11, NAD27 coordinates (E, N): 228250, 3858000; 228250, 3858250; 228500, 3858250; 228500, 3858000; 229500, 3858000; 229500, 3858250; 230250, 3858250; 230250, 3858750; 230500, 3858750; 230500, 3859500; 230750, 3859500; 230750, 3859750; 231500, 3859750; 231500, 3860000; 231750, 3860000; 231750, 3860250; 232250, 3860250; 232250, 3859750; 232500, 3859750; 232500, 3859500; 232750, 3859500; 232750, 3859000; 233000, 3859000; 233000, 3858750; 233750, 3858750; 233750, 3859000; 234000, 3859000; 234000, 3858750; 234250, 3858750; 234250, 3858500; 235250, 3858500; 235250, 3858250; 235500, 3858250; 235500, 3858000; 236500, 3858000; 236500, 3857750; 237500, 3857750; 237500, 3857500; 237750, 3857500; 237750, 3857250; 238500, 3857250; 238500, 3857000; 238750, 3857000; 238750, 3857250; 239000, 3857250; 239000, 3857000; 239500, 3857000; 239500, 3856750; 239750, 3856750;

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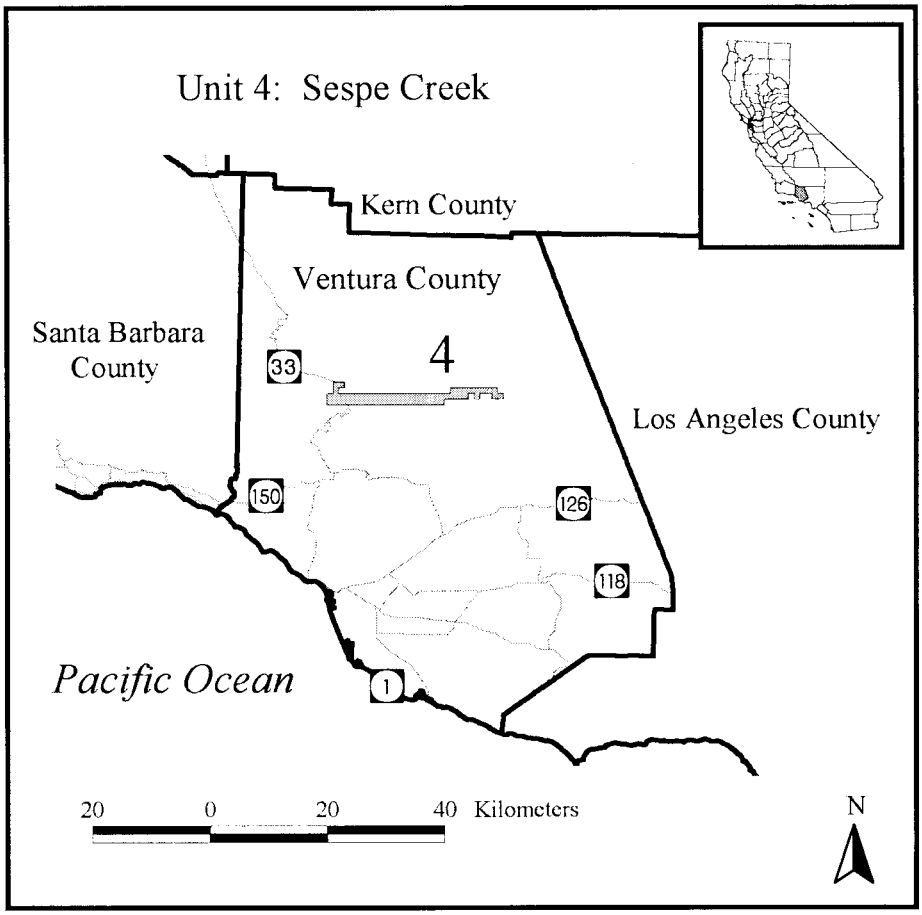
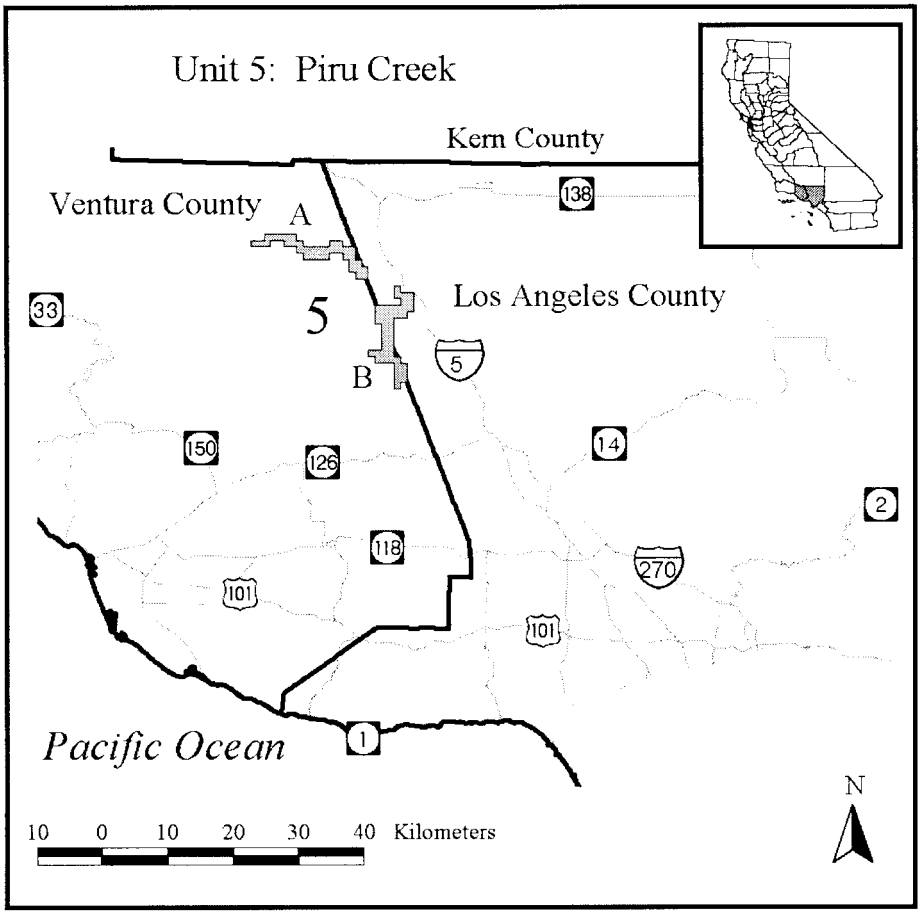
All remaining critical habitat units are in Universal Transverse Mercator zone 11, North American Datum 1927 (NAD27).

Map Unit 3: Upper Santa Ynez River Basin, Santa Barbara County, California. From USGS 1:24,000 quadrangle maps Little Pine Mtn., Hildreth Peak, and Carpinteria, the lands bounded by the following UTM coordinates (E, N): 261750, 3833000; 262500, 3833000; 262500, 3832750; 262250, 3832750; 262250, 3832250; 262000, 3832250; 262000, 3831750; 261750, 3831750; 261750, 3831500; 261500, 3831500; 261500, 3831250; 261250, 3831250; 261250, 3831000; 261000, 3831000; 261000, 3830250; 260750, 3830250; 260750, 3830000; 261000, 3830000; 261000, 3829750; 260750, 3829750; 260750, 3829250; 260500, 3829250; 260500, 3828500; 261000, 3828500; 261000, 3828250; 260750, 3828250; 260750, 3828000; 260500, 3828000; 260500, 3826750; 260250, 3826750; 260250, 3826500; 260000, 3826500; 260000, 3826000; 259500, 3826000; 259500, 3825750; 259750, 3825750; 259750, 3825500; 259500, 3825500; 259500, 3824750; 259000, 3824750; 259000, 3824500; 259500, 3824500; 259500, 3824250; 259000, 3824250; 259000, 3823750; 259250, 3823750; 259250, 3822750; 258750, 3822750; 258750, 3822500; 258500, 3822500; 258500, 3822250; 259000, 3822250; 259000, 3822000; 260250, 3822000; 260250, 3821750; 261000, 3821750; 261000, 3822250; 262000, 3822250; 262000, 3822500; 262250, 3822500; 262250, 3822250; 262750, 3822250; 262750, 3822000; 263750, 3822000; 263750, 3821250; 264000, 3821250; 264000, 3821000; 264750, 3821000; 264750, 3820750; 265000, 3820750; 265000, 3820500; 265250, 3820500; 265250, 3820000; 265500, 3820000; 265500, 3820250; 265750, 3820250; 265750, 3819750; 266500, 3819750; 266500, 3819500; 266750, 3819500; 266750, 3819250; 267750, 3819250; 267750, 3819000; 268500, 3819000; 268500, 3819250; 268750, 3819250; 268750, 3819750; 269500, 3819750; 269500, 3819250; 269250, 3819250; 269250, 3818750; 269000, 3818750; 269000, 3818500; 266500, 3818500; 266500, 3818750; 266250, 3818750; 266250, 3819000; 265250, 3819000; 265250, 3819500; 264750, 3819500; 264750, 3820250; 264250, 3820250; 264250, 3820500; 263750, 3820500; 263750, 3820750; 263500, 3820750; 263500, 3821000; 263000, 3821000; 263000, 3821500; 261250, 3821500; 261250, 3821250; 261000, 3821250; 261000, 3821000; 260750, 3821000; 260750, 3820500; 260250, 3820500; 260250, 3821000; 259750, 3821000; 259750, 3821250; 259000, 3821250; 259000, 3821500; 258500, 3821500; 258500, 3821750; 258250, 3821750; 258250, 3822000; 258000, 3822000; 258000, 3823000; 258250, 3823000; 258250, 3823250; 258500, 3823250; 258500, 3823750; 258000, 3823750; 258000, 3824500; 257750, 3824500; 257750, 3825000; 257500, 3825000; 257500, 3825250; 257250, 3825250; 257250, 3826000; 256750, 3826000; 256750, 3826250; 256500, 3826250; 256500, 3826500; 256250, 3826500; 256250, 3826750; 256000, 3826750; 256000, 3827500; 255500, 3827500; 255500, 3828000; 255250, 3828000; 255250, 3828250; 254750, 3828250; 254750, 3828750; 255000, 3828750; 255000, 3829000; 254750, 3829000; 254750, 3829500; 255250, 3829500; 255250, 3829250; 255500, 3829250; 255500, 3828750; 255750, 3828750; 255750, 3828250; 256000, 3828250; 256000, 3828000; 256250, 3828000; 256250, 3827750; 256500, 3827750; 256500, 3827250; 256750, 3827250; 256750, 3826750; 257250, 3826750; 257250, 3827000; 257750, 3827000; 257750, 3826750; 258000, 3826750; 258000, 3826500; 258250, 3826500; 258250, 3825750; 258000, 3825750; 258000, 3825500; 258250, 3825500; 258250, 3825250; 258500, 3825250; 258500, 3826000; 259250, 3826000; 259250, 3827000; 259500, 3827000; 259500, 3827250; 259750, 3827250; 259750, 3828500; 260000, 3828500; 260000, 3828750; 259750, 3828750; 259750, 3829750; 260250, 3829750; 260250, 3831250; 260500, 3831250; 260500, 3831750; 261000, 3831750; 261000, 3832250; 261250, 3832250; 261250, 3832500; 261500, 3832500; 261500, 3832750; 261750, 3832750; 261750, 3833000.




Map Unit 4: Sespe Creek, Ventura County, California. From USGS 1:24,000 quadrangle maps Wheeler Springs, Lion Canyon, Topatopa Mts., and Devil's Heart Peak, the lands bounded by the following UTM coordinates (E, N): 292750, 3828500; 293250, 3828500; 293250, 3828000; 293000, 3828000; 293000, 3827250; 292750, 3827250; 292750, 3826500; 293250, 3826500; 293250, 3826250; 293500, 3826250; 293500, 3826750; 294000, 3826750; 294000, 3826500; 294750, 3826500; 294750, 3826000; 295000, 3826000; 295000, 3826500; 296250, 3826500; 296250, 3826250; 296500, 3826250; 296500, 3826000; 296750, 3826000; 296750, 3826250; 297750, 3826250; 297750, 3826000; 298000, 3826000; 298000, 3826250; 298250, 3826250; 298250, 3826500; 300250, 3826500; 300250, 3826750; 301750, 3826750; 301750, 3826500; 302750, 3826500; 302750, 3826250; 303000, 3826250; 303000, 3826500; 303750, 3826500; 303750, 3826250; 304250, 3826250; 304250, 3826750; 305000, 3826750; 305000, 3826500; 305250, 3826500; 305250, 3826250; 306500, 3826250; 306500, 3826500; 306750, 3826500; 306750, 3826250; 307000, 3826250; 307000, 3826500; 309500, 3826500; 309500, 3825750; 309750, 3825750; 309750, 3826000; 310250, 3826000; 310250, 3826500; 310750, 3826500; 310750, 3827000; 312000, 3827000; 312000, 3827750; 313000, 3827750; 313000, 3827500; 314750, 3827500; 314750, 3827250; 315000, 3827250; 315000, 3827750; 315250, 3827750; 315250, 3828000; 315750, 3828000; 315750, 3827750; 316250, 3827750; 316250, 3827500; 316500, 3827500; 316500, 3827250; 316750, 3827250; 316750, 3828000; 318750, 3828000; 318750, 3827750; 319250, 3827750; 319250, 3828000; 319500, 3828000; 319500, 3827750; 319750, 3827750; 319750, 3827500; 320000, 3827500; 320000, 3827000; 320500, 3827000; 320500, 3826500; 321000, 3826500; 321000, 3826000; 320750, 3826000; 320750, 3826250; 320250, 3826250; 320250, 3826500; 319750, 3826500; 319750, 3827000; 318750, 3827000; 318750, 3827250; 318500, 3827250; 318500, 3827500; 318250, 3827500; 318250, 3827250; 317250, 3827250; 317250, 3827500; 317000, 3827500; 317000, 3826750; 316250, 3826750; 316250, 3827000; 315750, 3827000; 315750, 3827250; 315500, 3827250; 315500, 3827000; 314500, 3827000; 314500, 3826750; 313000, 3826750; 313000, 3827250; 312500, 3827250; 312500, 3827000; 312750, 3827000; 312750, 3826500; 312500, 3826500; 312500, 3826250; 311000, 3826250; 311000, 3825750; 310500, 3825750; 310500, 3825500; 309000, 3825500; 309000, 3826000; 308250, 3826000; 308250, 3825750; 308000, 3825750; 308000, 3826000; 307500, 3826000; 307500, 3825750; 304750, 3825750; 304750, 3826000; 304500, 3826000; 304500, 3825750; 304250, 3825750; 304250, 3825500; 303750, 3825500; 303750, 3825750; 301750, 3825750; 301750, 3826000; 300250, 3826000; 300250, 3825750; 300000, 3825750; 300000, 3825500; 299500, 3825500; 299500, 3825750; 298250, 3825750; 298250, 3825500; 297500, 3825500; 297500, 3825250; 297250, 3825250; 297250, 3825500; 297000, 3825500; 297000, 3825250; 296500, 3825250; 296500, 3825500; 296250, 3825500; 296250, 3825750; 295750, 3825750; 295750, 3825500; 295250, 3825500; 295250, 3825250; 294500, 3825250; 294500, 3825500; 294250, 3825500; 294250, 3825750; 291750, 3825750; 291750, 3826250; 291500, 3826250; 291500, 3826500; 292000, 3826500; 292000, 3827250; 292500, 3827250; 292500, 3828250; 292750, 3828250; 292750, 3828500.




Map Unit 5: Piru Creek, Ventura and Los Angeles Counties, California

Subunit 5a: From USGS 1:24,000 quadrangle maps Alamo Mtn., and Black Mtn., the lands upstream from Pyramid Lake bounded by the following UTM coordinates (E, N): 318750, 3842750; 319500, 3842750; 319500, 3842500; 319750, 3842500; 319750, 3842750; 320750, 3842750; 320750, 3842500; 321000, 3842500; 321000, 3842250; 322750, 3842250; 322750, 3841750; 323000, 3841750; 323000, 3841500; 323250, 3841500; 323250, 3841000; 325000, 3841000; 325000, 3840750; 325250, 3840750; 325250, 3840250; 325500, 3840250; 325500, 3840500; 326250, 3840500; 326250, 3840250; 326500, 3840250; 326500, 3840500; 327750, 3840500; 327750, 3840750; 328250, 3840750; 328250, 3841250; 328500, 3841250; 328500, 3841750; 329000, 3841750; 329000, 3842000; 329250, 3842000; 329250, 3841750; 329500, 3841750; 329500, 3841500; 329250, 3841500; 329250, 3841250; 329500, 3841250; 329500, 3840750; 330000, 3840750; 330000, 3841000; 330250, 3841000; 330250, 3840750; 330500, 3840750; 330500, 3840500; 331000, 3840500; 331000, 3840250; 331250, 3840250; 331250, 3839750; 331500, 3839750; 331500, 3839250; 332000, 3839250; 332000, 3838500; 332250, 3838500; 332250, 3838250; 332500, 3838250; 332500, 3837750; 332750, 3837750; 332750, 3837500; 333000, 3837500; 333000, 3837750; 333500, 3837750; 333500, 3837500; 333750, 3837500; 333750, 3837000; 334000, 3837000; 334000, 3836500; 333500, 3836500; 333500, 3836750; 333250, 3836750; 333250, 3837250; 333000, 3837250; 333000, 3836750; 332750, 3836750; 332750, 3837000; 332500, 3837000; 332500, 3837250; 332250, 3837250; 332250, 3837500; 332000, 3837500; 332000, 3837750; 331750, 3837750; 331750, 3838000; 331500, 3838000; 331500, 3838250; 331250, 3838250; 331250, 3838750; 331000, 3838750; 331000, 3839000; 330750, 3839000; 330750, 3839500; 330500, 3839500; 330500, 3840000; 330250, 3840000; 330250, 3840250; 329250, 3840250; 329250, 3841000; 329000, 3841000; 329000, 3841250; 328750, 3841250; 328750, 3840500; 328250, 3840500; 328250, 3840250; 327750, 3840250; 327750, 3840000; 327250, 3840000; 327250, 3839750; 326750, 3839750; 326750, 3839500; 326000, 3839500; 326000, 3839750; 324750, 3839750; 324750, 3840500; 323250, 3840500; 323250, 3840750; 323000, 3840750; 323000, 3841000; 322750, 3841000; 322750, 3841250; 322500, 3841250; 322500, 3841500; 322000, 3841500; 322000, 3841750; 321500, 3841750; 321500, 3842000; 319000, 3842000; 319000, 3841500; 318250, 3841500; 318250, 3841250; 317750, 3841250; 317750, 3841000; 317000, 3841000; 317000, 3841750; 318000, 3841750; 318000, 3842000; 318250, 3842000; 318250, 3842250; 318750, 3842250; 318750, 3842750.

Subunit 5b: From USGS 1:24,000 quadrangle maps Black Mountain, Liebre Mountain, Whitaker Peak, and Cobblestone Mountain, the lands between Pyramid Lake and Lake Piru bounded by the following UTM coordinates (E, N): 338250, 3835000; 338500, 3835000; 338500, 3834750; 338750, 3834750; 338750, 3834500; 339000, 3834500; 339000, 3834000; 340000, 3834000; 340000, 3833500; 340250, 3833500; 340250, 3833250; 340500, 3833250; 340500, 3832250; 340250, 3832250; 340250, 3832000; 340500, 3832000; 340500, 3831250; 340000, 3831250; 340000, 3831000; 339750, 3831000; 339750, 3830750; 339500, 3830750; 339500, 3830500; 339000, 3830500; 339000, 3830750; 338250, 3830750; 338250, 3831000; 338000, 3831000; 338000, 3830750; 337750, 3830750; 337750, 3830500; 337000, 3830500; 337000, 3830750; 336750, 3830750; 336750, 3831250; 336500, 3831250; 336500, 3831500; 336000, 3831500; 336000, 3831000; 335500, 3831000; 335500, 3830750; 335750, 3830750; 335750, 3830250; 336500, 3830250; 336500, 3830000; 336750, 3830000; 336750, 3829750; 337250, 3829750; 337250, 3829500; 337500, 3829500; 337500, 3829250; 337750, 3829250; 337750, 3828750; 338000, 3828750; 338000, 3828500; 337750, 3828500; 337750, 3828250; 337250, 3828250; 337250, 3827500; 337500, 3827500; 337500, 3826500; 337250, 3826500; 337250, 3826250; 337500, 3826250; 337500, 3825250; 337250, 3825250; 337250, 3825000; 337500, 3825000; 337500, 3824250; 338000, 3824250; 338000, 3824000; 338500, 3824000; 338500, 3823750; 338750, 3823750; 338750, 3823250; 339000, 3823250; 339000, 3822500; 339250, 3822500; 339250, 3822000; 339000, 3822000; 339000, 3821500; 339250, 3821500; 339250, 3820500; 339750, 3820500; 339750, 3820250; 339500, 3820250; 339500, 3820000; 339000, 3820000; 339000, 3819500; 338250, 3819500; 338250, 3820000; 338000, 3820000; 338000, 3820500; 338500, 3820500; 338500, 3821250; 338250, 3821250;

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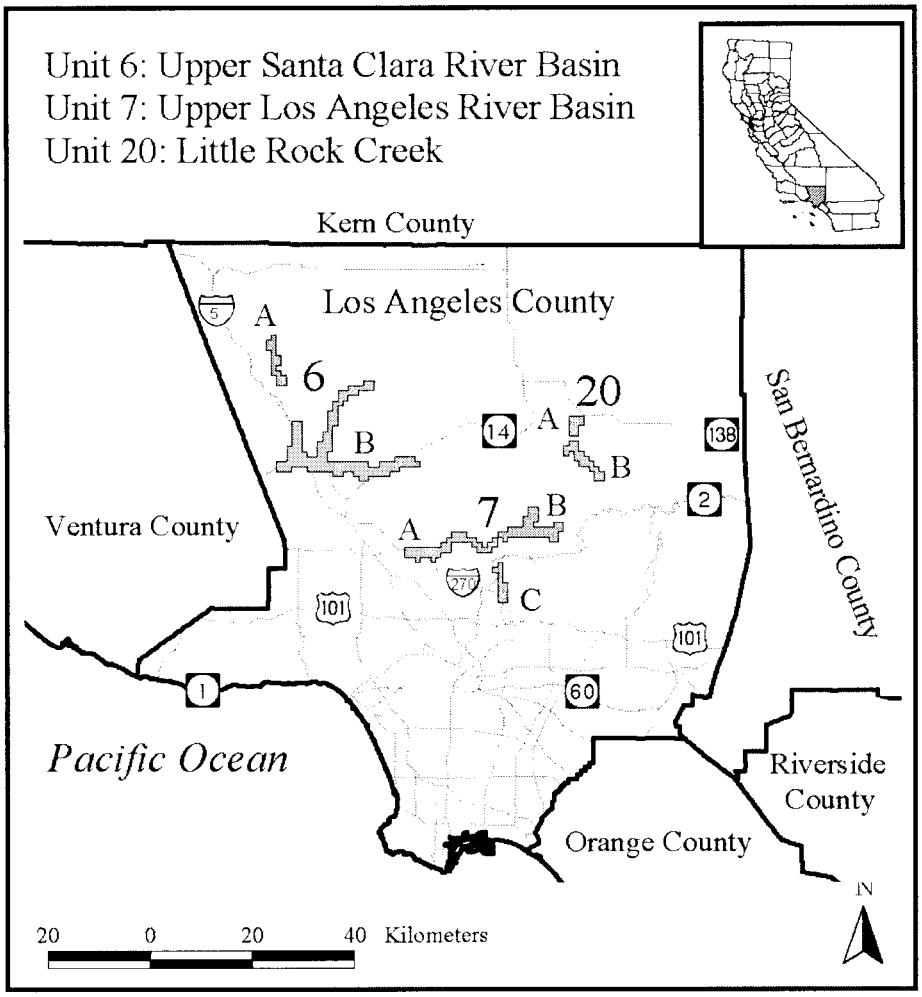


Map Unit 6: Upper Santa Clara River basin, Los Angeles County, California

Subunit 6a: From USGS 1:24,000 quadrangle maps Liebre Mtn. and Whitaker Peak, the lands, upstream of Castaic Lake, bounded by the following UTM coordinates (E, N): 347000, 3835500; 347250, 3835500; 347250, 3835000; 347500, 3835000; 347500, 3834500; 347250, 3834500; 347250, 3834000; 347500, 3834000; 347500, 3833750; 347750, 3833750; 347750, 3832750; 348000, 3832750; 348000, 3831750; 348250, 3831750; 348250, 3831000; 347750, 3831000; 347750, 3830500; 348000, 3830500; 348000, 3830750; 348500, 3830750; 348500, 3830250; 348250, 3830250; 348250, 3830000; 347750, 3830000; 347750, 3829500; 348000, 3829500; 348000, 3829000; 348250, 3829000; 348250, 3828750; 348750, 3828750; 348750, 3828250; 349000, 3828250; 349000, 3828000; 349250, 3828000; 349250, 3827750; 349500, 3827750; 349500, 3827000; 349250, 3827000; 349250, 3826750; 348750, 3826750; 348750, 3827250; 348500, 3827250; 348500, 3827750; 348250, 3827750; 348250, 3828000; 348000, 3828000; 348000, 3828250; 347750, 3828250; 347750, 3828500; 347500, 3828500; 347500, 3828750; 347250, 3828750; 347250, 3829250; 347000, 3829250; 347000, 3830750; 347250, 3830750; 347250, 3831000; 347500, 3831000; 347500, 3831250; 347750, 3831250; 347750, 3831750; 347500, 3831750; 347500, 3832250; 347750, 3832250; 347750, 3832500; 347500, 3832500; 347500, 3832750; 347250, 3832750; 347250, 3833500; 346750, 3833500; 346750, 3834250; 347000, 3834250; 347000, 3835500.

Subunit 6b: From USGS 1:24,000 quadrangle maps Warm Springs Mountain, Val Verde, and Newhall, the lands bounded by the following UTM coordinates (E, N): 351500, 3819000; 352000, 3819000; 352000, 3818500; 352250, 3818500; 352250, 3818750; 352500, 3818750; 352500, 3817500; 353000, 3817500; 353000, 3816750; 352750, 3816750; 352750, 3816000; 352500, 3816000; 352500, 3815500; 352750, 3815500; 352750, 3814500; 353000, 3814500; 353000, 3814250; 352750, 3814250; 352750, 3813250; 352500, 3813250; 352500, 3813000; 352250, 3813000; 352250, 3812750; 352500, 3812750; 352500, 3812000; 352750, 3812000; 352750, 3811500; 352500, 3811500; 352500, 3811250; 352000, 3811250; 352000, 3811000; 351750, 3811000; 351750, 3810750; 351500, 3810750; 351500, 3810250;

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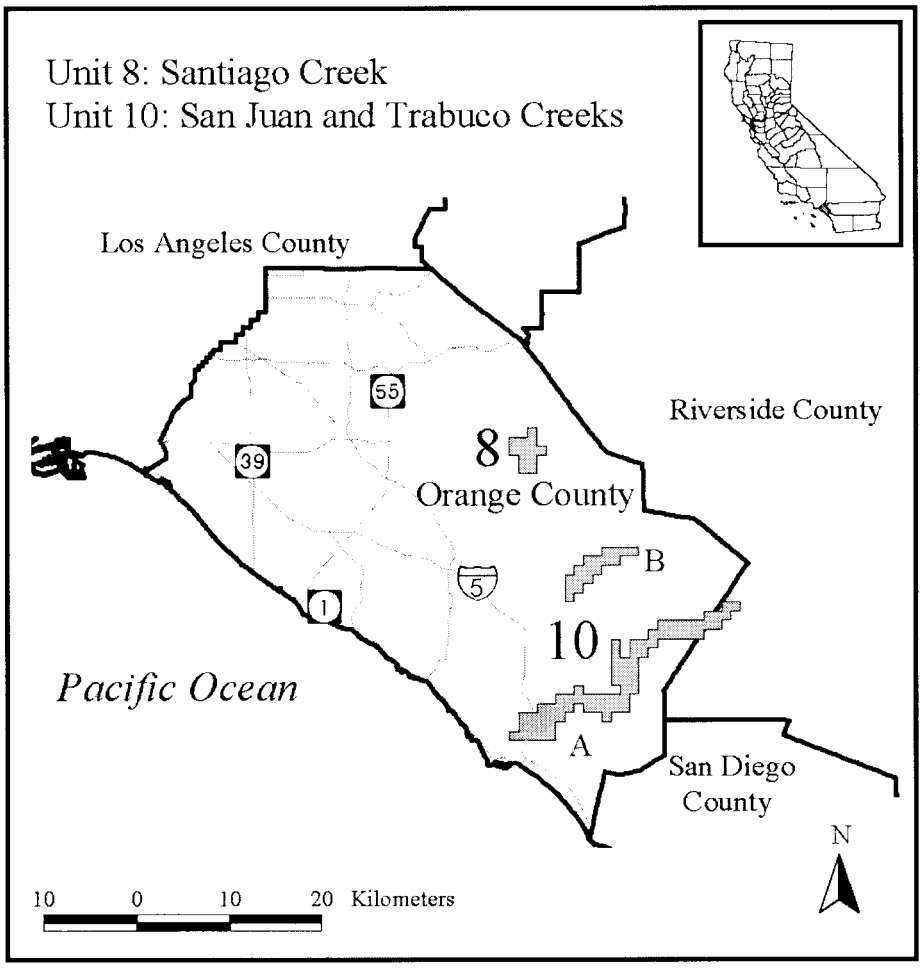
Subunit 6c: From USGS 1:24,000 quadrangle maps Warm Springs Mtn., Green Valley, and Newhall, the lands bounded by the following UTM coordinates (E, N): 365750, 3826500; 366000, 3826500; 366000, 3826250; 366250, 3826250; 366250, 3825750; 365500, 3825750; 365500, 3825500; 365000, 3825500; 365000, 3825250; 364500, 3825250; 364500, 3825000; 364000, 3825000; 364000, 3824750; 363500, 3824750; 363500, 3824500; 363000, 3824500; 363000, 3824250; 362500, 3824250; 362500, 3824000; 362000, 3824000; 362000, 3823750; 361500, 3823750; 361500, 3823500; 361250, 3823500; 361250, 3823250; 361000, 3823250; 361000, 3823000; 360750, 3823000; 360750, 3822750; 360500, 3822750; 360500, 3822500; 360250, 3822500; 360250, 3822000; 360000, 3822000; 360000, 3821250; 359750, 3821250; 359750, 3820750; 359500, 3820750; 359500, 3820500; 359750, 3820500; 359750, 3820250; 359500, 3820250; 359500, 3819750; 359250, 3819750; 359250, 3818750; 359000, 3818750; 359000, 3817500; 358750, 3817500; 358750, 3815750; 358500, 3815750; 358500, 3815250; 358250, 3815250; 358250, 3814750; 357000, 3814750; 357000, 3815750; 357250, 3815750; 357250, 3816000; 357500, 3816000; 357500, 3816250; 357750, 3816250; 357750, 3816750; 358000, 3816750; 358000, 3818750; 358250, 3818750; 358250, 3819000; 358500, 3819000; 358500, 3819750; 358750, 3819750; 358750, 3820500; 359000, 3820500; 359000, 3821750; 359250, 3821750; 359250, 3822000; 359500, 3822000; 359500, 3823000; 360000, 3823000; 360000, 3823250; 360250, 3823250; 360250, 3823750; 360750, 3823750; 360750, 3824750; 361750, 3824750; 361750, 3824500; 362000, 3824500; 362000, 3824750; 362250, 3824750; 362250, 3825000; 362500, 3825000; 362500, 3825250; 362750, 3825250; 362750, 3825000; 363000, 3825000; 363000, 3825250; 363250, 3825250; 363250, 3825750; 363500, 3825750; 363500, 3825500; 363750, 3825500; 363750, 3825750; 364500, 3825750; 364500, 3826000; 365250, 3826000; 365250, 3826250; 365750, 3826250; 365750, 3826500.

Map Unit 7: Upper Los Angeles River Basin, Los Angeles County, California

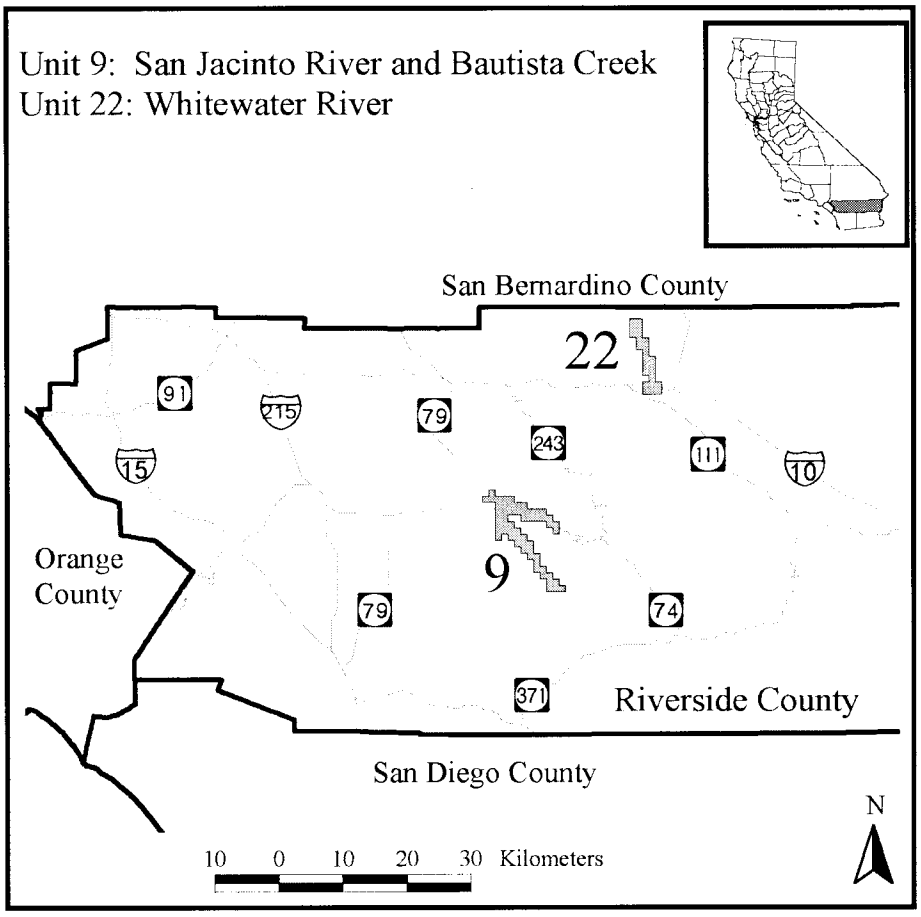
Subunit 7a: From USGS 1:24,000 quadrangle maps Sunland and Condor Peak, the lands in the Big Tujunga Creek basin bounded by the following UTM coordinates (E, N): 379750, 3793000; 379750, 3792500; 379500, 3792500; 379500, 3792250; 379250, 3792250; 379250, 3792000; 379000, 3792000; 379000, 3791750; 378500, 3791750; 378500, 3791500; 378250, 3791500; 378250, 3792000; 375500, 3792000; 375500, 3793500; 376750, 3793500; 376750, 3793250; 378500, 3793250; 378500, 3793500; 379000, 3793500; 379000, 3793750; 379500, 3793750; 379500, 3794000; 380250, 3794000; 380250, 3794250; 380750, 3794250; 380750, 3794750; 381000, 3794750; 381000, 3795000; 381250, 3795000; 381250, 3795250; 381500, 3795250; 381500, 3795500; 381750, 3795500; 381750, 3795750; 382000, 3795750; 382000, 3796000; 382250, 3796000; 382250, 3796250; 383750, 3796250; 383750, 3796500; 384750, 3796500; 384750, 3796250; 385000, 3796250; 385000, 3796000; 385250, 3796000; 385250, 3795750; 386000, 3795750; 386000, 3795500; 386250, 3795500; 386250, 3795250; 386750, 3795250; 386750, 3794750; 387250, 3794750; 387250, 3794500; 387500, 3794500; 387500, 3794250; 387750, 3794250; 387750, 3794000; 388000, 3794000; 388000, 3793750; 389250, 3793750; 389250, 3794000; 389500, 3794000; 389500, 3794250; 389750, 3794250; 389750, 3794500; 390000, 3794500; 390000, 3795000; 390500, 3795000; 390500, 3795250; 390750, 3795250; 390750, 3794750; 390500, 3794750; 390500, 3794000; 390000, 3794000; 390000, 3793750; 389750, 3793750; 389750, 3793500; 389500, 3793500; 389500, 3793250; 388750, 3793250; 388750, 3793000; 387750, 3793000; 387750, 3793250; 387500, 3793250; 387500, 3793750; 387250, 3793750; 387250, 3794000; 387000, 3794000; 387000, 3794250; 386500, 3794250; 386500, 3794500; 386250, 3794500; 386250, 3794750; 386000, 3794750; 386000, 3795000; 385500, 3795000; 385500, 3795250; 385250, 3795250; 385250, 3795500; 384750, 3795500; 384750, 3795750; 384500, 3795750; 384500, 3796000; 384000, 3796000; 384000, 3795500; 383500, 3795500; 383500, 3795750; 382500, 3795750; 382500, 3795500; 382250, 3795500; 382250, 3795250; 382000, 3795250; 382000, 3795000; 381750, 3795000; 381750, 3794500; 381500, 3794500; 381500, 3793500; 380750, 3793500; 380750, 3793250; 380250, 3793250; 380250, 3793000; 379750, 3793000; excluding land bounded by 379750, 3793000; 379750, 3793250; 379500, 3793250; 379500, 3793000; 379750, 3793000.

Subunit 7b: From USGS 1:24,000 quadrangle maps Condor Peak and Chilao Flat, the lands bounded by the following UTM coordinates (E, N): 397750, 3801250; 398250, 3801250; 398250, 3799500; 398000, 3799500; 398000, 3799250; 397750, 3799250; 397750, 3799000; 397500, 3799000; 397500, 3798750; 397000, 3798750; 397000, 3798250; 396750, 3798250; 396750, 3798000; 396500, 3798000; 396500, 3797750; 396250, 3797750; 396250, 3797500; 395750, 3797500; 395750, 3797000; 396000, 3797000; 396000, 3797250; 397750, 3797250; 397750, 3797000; 398250, 3797000; 398250, 3797250; 400000, 3797250; 400000, 3797500; 400500, 3797500; 400500, 3797250; 400750, 3797250; 400750, 3797000; 401250, 3797000; 401250, 3797250; 401500, 3797250; 401500, 3797750; 402000, 3797750; 402000, 3798000; 402500, 3798000; 402500, 3798250; 403500, 3798250; 403500, 3798000; 403750, 3798000; 403750, 3797750; 403500, 3797750; 403500, 3797500; 403250, 3797500; 403250, 3797750; 402750, 3797750; 402750, 3797500; 402250, 3797500; 402250, 3797250; 402000, 3797250; 402000, 3797000; 401750, 3797000; 401750, 3796750; 402000, 3796750; 402000, 3796500; 402500, 3796500; 402500, 3796000; 402750, 3796000; 402750, 3795500; 403000, 3795500; 403000, 3795000; 402500, 3795000; 402500, 3795500; 402250, 3795500; 402250, 3795750; 401750, 3795750; 401750, 3796000; 401500, 3796000; 401500, 3796250; 401250, 3796250; 401250, 3796500; 401000, 3796500; 401000, 3796250; 400250, 3796250; 400250, 3796500; 398250, 3796500; 398250, 3796250; 397500, 3796250; 397500, 3796500; 397250, 3796500; 397250, 3796750; 396000, 3796750; 396000, 3796500; 395500, 3796500; 395500, 3796750; 394750, 3796750; 394750, 3796500; 394250, 3796500; 394250, 3796750; 393750, 3796750; 393750, 3796250; 392750, 3796250; 392750, 3796000; 392500, 3796000; 392500, 3795750; 392000, 3795750; 392000, 3796250; 392250, 3796250; 392250, 3796500; 392750, 3796500; 392750, 3796750; 393500, 3796750; 393500, 3797000; 393750, 3797000; 393750, 3797250; 394250, 3797250; 394250, 3797000; 394750, 3797000; 394750, 3797750; 395250, 3797750; 395250, 3798000; 396000, 3798000; 396000, 3798500; 396250, 3798500; 396250, 3799000; 396750, 3799000; 396750, 3799500; 397500, 3799500; 397500, 3800000; 397750, 3800000; 397750, 3801250.

Subunit 7c: From USGS 1:24,000 quadrangle maps Condor Peak and Pasadena, the lands bounded by the following UTM coordinates (E, N): 391500, 3790750; 392000, 3790750; 392000, 3790000; 391750, 3790000; 391750, 3789750; 391250, 3789750; 391250, 3789500; 391500, 3789500; 391500, 3789000; 391750, 3789000; 391750, 3788500; 392000, 3788500; 392000, 3787750; 391750, 3787750; 391750, 3787000; 392000, 3787000; 392000, 3786500; 392250, 3786500; 392250, 3786000; 392500, 3786000; 392500, 3785750; 392750, 3785750; 392750, 3785500; 393000, 3785500; 393000, 3784750; 392750, 3784750; 392750, 3784250; 392500, 3784250; 392500, 3784000; 391750, 3784000; 391750, 3784750; 392000, 3784750; 392000, 3785000; 392250, 3785000; 392250, 3785500; 391750, 3785500; 391750, 3786250; 391500, 3786250; 391500, 3786750; 391250, 3786750; 391250, 3788000; 391500, 3788000; 391500, 3788250; 391250, 3788250; 391250, 3788750; 391000, 3788750; 391000, 3789000; 390750, 3789000; 390750, 3790000; 391000, 3790000; 391000, 3790250; 391250, 3790250; 391250, 3790500; 391500, 3790500; 391500, 3790750.




Map Unit 8: Santiago Creek, Orange County. From USGS 1:24,000 quadrangle maps Black Star Canyon and El Toro, the lands bounded by the following UTM coordinates (E, N): 438250, 3734750; 438250, 3734500; 438500, 3734500; 438500, 3734000; 438000, 3734000; 438000, 3734250; 437750, 3734250; 437750, 3734500; 437500, 3734500; 437500, 3735000; 437250, 3735000; 437250, 3736000; 437000, 3736000; 437000, 3736500; 436750, 3736500; 436750, 3737000; 436500, 3737000; 436500, 3737500; 436750, 3737500; 436750, 3737250; 437000, 3737250; 437000, 3737500; 437250, 3737500; 437250, 3737750; 437500, 3737750; 437500, 3738000; 438000, 3738000; 438000, 3738500; 438250, 3738500; 438250, 3738750; 439000, 3738750; 439000, 3738250; 438500, 3738250; 438500, 3737750; 438250, 3737750; 438250, 3737500; 437750, 3737500; 437750, 3737000; 437500, 3737000; 437500, 3736250; 437750, 3736250; 437750, 3736000; 438000, 3736000; 438000, 3735500; 438500, 3735500; 438500, 3735750; 438750, 3735750; 438750, 3736500; 439000, 3736500; 439000, 3737000; 439500, 3737000; 439500, 3736250; 439250, 3736250; 439250, 3736000; 439000, 3736000; 439000, 3735250; 438750, 3735250; 438750, 3734750; 438250, 3734750; excluding land bounded by 438250, 3734750; 438250, 3735000; 438000, 3735000; 438000, 3734750; 438250, 3734750.




Map Unit 9: San Jacinto River and Bautista Creek, Riverside County.

Subunit 9a: From USGS 1:24,000 quadrangle maps San Jacinto, Lake Fulmor, Hemet and Blackburn Canyon, the lands bounded by the following UTM coordinates (E, N): 509750, 3736000; 511500, 3736000; 511500, 3735750; 512000, 3735750; 512000, 3734750; 512250, 3734750; 512250, 3734500; 513000, 3734500; 513000, 3734250; 513750, 3734250; 513750, 3734000; 514250, 3734000; 514250, 3733750; 514500, 3733750; 514500, 3733500; 515750, 3733500; 515750, 3733250; 516250, 3733250; 516250, 3733000; 517250, 3733000; 517250, 3732750; 517500, 3732750; 517500, 3732500; 517750, 3732500; 517750, 3732250; 518000, 3732250; 518000, 3731750; 518250, 3731750; 518250, 3731500; 518500, 3731500; 518500, 3731250; 518750, 3731250; 518750, 3731000; 519000, 3731000; 519000, 3730750; 518000, 3730750; 518000, 3731250; 517500, 3731250; 517500, 3732000; 517000, 3732000; 517000, 3732250; 516500, 3732250; 516500, 3732500; 516000, 3732500; 516000, 3732750; 515750, 3732750; 515750, 3732500; 515500, 3732500; 515500, 3732750; 513500, 3732750; 513500, 3733000; 513250, 3733000; 513250, 3733250; 512500, 3733250; 512500, 3733750; 511250, 3733750; 511250, 3734500; 511000, 3734500; 511000, 3734750; 510750, 3734750; 510750, 3735000; 510500, 3735000; 510500, 3735500; 509750, 3735500; 509750, 3736000.

Subunit 9b: From USGS 1:24,000 quadrangle map Blackburn Canyon, the lands bounded by the following UTM coordinates (E, N): 512750, 3730000; 513000, 3730000; 513000, 3729750; 513750, 3729750; 513750, 3729250; 514000, 3729250; 514000, 3729000; 514250, 3729000; 514250, 3728750; 514500, 3728750; 514500, 3728250; 514750, 3728250; 514750, 3728000; 514500, 3728000; 514500, 3727750; 514750, 3727750; 514750, 3727250; 515000, 3727250; 515000, 3726750; 515250, 3726750; 515250, 3726500; 515500, 3726500; 515500, 3725750; 515750, 3725750; 515750, 3725500; 516000, 3725500; 516000, 3725000; 516250, 3725000; 516250, 3724750; 516500, 3724750; 516500, 3724500; 516750, 3724500; 516750, 3724250; 517000, 3724250; 517000, 3724000; 517250, 3724000; 517250, 3723500; 517500, 3723500; 517500, 3723000; 518000, 3723000; 518000, 3722750; 518250, 3722750; 518250, 3722250; 518500, 3722250; 518500, 3722000; 519250, 3722000; 519250, 3721750; 519500, 3721750; 519500, 3721500; 519250, 3721500; 519250, 3721250; 518750, 3721250; 518750, 3721500; 518000, 3721500; 518000, 3721750; 517750, 3721750; 517750, 3722000; 517500, 3722000; 517500, 3722250; 517250, 3722250; 517250, 3722500; 517000, 3722500; 517000, 3723000; 516750, 3723000; 516750, 3723500; 516500, 3723500; 516500, 3724000; 516250, 3724000; 516250, 3724250; 515750, 3724250; 515750, 3724500; 515500, 3724500; 515500, 3725250; 515250, 3725250; 515250, 3725750; 515000, 3725750; 515000, 3726250; 514750, 3726250; 514750, 3726750; 514500, 3726750; 514500, 3727250; 514000, 3727250; 514000, 3727500; 513750, 3727500; 513750, 3728250; 513500, 3728250; 513500, 3728500; 513000, 3728500; 513000, 3728750; 512750, 3728750; 512750, 3729000; 512250, 3729000; 512250, 3729500; 512500, 3729500; 512500, 3729750; 512750, 3729750; 512750, 3730000.

Map Unit 10 (see Map of Units 8 and 10): San Juan and Trabuco Creeks, Orange and Riverside Counties, California

Subunit 10a: From USGS 1:24,000 quadrangle maps Dana Point, San Juan Capistrano, Canada Gobernadora and Sitton Peak, the lands bounded by the following UTM coordinates (E, N): 459500, 3720000; 459750, 3720000; 459750, 3719750; 460000, 3719750; 460000, 3720000; 460500, 3720000; 460500, 3719500; 460250, 3719500; 460250, 3719250; 460000, 3719250; 460000, 3718750; 459500, 3718750; 459500, 3718500; 459250, 3718500; 459250, 3718250; 458750, 3718250; 458750, 3718000; 458500, 3718000; 458500, 3717750; 457500, 3717750; 457500, 3717250; 457250, 3717250; 457250, 3717000; 457000, 3717000; 457000, 3716750; 456500, 3716750; 456500, 3716500; 456250, 3716500; 456250, 3716750; 456000, 3716750; 456000, 3716500; 455750, 3716500; 455750, 3716750; 455500, 3716750; 455500, 3717000; 454750, 3717000; 454750, 3716750; 454000, 3716750; 454000, 3716500; 452500, 3716500; 452500, 3716250; 452250, 3716250; 452250, 3716000; 452000, 3716000; 452000, 3715750; 451750, 3715750; 451750, 3715500; 451500, 3715500; 451500, 3715250; 451250, 3715250; 451250, 3715000; 451000, 3715000; 451000, 3714750; 450000, 3714750; 450000, 3714000; 449750, 3714000; 449750, 3713500; 450000, 3713500; 450000,

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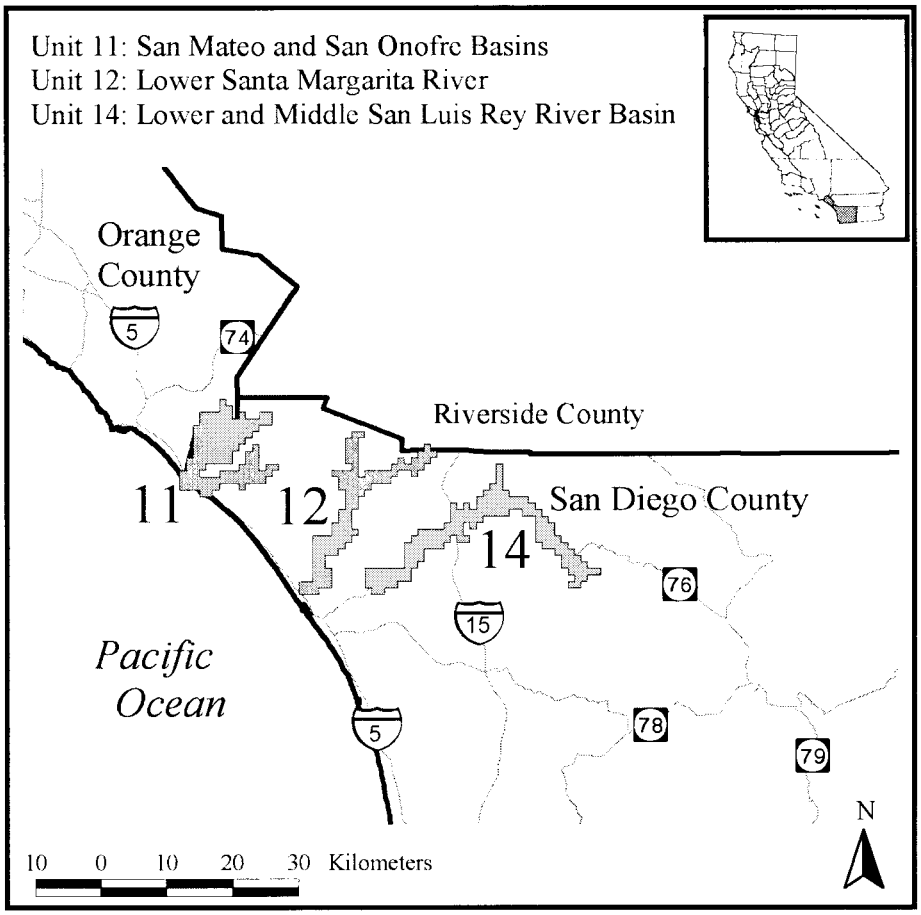
Subunit 10b: From USGS 1:24,000 quadrangle map Santiago Peak, the lands bounded by the following UTM coordinates (E, N): 448000, 3726000; 449250, 3726000; 449250, 3725500; 448500, 3725500; 448500, 3725250; 448250, 3725250; 448250, 3725000; 447750, 3725000; 447750, 3724750; 447250, 3724750; 447250, 3724500; 446750, 3724500; 446750, 3724250; 446000, 3724250; 446000, 3724000; 445500, 3724000; 445500, 3723750; 445250, 3723750; 445250, 3723500; 445000, 3723500; 445000, 3723250; 444500, 3723250; 444500, 3722750; 444250, 3722750; 444250, 3722500; 443750, 3722500; 443750, 3722250; 443500, 3722250; 443500, 3722000; 443250, 3722000; 443250, 3721250; 442250, 3721250; 442250, 3721750; 442500, 3721750; 442500, 3722250; 442750, 3722250; 442750, 3722500; 443000, 3722500; 443000, 3722750; 443250, 3722750; 443250, 3723000; 443500, 3723000; 443500, 3723250; 443750, 3723250; 443750, 3723500; 444000, 3723500; 444000, 3723750; 444250, 3723750; 444250, 3724000; 444750, 3724000; 444750, 3724500; 445250, 3724500; 445250, 3725000; 445500, 3725000; 445500, 3724750; 445750, 3724750; 445750, 3725000; 446250, 3725000; 446250, 3725250; 446500, 3725250; 446500, 3725000; 446750, 3725000; 446750, 3725250; 447250, 3725250; 447250, 3725500; 447500, 3725500; 447500, 3725750; 448000, 3725750; 448000, 3726000.




Map Unit 11: San Mateo and San Onofre Basins, Orange and Riverside Counties, California

Subunit 11a: From USGS 1:24,000 quadrangle map San Clemente, the lands bounded by the following UTM coordinates (E, N): 450500, 3706250; 450750, 3706250; 450750, 3705000; 451250, 3705000; 451250, 3705250; 451750, 3705250; 451750, 3704750; 451500, 3704750; 451500, 3704250; 450000, 3704250; 450000, 3704000; 449750, 3704000; 449750, 3703750; 449250, 3703750; 449250, 3703500; 449000, 3703500; 449000, 3703250; 448500, 3703250; 448500, 3703000; 448250, 3703000; 448250, 3702750; 447500, 3702750; 447500, 3701750; 447750, 3701750; 447750, 3702000; 448500, 3702000; 448500, 3701750; 449500, 3701750; 449500, 3702000; 450000, 3702000; 450000, 3702250; 450250, 3702250; 450250, 3702500; 450750, 3702500; 450750, 3702750; 451500, 3702750; 451500, 3703000; 452000, 3703000; 452000, 3703250; 452250, 3703250; 452250, 3703750; 452750, 3703750; 452750, 3703250; 452500, 3703250; 452500, 3703000; 452250, 3703000; 452250, 3702750; 452000, 3702750; 452000, 3702500; 451500, 3702500; 451500, 3702250; 451000, 3702250; 451000, 3702000; 450500, 3702000; 450500, 3701750; 450250, 3701750; 450250, 3701500; 449500, 3701500; 449500, 3701250; 448250, 3701250; 448250, 3701500; 447250, 3701500; 447250, 3700750; 447000, 3700750; 447000, 3698750; 447250, 3698750; 447250, 3697500; 447000, 3697500; 447000, 3697250; 447250, 3697250; 447250, 3696000; 447000, 3696000; 447000, 3695750; 446750, 3695750; 446750, 3695250; 446500, 3695250; 446500, 3695000; 446250, 3695000; 446250, 3694500; 446000, 3694500; 446000, 3694250; 445750, 3694250; 445750, 3694000; 446000, 3694000; 446000, 3693500; 445250, 3693500; 445250, 3693750; 444750, 3693750; 444750, 3694000; 444500, 3694000; 444500, 3695500; 445000, 3695500; 445000, 3695750; 445250, 3695750; 445250, 3696250; 445500, 3696250; 445500, 3696750; 445750, 3696750; 445750, 3697250; 446000, 3697250; 446000, 3697750; 446250, 3697750; 446250, 3698250; 446500, 3698250; 446500, 3698500; 446750, 3698500; 446750, 3698750; 446500, 3698750; 446500, 3700750; 446750, 3700750; 446750, 3702750; 447000, 3702750; 447000, 3703250; 447250, 3703250; 447250, 3703500; 447500, 3703500; 447500, 3704250; 448000, 3704250; 448000, 3703750; 448500, 3703750; 448500, 3704000; 448750, 3704000; 448750, 3704250; 449250, 3704250; 449250, 3704500; 449750, 3704500; 449750, 3705000; 450250, 3705000; 450250, 3706000; 450500, 3706000; 450500, 3706250.

Subunit 11b: From USGS 1:24,000 quadrangle map Margarita Peak, the lands bounded by the following UTM coordinates (E, N): 457000, 3704500; 457500, 3704500; 457500, 3703750; 457000, 3703750; 457000, 3703500; 456750, 3703500; 456750, 3703250; 455750, 3703250; 455750, 3703500; 456250, 3703500; 456250, 3703750; 456500, 3703750; 456500, 3704250; 457000, 3704250; 457000, 3704500.

Map Unit 12: Lower Santa Margarita Basin, San Diego County, California

Subunit 12a: From USGS 1:24,000 quadrangle map Fallbrook, the lands bounded by the following UTM coordinates (E, N): 469750, 3700500; 470750, 3700500; 470750, 3700000; 470500, 3700000; 470500, 3699750; 470250, 3699750; 470250, 3698750; 470500, 3698750; 470500, 3697500; 470750, 3697500; 470750, 3697000; 470500, 3697000; 470500, 3697250; 470250, 3697250; 470250, 3697000; 470000, 3697000; 470000, 3697750; 469750, 3697750; 469750, 3698250; 469500, 3698250; 469500, 3698500; 469250, 3698500; 469250, 3699000; 469500, 3699000; 469500, 3699500; 469250, 3699500; 469250, 3700000; 469500, 3700000; 469500, 3700250; 469750, 3700250; 469750, 3700500.

Subunit 12b: From USGS 1:24,000 quadrangle maps Fallbrook, Morro Hill, and Temecula, the lands bounded by the following UTM coordinates (E, N): 473500, 3695500; 474000, 3695500; 474000, 3695250; 474250, 3695250; 474250, 3695000; 475750, 3695000; 475750, 3694750; 475000, 3694750; 475000, 3694500; 474750, 3694500; 474750, 3694250; 473750, 3694250; 473750, 3694750; 473500, 3694750; 473500, 3694500; 473250, 3694500; 473250, 3694250; 473000, 3694250; 473000, 3693750; 472750, 3693750; 472750, 3693500; 472000, 3693500; 472000, 3693000; 471750, 3693000; 471750, 3692750; 471500, 3692750; 471500, 3692250; 471000, 3692250; 471000, 3692000; 470750, 3692000; 470750, 3692500; 471250, 3692500; 471250, 3693250;

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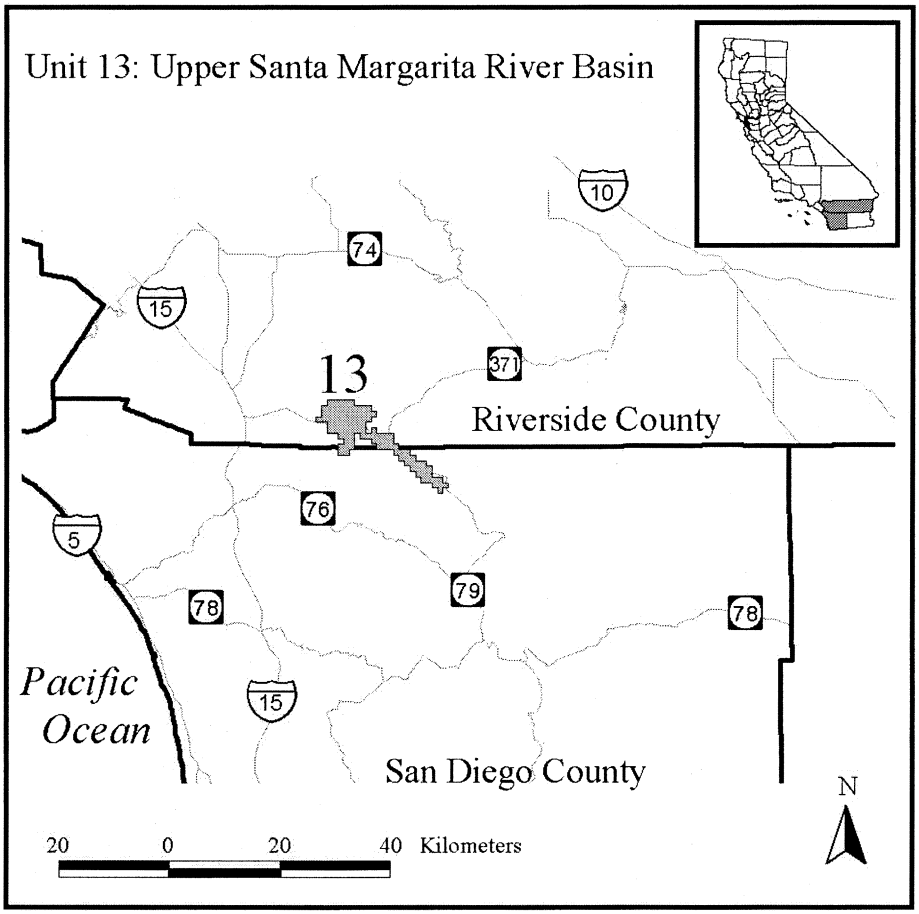


Map Unit 13: Upper Santa Margarita Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Sage, Vail Lake, Aquanga, and Palomar Observatory, the lands bounded by the following UTM coordinates (E, N): 504750, 3706750; 505500, 3706750; 505500, 3706500; 505750, 3706500; 505750, 3706750; 506000, 3706750; 506000, 3706250; 506250, 3706250; 506250, 3706000; 507000, 3706000; 507000, 3705750; 507250, 3705750; 507250, 3705500; 507750, 3705500; 507750, 3706000; 508500, 3706000; 508500, 3705500; 509000, 3705500; 509000, 3704500; 508000, 3704500; 508000, 3704250; 507250, 3704250; 507250, 3704000; 507000, 3704000; 507000, 3704500; 506750, 3704500; 506750, 3704750; 506000, 3704750; 506000, 3705000; 505500, 3705000; 505500, 3705250; 505250, 3705250; 505250, 3705000; 504750, 3705000; 504750, 3704750; 504500, 3704750; 504500, 3704000; 504750, 3704000; 504750, 3704250; 505000, 3704250; 505000, 3704000; 506250, 3704000; 506250, 3703750; 506750, 3703750; 506750, 3703000; 507000, 3703000; 507000, 3702750; 508250, 3702750; 508250, 3701750; 508750, 3701750; 508750, 3701250; 508500, 3701250; 508500, 3701000; 508750, 3701000; 508750, 3700750; 509500, 3700750; 509500, 3701000; 510000, 3701000; 510000, 3701250; 510500, 3701250; 510500, 3701000; 510750, 3701000; 510750, 3700750; 512750, 3700750; 512750, 3700500; 513750, 3700500; 513750, 3699250; 513500, 3699250; 513500, 3699000; 514250, 3699000; 514250, 3698750; 514500, 3698750; 514500, 3698250; 514750, 3698250; 514750, 3698000; 515000, 3698000; 515000, 3697750; 515250, 3697750; 515250, 3697500; 515750, 3697500; 515750, 3697250; 516000, 3697250; 516000, 3697500; 516500, 3697500; 516500, 3697250; 517000, 3697250; 517000, 3696250; 517250, 3696250; 517250, 3696000; 517500, 3696000; 517500, 3695750; 518000, 3695750; 518000, 3695250; 518250, 3695250; 518250, 3695500; 518750, 3695500; 518750, 3695250; 519750, 3695250; 519750, 3695000; 520000, 3695000; 520000, 3694500; 520500, 3694500; 520500, 3694000; 520750, 3694000; 520750, 3693500; 520500, 3693500; 520500, 3693000; 521000, 3693000; 521000, 3692750; 522750, 3692750; 522750, 3692000; 523000, 3692000; 523000, 3691750; 522750, 3691750; 522750, 3691000; 521500, 3691000; 521500, 3691750; 521250, 3691750; 521250, 3692000; 520750, 3692000; 520750, 3692250; 520000, 3692250; 520000, 3692750; 519750, 3692750; 519750, 3693000; 519250, 3693000; 519250, 3693250; 519000, 3693250; 519000, 3693500; 518750, 3693500; 518750, 3694000; 518500, 3694000; 518500, 3694250; 518000, 3694250; 518000, 3694500; 517750, 3694500; 517750, 3694750; 517500, 3694750; 517500, 3695000; 517250, 3695000; 517250, 3695250; 517000, 3695250; 517000, 3695750; 516750, 3695750; 516750, 3696000; 516000, 3696000; 516000, 3696500; 515500, 3696500; 515500, 3696750; 515250, 3696750; 515250, 3697000; 515000, 3697000;

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Map Unit 14 (see map of Units 11, 12, and 14): Lower and Middle San Luis Rey Basin, San Diego County, California. From USGS 1:24,000 quadrangle maps Pechanga, San Luis Rey, Morro Hill, Bonsall, Pala, Boucher Hill and Rodriguez Mtn., the lands bounded by the following UTM coordinates (E, N): 487250, 3689250; 487250, 3690250; 487500, 3690250; 487500, 3690500; 488000, 3690500; 488000, 3690000; 488250, 3690000; 488250, 3689500; 489000, 3689500; 489000, 3690000; 489250, 3690000; 489250, 3690500; 489500, 3690500; 489500, 3691000; 489750, 3691000; 489750, 3691250; 490250, 3691250; 490250, 3691500; 490500, 3691500; 490500, 3692000; 490750, 3692000; 490750, 3692500; 491250, 3692500; 491250, 3692250; 491500, 3692250; 491500, 3692500; 491750, 3692500; 491750, 3692250; 492250, 3692250; 492250, 3693000; 492000, 3693000; 492000, 3693250; 491750, 3693250; 491750, 3693750; 492000, 3693750; 492000, 3695250; 492250, 3695250; 492250, 3696000; 492500, 3696000; 492500, 3696750; 492750, 3696750; 492750, 3696500; 493000, 3696500; 493000, 3695750; 492750, 3695750; 492750, 3695000; 492500, 3695000; 492500, 3694250; 492250, 3694250; 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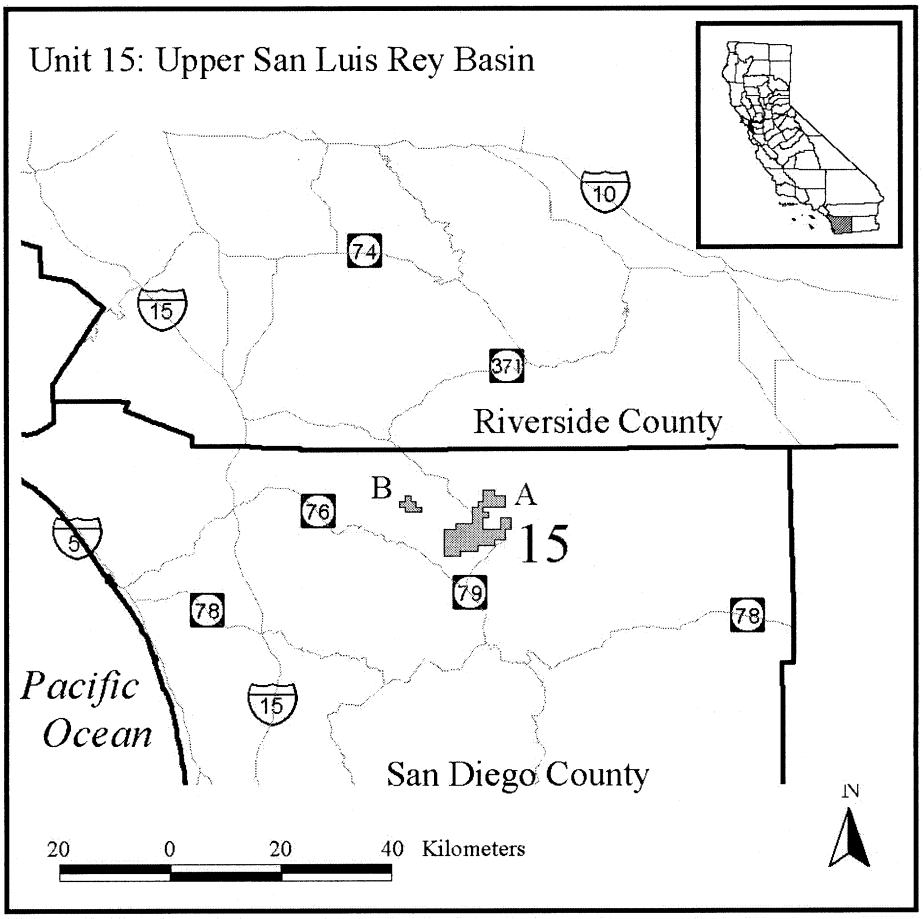
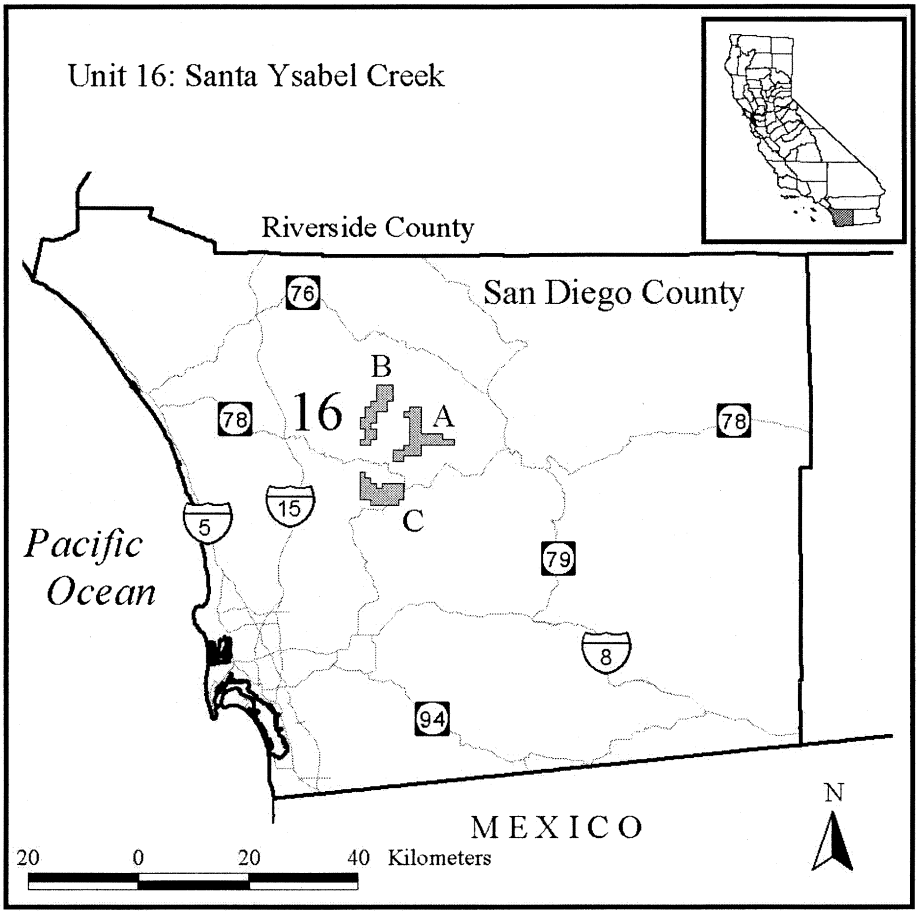



Map Unit 15: Upper San Luis Rey Basin, San Diego County, California

Subunit 15a: From USGS 1:24,000 quadrangle maps Palomar Observatory, and Warner Springs, the lands bounded by the following UTM coordinates (E, N): 531000, 3691000; 531500, 3691000; 531500, 3690750; 531750, 3690750; 531750, 3690000; 532000, 3690000; 532000, 3689500; 532750, 3689500; 532750, 3689750; 533500, 3689750; 533500, 3688750; 533000, 3688750; 533000, 3688250; 532000, 3688250; 532000, 3688750; 531750, 3688750; 531750, 3689000; 531500, 3689000; 531500, 3689250; 531000, 3689250; 531000, 3688500; 530500, 3688500; 530500, 3688750; 530250, 3688750; 530250, 3688500; 530000, 3688500; 530000, 3688000; 529750, 3688000; 529750, 3687750; 530000, 3687750; 530000, 3686750; 530250, 3686750; 530250, 3686250; 530000, 3686250; 530000, 3685250; 529750, 3685250; 529750, 3685000; 529250, 3685000; 529250, 3684750; 528750, 3684750; 528750, 3684500; 529250, 3684500; 529250, 3683500; 530500, 3683500; 530500, 3683750; 530750, 3683750; 530750, 3683500; 531000, 3683500; 531000, 3683250; 531750, 3683250; 531750, 3683500; 532250, 3683500; 532250, 3683750; 532500, 3683750; 532500, 3684000; 533000, 3684000; 533000, 3684250; 533500, 3684250; 533500, 3684500; 533750, 3684500; 533750, 3685250; 534000, 3685250; 534000, 3685500; 534750, 3685500; 534750, 3685000; 534250, 3685000; 534250, 3684500; 534000, 3684500; 534000, 3683750; 533750, 3683750; 533750, 3683500; 533250, 3683500; 533250, 3682750; 532500, 3682750; 532500, 3682250; 532250, 3682250; 532250, 3682000; 532000, 3682000; 532000, 3681750; 531750, 3681750; 531750, 3681500; 530750, 3681500; 530750, 3681250; 530250, 3681250; 530250, 3681500; 530000, 3681500; 530000, 3681750; 529500, 3681750; 529500, 3681500; 529000, 3681500; 529000, 3680500; 528500, 3680500; 528500, 3680750; 527750, 3680750; 527750, 3681000; 527500, 3681000; 527500, 3681250; 527000, 3681250; 527000, 3681500; 526500, 3681500; 526500, 3680750; 526250, 3680750; 526250, 3680250; 526000, 3680250; 526000, 3679750; 523000, 3679750; 523000, 3680250; 523250, 3680250; 523250, 3681250; 523500, 3681250; 523500, 3681500; 523250, 3681500; 523250, 3682250; 523000, 3682250; 523000, 3683250; 523250, 3683250; 523250, 3683500; 523750, 3683500; 523750, 3683250; 524000, 3683250; 524000, 3683500; 524250, 3683500; 524250, 3683750; 524500, 3683750; 524500, 3684000; 525250, 3684000; 525250, 3684250; 526250, 3684250; 526250, 3684500; 526500, 3684500; 526500, 3684750; 527250, 3684750; 527250, 3685000; 528000, 3685000; 528000, 3685250; 528250, 3685250; 528250, 3686250; 528000, 3686250; 528000, 3686750; 528500, 3686750; 528500, 3687500; 528750, 3687500; 528750, 3687750; 529000, 3687750; 529000, 3688250; 529250, 3688250; 529250, 3688500; 529500, 3688500; 529500, 3688750; 529750, 3688750; 529750, 3689000; 530000, 3689000; 530000, 3689250; 530250, 3689250; 530250, 3689750; 530500, 3689750; 530500, 3690000; 530750, 3690000; 530750, 3690250; 531000, 3690250; 531000, 3691000.

Subunit 15b: From USGS 1:24,000 quadrangle map Palomar Observatory, the lands bounded by the following UTM coordinates (E, N): 516750, 3689250; 517000, 3689250; 517000, 3688750; 517250, 3688750; 517250, 3688000; 518000, 3688000; 518000, 3687750; 518250, 3687750; 518250, 3687000; 517500, 3687000; 517500, 3687250; 517000, 3687250; 517000, 3687500; 516750, 3687500; 516750, 3687750; 516500, 3687750; 516500, 3688000; 516000, 3688000; 516000, 3688250; 515750, 3688250; 515750, 3688750; 516500, 3688750; 516500, 3689000; 516750, 3689000; 516750, 3689250.




Map Unit 16: Santa Ysabel Creek, San Diego County, California

Subunit 16a: From USGS 1:24,000 quadrangle maps Mesa Grande, Ramona and San Pasqual, the lands bounded by the following UTM coordinates (E, N): 513750, 3671000; 514250, 3671000; 514250, 3669500; 514000, 3669500; 514000, 3669250; 514250, 3669250; 514250, 3668500; 514750, 3668500; 514750, 3667750; 514500, 3667750; 514500, 3667500; 514750, 3667500; 514750, 3667250; 514500, 3667250; 514500, 3666500; 514250, 3666500; 514250, 3665750; 514000, 3665750; 514000, 3665500; 514500, 3665500; 514500, 3665000; 514250, 3665000; 514250, 3664750; 514500, 3664750; 514500, 3664500; 514750, 3664500; 514750, 3664750; 515000, 3664750; 515000, 3665000; 515250, 3665000; 515250, 3665250; 515500, 3665250; 515500, 3665000; 515750, 3665000; 515750, 3665250; 517000, 3665250; 517000, 3665000; 517750, 3665000; 517750, 3665250; 518250, 3665250; 518250, 3665500; 518750, 3665500; 518750, 3665250; 519000, 3665250; 519000, 3665000; 520000, 3665000; 520000, 3664750; 520250, 3664750; 520250, 3664000; 519750, 3664000; 519750, 3664500; 519250, 3664500; 519250, 3664750; 519000, 3664750; 519000, 3664500; 517500, 3664500; 517500, 3664250; 517250, 3664250; 517250, 3664000; 517000, 3664000; 517000, 3664250; 516750, 3664250; 516750, 3664750; 515500, 3664750; 515500, 3664500; 515250, 3664500; 515250, 3664250; 515000, 3664250; 515000, 3664000; 514000, 3664000; 514000, 3663250; 514250, 3663250; 514250, 3662750; 513750, 3662750; 513750, 3662500; 513500, 3662500; 513500, 3662250; 513250, 3662250; 513250, 3662500; 513000, 3662500; 513000, 3662750; 512500, 3662750; 512500, 3662250; 511750, 3662250; 511750, 3662000; 511500, 3662000; 511500, 3661750; 511250, 3661750; 511250, 3661500; 511000, 3661500; 511000, 3661250; 510250, 3661250; 510250, 3661000; 510000, 3661000; 510000, 3661750; 510750, 3661750; 510750, 3662000; 511000, 3662000; 511000, 3662250; 511250, 3662250; 511250, 3662500; 511500, 3662500; 511500, 3662750; 512000, 3662750; 512000, 3663000; 512250, 3663000; 512250, 3663250; 513250, 3663250; 513250, 3666500; 513500, 3666500; 513500, 3666750; 513250, 3666750; 513250, 3667000; 513500, 3667000; 513500, 3667250; 513250, 3667250; 513250, 3667500; 513500, 3667500; 513500, 3668250; 513250, 3668250; 513250, 3668500; 513000, 3668500; 513000, 3669250; 512750, 3669250; 512750, 3669500; 512500, 3669500; 512500, 3669750; 513000, 3669750; 513000, 3670500; 513500, 3670500; 513500, 3670750; 513750, 3670750; 513750, 3671000.

Subunit 16b: From USGS 1:24,000 quadrangle maps Rodriguez Mtn. and San Pasqual, the lands bounded by the following UTM coordinates (E, N): 508500, 3674750; 508750, 3674750; 508750, 3674500; 509250, 3674500; 509250, 3674750; 509500, 3674750; 509500, 3674000; 509250, 3674000; 509250, 3673250; 509750, 3673250; 509750, 3672750; 509500, 3672750; 509500, 3672500; 509250, 3672500; 509250, 3672250; 508750, 3672250; 508750, 3672000; 508000, 3672000; 508000, 3671750; 508500, 3671750; 508500, 3671500; 508750, 3671500; 508750, 3671250; 508500, 3671250; 508500, 3670750; 507750, 3670750; 507750, 3670250; 507250, 3670250; 507250, 3670000; 507000, 3670000; 507000, 3669250; 506750, 3669250; 506750, 3668750; 506250, 3668750; 506250, 3668500; 506000, 3668500; 506000, 3668250; 505500, 3668250; 505500, 3667500; 505750, 3667500; 505750, 3667000; 506000, 3667000; 506000, 3666500; 506250, 3666500; 506250, 3666250; 506500, 3666250; 506500, 3665750; 506250, 3665750; 506250, 3665500; 506000, 3665500; 506000, 3664750; 505750, 3664750; 505750, 3664500; 505250, 3664500; 505250, 3664250; 505000, 3664250; 505000, 3664750; 505250, 3664750; 505250, 3665750; 505500, 3665750; 505500, 3666500; 505250, 3666500; 505250, 3667250; 505000, 3667250; 505000, 3667750; 504750, 3667750; 504750, 3668250; 505000, 3668250; 505000, 3669000; 505500, 3669000; 505500, 3669500; 506000, 3669500; 506000, 3670000; 505750, 3670000; 505750, 3670750; 506250, 3670750; 506250, 3671250; 506500, 3671250; 506500, 3671500; 506750, 3671500; 506750, 3671750; 507000, 3671750; 507000, 3672750; 507500, 3672750; 507500, 3673750; 507750, 3673750; 507750, 3674250; 508000, 3674250; 508000, 3674500; 508500, 3674500; 508500, 3674750.

Subunit 16c: From USGS 1:24,000 quadrangle map San Pasqual, the lands bounded by the following UTM coordinates (E, N): 504000, 3658250; 505000, 3658250; 505000, 3657750; 505500, 3657750; 505500, 3657250; 505750, 3657250; 505750, 3657000; 506000, 3657000; 506000, 3656250; 506500, 3656250; 506500, 3656000; 506750, 3656000; 506750, 3655500; 507500, 3655500; 507500,

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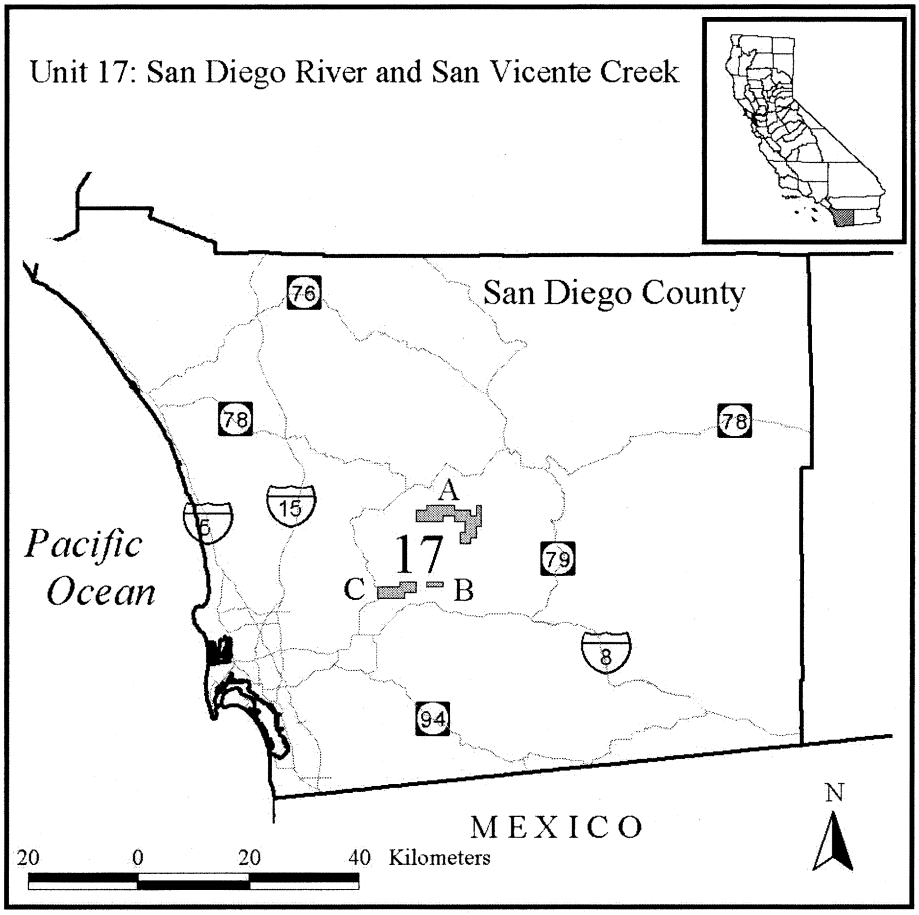


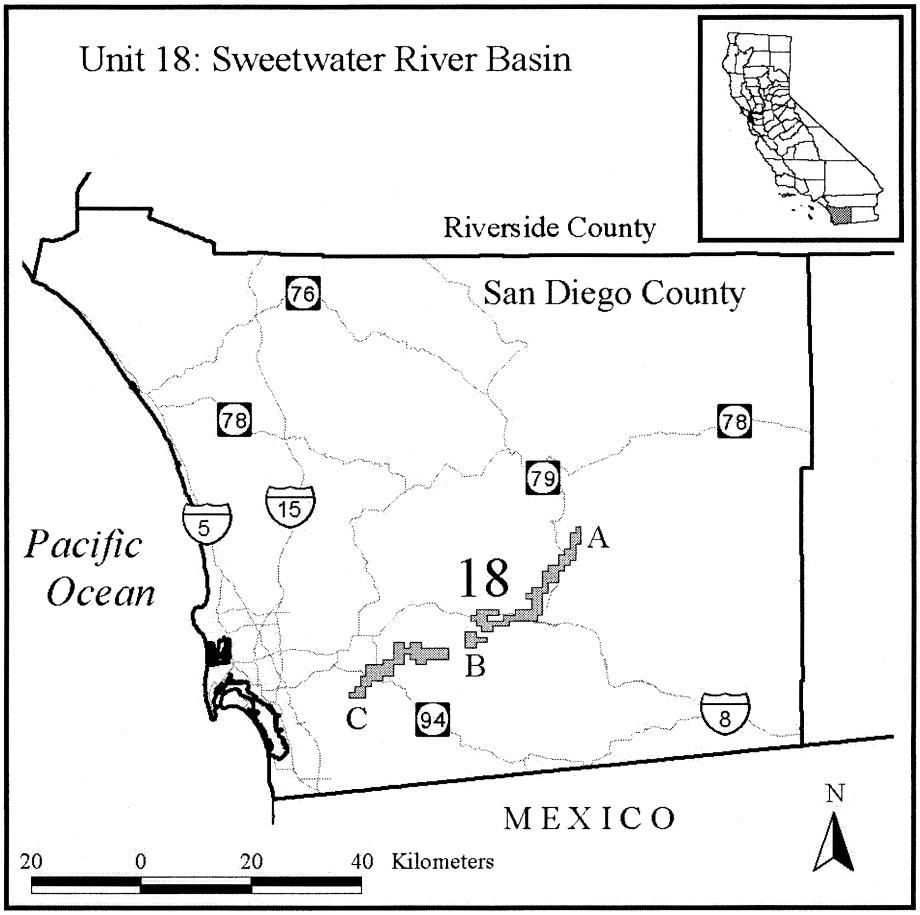

Map Unit 17: San Diego River and San Vicente Creek, San Diego County, California

Subunit 17a: From USGS 1:24,000 quadrangle maps El Cajon Mtn., Tule Springs and Santa Ysabel, the lands bounded by the following UTM coordinates (E, N): 525500, 3653000; 525750, 3653000; 525750, 3652750; 526000, 3652750; 526000, 3652000; 525750, 3652000; 525750, 3651250; 525500, 3651250; 525500, 3650750; 525250, 3650750; 525250, 3650250; 525500, 3650250; 525500, 3650500; 526000, 3650500; 526000, 3650000; 525500, 3650000; 525500, 3649750; 524750, 3649750; 524750, 3649500; 524500, 3649500; 524500, 3649250; 524250, 3649250; 524250, 3649000; 524750, 3649000; 524750, 3648750; 525000, 3648750; 525000, 3648250; 524750, 3648250; 524750, 3647500; 524500, 3647500; 524500, 3647250; 524000, 3647250; 524000, 3647000; 523750, 3647000; 523750, 3646500; 523250, 3646500; 523250, 3646250; 522750, 3646250; 522750, 3646500; 522250, 3646500; 522250, 3647000; 522500, 3647000; 522500, 3647250; 523500, 3647250; 523500, 3647750; 523750, 3647750; 523750, 3648000; 524250, 3648000; 524250, 3648500; 524000, 3648500; 524000, 3648750; 523750, 3648750; 523750, 3649500; 524000, 3649500; 524000, 3650250; 524250, 3650250; 524250, 3650500; 524500, 3650500; 524500, 3650750; 524750, 3650750; 524750, 3651000; 525000, 3651000; 525000, 3651500; 525250, 3651500; 525250, 3652000; 525500, 3652000; 525500, 3653000.

Subunit 17b: From USGS 1:24,000 quadrangle map El Cajon Mtn., the lands bounded by the following UTM coordinates (E, N): 516500, 3638750; 516750, 3638750; 516750, 3638500; 517000, 3638500; 517000, 3638750; 518000, 3638750; 518000, 3638000; 516500, 3638000; 516500, 3638750.

Subunit 17c: From USGS 1:24,000 quadrangle maps El Cajon, San Vicente Reservoir, and El Cajon Mtn., the lands bounded by the following UTM coordinates (E, N): 513000, 3639000; 513500, 3639000; 513500, 3638500; 513250, 3638500; 513250, 3637750; 513000, 3637750; 513000, 3637500; 512500, 3637500; 512500, 3637250; 511500, 3637250; 511500, 3637000; 511250, 3637000; 511250, 3636750; 511000, 3636750; 511000, 3636500; 510500, 3636500; 510500, 3636250; 510000, 3636250; 510000, 3636000; 509750, 3636000; 509750, 3636750; 508750, 3636750; 508750, 3636500; 508000, 3636500; 508000, 3636750; 507750, 3636750; 507750, 3637250; 508000, 3637250; 508000, 3637500; 508500, 3637500; 508500, 3637250; 509750, 3637250; 509750, 3637000; 510000, 3637000; 510000, 3637250; 510500, 3637250; 510500, 3637500; 511000, 3637500; 511000, 3637750; 511250, 3637750; 511250, 3638000; 511500, 3638000; 511500, 3638250; 512000, 3638250; 512000, 3638500; 513000, 3638500; 513000, 3639000.

Subunit 17d: From USGS 1:24,000 quadrangle maps El Cajon Mtn., and Ramona, the lands bounded by the following UTM coordinates (E, N): 516000, 3652000; 517750, 3652000; 517750, 3651750; 518000, 3651750; 518000, 3650750; 517500, 3650750; 517500, 3651250; 517000, 3651250; 517000, 3651000; 516250, 3651000; 516250, 3650750; 515500, 3650750; 515500, 3650500; 515000, 3650500; 515000, 3650250; 515250, 3650250; 515250, 3650000; 514750, 3650000; 514750, 3650500; 514500, 3650500; 514500, 3650750; 514000, 3650750; 514000, 3651000; 514250, 3651000; 514250, 3651250; 514500, 3651250; 514500, 3651500; 516000, 3651500; 516000, 3652000.




Map Unit 18: Sweetwater River, San Diego County, California

Subunit 18a: From USGS 1:24,000 quadrangle maps Viejas Mountain, Descanso, and Cuyamaca Peak, the lands bounded by the following UTM coordinates (E, N): 536250, 3636500; 536250, 3636250; 536500, 3636250; 536500, 3636000; 536750, 3636000; 536750, 3635500; 537000, 3635500; 537000, 3634750; 536500, 3634750; 536500, 3634500; 536750, 3634500; 536750, 3634250; 536500, 3634250; 536500, 3634000; 536750, 3634000; 536750, 3633500; 536500, 3633500; 536500, 3633250; 536250, 3633250; 536250, 3633000; 535750, 3633000; 535750, 3632500; 535500, 3632500; 535500, 3632250; 535000, 3632250; 535000, 3632750; 534250, 3632750; 534250, 3633000; 533750, 3633000; 533750, 3632500; 533500, 3632500; 533500, 3632250; 532500, 3632250; 532500, 3632500; 531750, 3632500; 531750, 3632250; 531500, 3632250; 531500, 3632000; 531000, 3632000; 531000, 3631750; 530500, 3631750; 530500, 3631500; 530000, 3631500; 530000, 3631250; 529750, 3631250; 529750, 3631000; 528500, 3631000; 528500, 3631250; 527750, 3631250; 527750, 3631000; 527500, 3631000; 527500, 3630750; 527250, 3630750; 527250, 3630250; 526750, 3630250; 526750, 3630000; 526250, 3630000; 526250, 3630500; 526500, 3630500; 526500, 3630750; 526750, 3630750; 526750, 3631000; 527000, 3631000; 527000, 3631250; 527500, 3631250; 527500, 3631500; 527750, 3631500; 527750, 3631750; 528000, 3631750; 528000, 3631500; 528750, 3631500; 528750, 3631750; 529000, 3631750; 529000, 3631500; 529250, 3631500; 529250, 3631750; 530000, 3631750; 530000, 3632000; 530250, 3632000; 530250, 3632250; 530500, 3632250; 530500, 3632750; 531500, 3632750; 531500, 3633000; 532250, 3633000; 532250, 3633250; 532500, 3633250; 532500, 3633000; 532750, 3633000; 532750, 3632750; 533250, 3632750; 533250, 3633250; 533500, 3633250; 533500, 3633500; 534500, 3633500; 534500, 3633750; 535250, 3633750; 535250, 3633250; 535500, 3633250; 535500, 3633500; 536000, 3633500; 536000, 3634250; 535500, 3634250; 535500, 3634750; 535250, 3634750; 535250, 3635000; 535750, 3635000; 535750, 3635250; 535500, 3635250; 535500, 3635750; 535000, 3635750; 535000, 3636000; 534750, 3636000; 534750, 3636750; 535250, 3636750; 535250, 3637000; 535000, 3637000; 535000, 3637250; 535250, 3637250; 535250, 3637750; 535750, 3637750; 535750, 3637500; 536250, 3637500; 536250, 3637250; 536750, 3637250; 536750, 3637750; 537000, 3637750; 537000, 3638500; 537250, 3638500; 537250, 3639000; 537500, 3639000; 537500, 3639750; 537750, 3639750; 537750, 3640250; 538000, 3640250; 538000, 3640500; 538500, 3640500; 538500, 3640250; 538750, 3640250; 538750, 3640750; 538500, 3640750; 538500, 3641250; 539500, 3641250; 539500, 3641500; 539750, 3641500; 539750, 3641750; 540000, 3641750; 540000, 3642250; 540250, 3642250; 540250, 3642500; 540500, 3642500; 540500, 3642750; 540750, 3642750; 540750, 3643250; 541000, 3643250; 541000, 3643500; 541250, 3643500; 541250, 3643750; 541500, 3643750; 541500, 3645000; 542000, 3645000; 542000, 3645500; 542250, 3645500; 542250, 3645750; 542500, 3645750; 542500, 3646250; 542750, 3646250; 542750, 3647250; 543000, 3647250; 543000, 3648500; 543250, 3648500; 543250, 3648750; 543500, 3648750; 543500, 3648500; 543750, 3648500; 543750, 3648250; 543500, 3648250; 543500, 3647000; 543250, 3647000; 543250, 3646000; 543000, 3646000; 543000, 3645250; 542750, 3645250; 542750, 3644750; 542500, 3644750; 542500, 3644000; 542750, 3644000; 542750, 3643500; 542000, 3643500; 542000, 3643000; 541500, 3643000; 541500, 3642250; 541250, 3642250; 541250, 3642000; 541000, 3642000; 541000, 3641500; 540500, 3641500; 540500, 3641250; 540250, 3641250; 540250, 3641000; 540000, 3641000; 540000, 3640750; 539500, 3640750; 539500, 3639750; 538500, 3639750; 538500, 3639500; 538000, 3639500; 538000, 3638750; 537750, 3638750; 537750, 3637750; 537250, 3637750; 537250, 3637250; 537000, 3637250; 537000, 3636750; 536750, 3636750; 536750, 3636500; 536250, 3636500; excluding land bounded by 536250, 3636500; 536250, 3636750; 536000, 3636750; 536000, 3637000; 535750, 3637000; 535750, 3636500; 536250, 3636500.

Subunit 18b: From USGS 1:24,000 quadrangle maps Viejas Mountain, and Alpine, the lands bounded by the following UTM coordinates (E, N): 523500, 3629750; 524250, 3629750; 524250, 3629500; 524000, 3629500; 524000, 3628750; 524500, 3628750; 524500, 3628500; 525000, 3628500; 525000, 3628750; 525500, 3628750; 525500, 3628500; 526250, 3628500; 526250, 3628750; 526750, 3628750; 526750, 3628250; 526500, 3628250; 526500, 3628000; 525250, 3628000; 525250,

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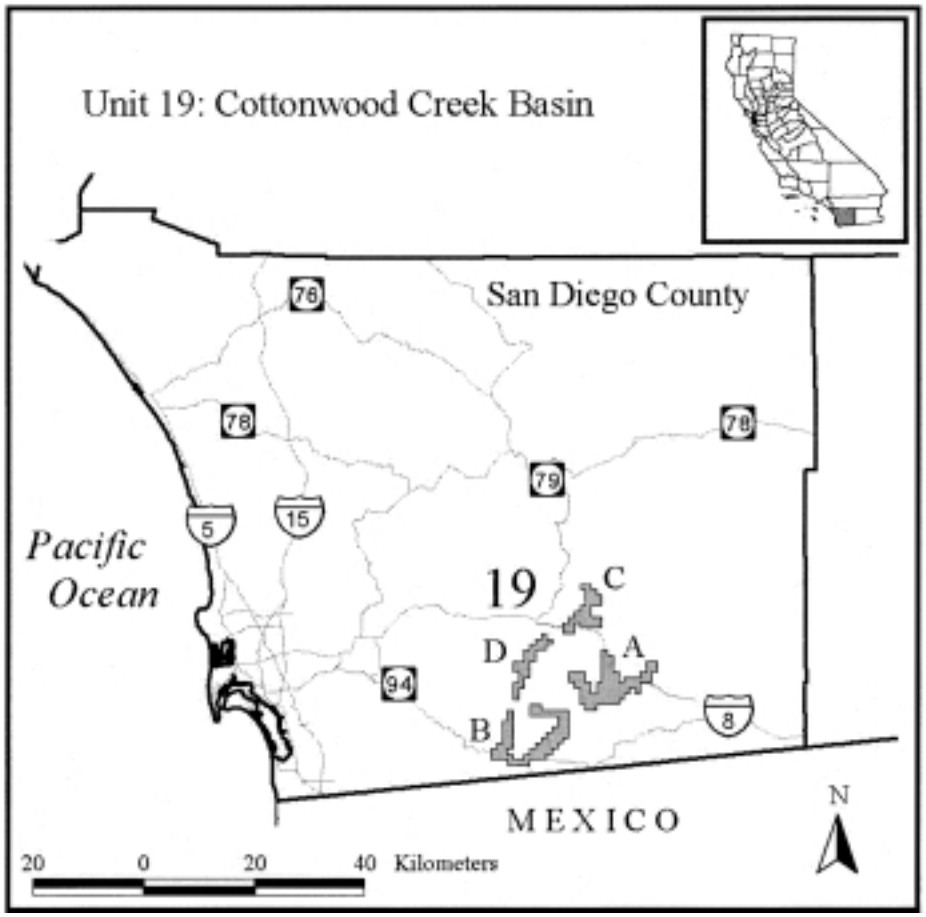
Subunit 18c: From USGS 1:24,000 quadrangle maps Alpine, El Cajon, and Jamul Mts., the lands bounded by the following UTM coordinates (E, N): 514750, 3626500; 515250, 3626500; 515250, 3626000; 515000, 3626000; 515000, 3625750; 514750, 3625750; 514750, 3625500; 515500, 3625500; 515500, 3625750; 515750, 3625750; 515750, 3626000; 516000, 3626000; 516000, 3626250; 516750, 3626250; 516750, 3626000; 517750, 3626000; 517750, 3626250; 519250, 3626250; 519250, 3626750; 519750, 3626750; 519750, 3626000; 519500, 3626000; 519500, 3625750; 519250, 3625750; 519250, 3625500; 518500, 3625500; 518500, 3625750; 518000, 3625750; 518000, 3625500; 516500, 3625500; 516500, 3625750; 516250, 3625750; 516250, 3625250; 516000, 3625250; 516000, 3625000; 515750, 3625000; 515750, 3624750; 514750, 3624750; 514750, 3624500; 514250, 3624500; 514250, 3624750; 514000, 3624750; 514000, 3625500; 514250, 3625500; 514250, 3625750; 513750, 3625750; 513750, 3626250; 512750, 3626250; 512750, 3626000; 512000, 3626000; 512000, 3626250; 511500, 3626250; 511500, 3626000; 511750, 3626000; 511750, 3625250; 511500, 3625250; 511500, 3624750; 511250, 3624750; 511250, 3624500; 510750, 3624500; 510750, 3624250; 510250, 3624250; 510250, 3624000; 510000, 3624000; 510000, 3623750; 509750, 3623750; 509750, 3623500; 509500, 3623500; 509500, 3623250; 509750, 3623250; 509750, 3623000; 509000, 3623000; 509000, 3622250; 508500, 3622250; 508500, 3622000; 507750, 3622000; 507750, 3621750; 507250, 3621750; 507250, 3622000; 506500, 3622000; 506500, 3621750; 506250, 3621750; 506250, 3621000; 505750, 3621000; 505750, 3620500; 505500, 3620500; 505500, 3620250; 505250, 3620250; 505250, 3620000; 505000, 3620000; 505000, 3619750; 504750, 3619750; 504750, 3619500; 504500, 3619500; 504500, 3619250; 504250, 3619250; 504250, 3618250; 504000, 3618250; 504000, 3618000; 503000, 3618000; 503000, 3619250; 503250, 3619250; 503250, 3619000; 503500, 3619000; 503500, 3618750; 503750, 3618750; 503750, 3619500; 504000, 3619500; 504000, 3619750; 504250, 3619750; 504250, 3620000; 504500, 3620000; 504500, 3620500; 504750, 3620500; 504750, 3621250; 505000, 3621250; 505000, 3621750; 505250, 3621750; 505250, 3622000; 505000, 3622000; 505000, 3622500; 505250, 3622500; 505250, 3623000; 507000, 3623000; 507000, 3622750; 507750, 3622750; 507750, 3623000; 508000, 3623000; 508000, 3623250; 508250, 3623250; 508250, 3623500; 508500, 3623500; 508500, 3624000; 508750, 3624000; 508750, 3624250; 509250, 3624250; 509250, 3624500; 509500, 3624500; 509500, 3624750; 510250, 3624750; 510250, 3625000; 510500, 3625000; 510500, 3625250; 511000, 3625250; 511000, 3625500; 510500, 3625500; 510500, 3626000; 510250, 3626000; 510250, 3627250; 510500, 3627250; 510500, 3627500; 511500, 3627500; 511500, 3627250; 512000, 3627250; 512000, 3627000; 512250, 3627000; 512250, 3626750; 512500, 3626750; 512500, 3627000; 513250, 3627000; 513250, 3627250; 514500, 3627250; 514500, 3627750; 515000, 3627750; 515000, 3627000; 514750, 3627000; 514750, 3626500; excluding land bounded by 514750, 3626500; 514250, 3626500; 514250, 3626250; 514750, 3626250; 514750, 3626500.

Subunit 18d: From USGS 1:24,000 quadrangle map Viejas Mountain, the lands bounded by the following UTM coordinates (E, N): 527000, 3634000; 527500, 3634000; 527500, 3633250; 527250, 3633250; 527250, 3633000; 526750, 3633000; 526750, 3632750; 526500, 3632750; 526500, 3632500; 526250, 3632500; 526250, 3632000; 525750, 3632000; 525750, 3631750; 525500, 3631750; 525500, 3632000; 524750, 3632000; 524750, 3632750; 525750, 3632750; 525750, 3633250; 526250, 3633250; 526250, 3633500; 526750, 3633500; 526750, 3633750; 527000, 3633750; 527000, 3634000.




Map Unit 19: Cottonwood-Tijuana Basin, San Diego County, California

Subunit 19a: From USGS 1:24,000 quadrangle maps Morena Reservoir, Cameron Corners and Mount Laguna, the lands bounded by the following UTM coordinates (E,N): 547000, 3627000; 547500, 3627000; 547500, 3626750; 547750, 3626750; 547750, 3626250; 548000, 3626250; 548000, 3625750; 548250, 3625750; 548250, 3625500; 548500, 3625500; 548500, 3624750; 548750, 3624750; 548750, 3623500; 549000, 3623500; 549000, 3622750; 550000, 3622750; 550000, 3622500; 549750, 3622500; 549750, 3621750; 549500, 3621750; 549500, 3621500; 549250, 3621500; 549250, 3621250; 549000, 3621250; 549000, 3621500; 548750, 3621500; 548750, 3621000; 548500, 3621000; 548500, 3620750; 548000, 3620750; 548000, 3620250; 548250, 3620250; 548250, 3618500; 549000, 3618500; 549000, 3620250; 549750, 3620250; 549750, 3620500; 550500, 3620500; 550500, 3620250; 551000, 3620250; 551000, 3619500; 550500, 3619500; 550500, 3619250; 550250, 3619250; 550250, 3618500; 550000, 3618500; 550000, 3618250; 549750, 3618250; 549750, 3617250; 548750, 3617250; 548750, 3617750; 548250, 3617750; 548250, 3617500; 547750, 3617500; 547750, 3618000; 547500, 3618000; 547500, 3618750; 547250, 3618750; 547250, 3619250; 547000, 3619250; 547000, 3617750; 546250, 3617750; 546250, 3617500; 546000, 3617500; 546000, 3617000; 545750, 3617000; 545750, 3616500; 545500, 3616500; 545500, 3616250; 544500, 3616250; 544500, 3616750; 544000, 3616750; 544000, 3617250; 543750, 3617250; 543750, 3617500; 543500, 3617500; 543500, 3619250; 543750, 3619250; 543750, 3619500; 543500, 3619500; 543500, 3620000; 543250, 3620000; 543250, 3620250; 543000, 3620250; 543000, 3620500; 542750, 3620500; 542750, 3620750; 542500, 3620750; 542500, 3621000; 542250, 3621000; 542250, 3621250; 541750, 3621250; 541750, 3621500; 541500, 3621500; 541500, 3622000; 541750, 3622000; 541750, 3622250; 542000, 3622250; 542000, 3622000; 542500, 3622000; 542500, 3621750; 542750, 3621750; 542750, 3622500; 543000, 3622500; 543000, 3622250; 543250, 3622250; 543250, 3622000; 543500, 3622000; 543500, 3621500; 543750, 3621500; 543750, 3621250; 544000, 3621250; 544000, 3621000; 544250, 3621000; 544250, 3620750; 544500, 3620750; 544500, 3620250; 544750, 3620250; 544750, 3620000; 544500, 3620000; 544500, 3619750; 544750, 3619750; 544750, 3619500; 545000, 3619500; 545000, 3618750; 545750, 3618750; 545750, 3619000; 546250, 3619000; 546250, 3619500; 546500, 3619500; 546500, 3620000; 546750, 3620000; 546750, 3620250; 547000, 3620250; 547000, 3621750; 547250, 3621750; 547250, 3622500; 547000, 3622500; 547000, 3624500; 547250, 3624500; 547250, 3626250; 547000, 3626250; 547000, 3627000; excluding land bounded by 544750, 3618500; 544750, 3618000; 545000, 3618000; 545000, 3618500; 544750, 3618500.

Subunit 19b: From USGS 1:24,000 quadrangle maps Barrett Lake, Tecate, Potrero and Morena Reservoir, the lands bounded by the following UTM coordinates (E,N): 530750, 3615750; 531000, 3615750; 531000, 3614500; 530750, 3614500; 530750, 3614000; 530500, 3614000; 530500, 3613500; 530250, 3613500; 530250, 3613000; 530500, 3613000; 530500, 3612000; 530250, 3612000; 530250, 3611250; 529750, 3611250; 529750, 3611000; 530000, 3611000; 530000, 3610250; 530250, 3610250; 530250, 3609750; 530000, 3609750; 530000, 3609500; 529750, 3609500; 529750, 3609250; 529250, 3609250; 529250, 3608750; 529000, 3608750; 529000, 3607750; 529500, 3607750; 529500, 3607500; 530250, 3607500; 530250, 3607250; 530500, 3607250; 530500, 3607000; 530250, 3607000; 530250, 3606750; 530750, 3606750; 530750, 3606500; 531750, 3606500; 531750, 3606750; 532500, 3606750; 532500, 3607000; 533250, 3607000; 533250, 3607500; 534250, 3607500; 534250, 3608000; 534500, 3608000; 534500, 3608250; 535000, 3608250; 535000, 3608750; 535500, 3608750; 535500, 3609750; 536000, 3609750; 536000, 3610000; 536250, 3610000; 536250, 3610250; 536500, 3610250; 536500, 3610500; 537000, 3610500; 537000, 3610750; 537500, 3610750; 537500, 3611250; 537750, 3611250; 537750, 3611500; 538250, 3611500; 538250, 3611750; 538500, 3611750; 538500, 3612500; 539000, 3612500; 539000, 3612750; 539250, 3612750; 539250, 3613500; 539500, 3613500; 539500, 3613750; 540000, 3613750; 540000, 3613250; 540250, 3613250; 540250, 3613000; 540500, 3613000; 540500, 3612750; 540750, 3612750; 540750, 3612250; 540250, 3612250; 540250, 3612000; 540000, 3612000; 540000, 3611750; 540250, 3611750; 540250, 3611500; 540000, 3611500; 540000, 3611000; 539750, 3611000; 539750, 3610250; 538500, 3610250; 538500, 3610000; 538250, 3610000; 538250,

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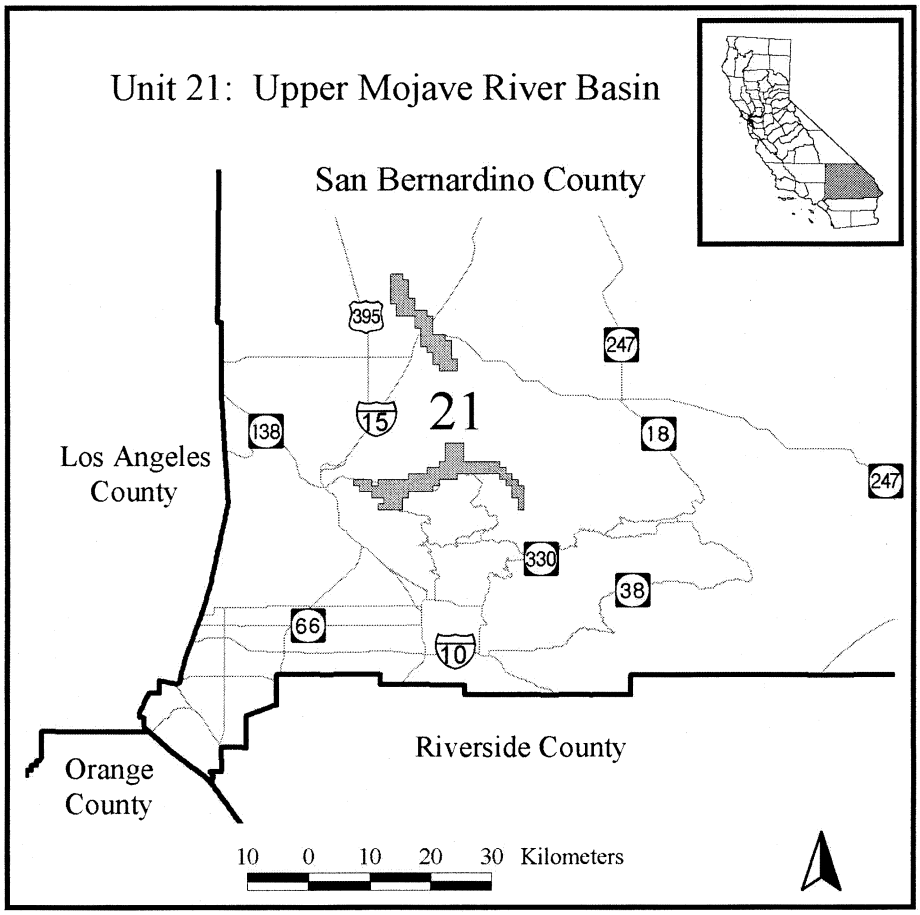
Subunit 19c: From USGS 1:24,000 quadrangle maps Descanso, and Cuyamaca Peak, the lands bounded by the following UTM coordinates (E, N): 544750, 3633000; 545250, 3633000; 545250, 3632250; 546250, 3632250; 546250, 3632500; 546750, 3632500; 546750, 3632000; 546500, 3632000; 546500, 3631750; 546250, 3631750; 546250, 3631500; 546000, 3631500; 546000, 3631250; 545750, 3631250; 545750, 3631000; 545000, 3631000; 545000, 3631250; 544750, 3631250; 544750, 3631000; 543750, 3631000; 543750, 3631500; 543500, 3631500; 543500, 3632750; 543250, 3632750; 543250, 3633000; 543000, 3633000; 543000, 3632750; 542750, 3632750; 542750, 3632500; 542250, 3632500; 542250, 3632000; 542000, 3632000; 542000, 3631750; 541500, 3631750; 541500, 3631250; 541250, 3631250; 541250, 3630750; 541000, 3630750; 541000, 3630500; 540500, 3630500; 540500, 3631250; 541000, 3631250; 541000, 3632000; 541500, 3632000; 541500, 3632750; 542000, 3632750; 542000, 3633000; 542500, 3633000; 542500, 3633250; 542750, 3633250; 542750, 3633750; 543250, 3633750; 543250, 3633500; 543500, 3633500; 543500, 3634250; 543750, 3634250; 543750, 3634500; 544250, 3634500; 544250, 3635250; 544500, 3635250; 544500, 3636000; 544750, 3636000; 544750, 3636500; 545000, 3636500; 545000, 3637000; 544750, 3637000; 544750, 3637250; 544500, 3637250; 544500, 3637750; 544250, 3637750; 544250, 3638500; 543750, 3638500; 543750, 3639000; 544250, 3639000; 544250, 3638750; 544750, 3638750; 544750, 3638250; 545000, 3638250; 545000, 3637750; 545250, 3637750; 545250, 3637500; 545500, 3637500; 545500, 3636750; 545750, 3636750; 545750, 3636500; 546250, 3636500; 546250, 3636250; 546500, 3636250; 546500, 3636000; 546250, 3636000; 546250, 3635750; 546000, 3635750; 546000, 3635500; 545750, 3635500; 545750, 3635750; 545250, 3635750; 545250, 3635250; 545000, 3635250; 545000, 3634250; 544750, 3634250; 544750, 3633000; excluding land bounded by 544750, 3633000; 544500, 3633000; 544500, 3632750; 544750, 3632750; 544750, 3633000.

Subunit 19d: From USGS 1:24,000 quadrangle maps Barrett Lake, Viejas Mtn. and Descanso, the lands bounded by the following UTM coordinates (E, N): 536750, 3629250; 537000, 3629250; 537000, 3629000; 537250, 3629000; 537250, 3628500; 536750, 3628500; 536750, 3628250; 536500, 3628250; 536500, 3628000; 536250, 3628000; 536250, 3627750; 536000, 3627750; 536000, 3627500; 535500, 3627500; 535500, 3627000; 535000, 3627000; 535000, 3626750; 534750, 3626750; 534750, 3626250; 534500, 3626250; 534500, 3626000; 534250, 3626000; 534250, 3625750; 534000, 3625750; 534000, 3625250; 533750, 3625250; 533750, 3625000; 534000, 3625000; 534000, 3624750; 533750, 3624750; 533750, 3624250; 533250, 3624250; 533250, 3622500; 533000, 3622500; 533000, 3621500; 532750, 3621500; 532750, 3620750; 532500, 3620750; 532500, 3620250; 532250, 3620250; 532250, 3620000; 531750, 3620000; 531750, 3619250; 531500, 3619250; 531500, 3618750; 531000, 3618750; 531000, 3619500; 531250, 3619500; 531250, 3620500; 531500, 3620500; 531500, 3620750; 531750, 3620750; 531750, 3620500; 532000, 3620500; 532000, 3621000; 532250, 3621000; 532250, 3621500; 532500, 3621500; 532500, 3621750; 532250, 3621750; 532250, 3622500; 532500, 3622500; 532500, 3623750; 532250, 3623750; 532250, 3623500; 531500, 3623500; 531500, 3623750; 531250, 3623750; 531250, 3624000; 531500, 3624000; 531500, 3624250; 531750, 3624250; 531750, 3624750; 532000, 3624750; 532000, 3625000; 532500, 3625000; 532500, 3624000; 532750, 3624000; 532750, 3624500; 533000, 3624500; 533000, 3624750; 533250, 3624750; 533250, 3625500; 533500, 3625500; 533500, 3626250; 533750, 3626250; 533750, 3626500; 534000, 3626500; 534000, 3626750; 534250, 3626750; 534250, 3627250; 534500, 3627250; 534500, 3627500; 534750, 3627500; 534750, 3627750; 535000, 3627750; 535000, 3628000; 535750, 3628000; 535750, 3628250; 536000, 3628250; 536000, 3628500; 536250, 3628500; 536250, 3629000; 536750, 3629000; 536750, 3629250.

Map Unit 20 (see map of Units 6, 7, and 20): Little Rock Creek, Los Angeles County, California. From USGS 1:24,000 quadrangle maps Juniper Hills and Pacifico Mtn., the lands bounded by the following UTM coordinates (E, N): 406250, 3814750; 406500, 3814750; 406500, 3814250; 406750, 3814250; 406750, 3813250; 407000, 3813250; 407000, 3812250; 407250, 3812250; 407250, 3812000; 407500, 3812000; 407500, 3811500; 408000, 3811500; 408000, 3811250; 408750, 3811250; 408750, 3811000; 409000, 3811000; 409000, 3810750; 409250, 3810750; 409250, 3810500; 409500, 3810500; 409500, 3810000; 410000, 3810000; 410000, 3809750; 410250, 3809750; 410250, 3809250; 410500, 3809250; 410500, 3809000; 411000, 3809000; 411000, 3808250; 411250, 3808250; 411250, 3808000; 411500, 3808000; 411500, 3807500; 411000, 3807500; 411000, 3807750; 410750, 3807750; 410750, 3808250; 410500, 3808250; 410500, 3808500; 410250, 3808500; 410250, 3809000; 410000, 3809000; 410000, 3809250; 409750, 3809250; 409750, 3809500; 409500, 3809500; 409500, 3809750; 409000, 3809750; 409000, 3810250; 408750, 3810250; 408750, 3810500; 408000, 3810500; 408000, 3810750; 407750, 3810750; 407750, 3811000; 407250, 3811000; 407250, 3811250; 407000, 3811250; 407000, 3811500; 406750, 3811500; 406750, 3811750; 406500, 3811750; 406500, 3813000; 406250, 3813000; 406250, 3813750; 406000, 3813750; 406000, 3813500; 405750, 3813500; 405750, 3813250; 405500, 3813250; 405500, 3813000; 405000, 3813000; 405000, 3812750; 404750, 3812750; 404750, 3813250; 405000, 3813250; 405000, 3813500; 405250, 3813500; 405250, 3813750; 405500, 3813750; 405500, 3814000; 405750, 3814000; 405750, 3814250; 406000, 3814250; 406000, 3814500; 406250, 3814500; 406250, 3814750.




Map Unit 21: Mojave River, San Bernardino County, California

Subunit 21a: From USGS 1:24,000 quadrangle maps Cajon, Silverwood Lake, Lake Arrowhead and Butler Peak, the lands bounded by the following UTM coordinates (E, N): 476750, 3803500; 478750, 3803500; 478750, 3802000; 478500, 3802000; 478500, 3801000; 478750, 3801000; 478750, 3800750; 479000, 3800750; 479000, 3800500; 479250, 3800500; 479250, 3800250; 480750, 3800250; 480750, 3800000; 481000, 3800000; 481000, 3800250; 482000, 3800250; 482000, 3800500; 482500, 3800500; 482500, 3800250; 484250, 3800250; 484250, 3800000; 484750, 3800000; 484750, 3799750; 485000, 3799750; 485000, 3799500; 485500, 3799500; 485500, 3798500; 486750, 3798500; 486750, 3798250; 487000, 3798250; 487000, 3797500; 487500, 3797500; 487500, 3796250; 488250, 3796250; 488250, 3795750; 488500, 3795750; 488500, 3795500; 488750, 3795500; 488750, 3795250; 489000, 3795250; 489000, 3795000; 488750, 3795000; 488750, 3794250; 488500, 3794250; 488500, 3793750; 488250, 3793750; 488250, 3794000; 488000, 3794000; 488000, 3794500; 488250, 3794500; 488250, 3795000; 488500, 3795000; 488500, 3795250; 488000, 3795250; 488000, 3795750; 487500, 3795750; 487500, 3796000; 487000, 3796000; 487000, 3796500; 487250, 3796500; 487250, 3796750; 487000, 3796750; 487000, 3797000; 486750, 3797000; 486750, 3797250; 486500, 3797250; 486500, 3797750; 486000, 3797750; 486000, 3798000; 485250, 3798000; 485250, 3798500; 485000, 3798500; 485000, 3799250; 484500, 3799250; 484500, 3799500; 483250, 3799500; 483250, 3799750; 482750, 3799750; 482750, 3799500; 482500, 3799500; 482500, 3799750; 481250, 3799750; 481250, 3799500; 480500, 3799500; 480500, 3799750; 479750, 3799750; 479750, 3799500; 479000, 3799500; 479000, 3799750; 478750, 3799750; 478750, 3799500; 477750, 3799500; 477750, 3799000; 477500, 3799000; 477500, 3798750; 476750, 3798750; 476750, 3799000; 475750, 3799000; 475750, 3798750; 475250, 3798750; 475250, 3798500; 475000, 3798500; 475000, 3798000; 474250, 3798000; 474250, 3797500; 473750, 3797500; 473750, 3797250; 473500, 3797250; 473500, 3796750; 473250, 3796750; 473250, 3796250; 473000, 3796250; 473000, 3796000; 472000, 3796000; 472000, 3796250; 471000, 3796250; 471000, 3796000; 470000, 3796000; 470000, 3795750; 468500, 3795750; 468500, 3796000; 468250, 3796000; 468250, 3796250; 468000, 3796250; 468000, 3796000; 467750, 3796000; 467750, 3796250; 466500, 3796250; 466500, 3796000; 466000, 3796000; 466000, 3795750; 465500, 3795750; 465500, 3795500; 465000, 3795500; 465000, 3795750; 464500, 3795750; 464500, 3796000; 464250, 3796000; 464250, 3796250; 463750, 3796250; 463750, 3796500; 462500, 3796500; 462500, 3796750; 462250, 3796750; 462250, 3797000; 462000, 3797000; 462000, 3797250; 461500, 3797250; 461500, 3797750; 462500, 3797750; 462500, 3797500; 462750, 3797500; 462750, 3797250; 463250, 3797250; 463250, 3797000; 464000, 3797000; 464000, 3796750; 464750, 3796750; 464750, 3796500; 466000, 3796500; 466000, 3796750; 465750, 3796750; 465750, 3797500; 467750, 3797500; 467750, 3797250; 468250, 3797250; 468250, 3797000; 468500, 3797000; 468500, 3797250; 468750, 3797250; 468750, 3797000; 469000, 3797000; 469000, 3796750; 469750, 3796750; 469750, 3797000; 469500, 3797000; 469500, 3797500; 470000, 3797500; 470000, 3798000; 470250, 3798000; 470250, 3798500; 470500, 3798500; 470500, 3798250; 470750, 3798250; 470750, 3798500; 471000, 3798500; 471000, 3798750; 471750, 3798750; 471750, 3799000; 473500, 3799000; 473500, 3799250; 473750, 3799250; 473750, 3799500; 474250, 3799500; 474250, 3799750; 475000, 3799750; 475000, 3800000; 475500, 3800000; 475500, 3800250; 476250, 3800250; 476250, 3800000; 476500, 3800000; 476500, 3800250; 477000, 3800250; 477000, 3800500; 477250, 3800500; 477250, 3800750; 477000, 3800750; 477000, 3801000; 476750, 3801000; 476750, 3802500; 477000, 3802500; 477000, 3802750; 476750, 3802750; 476750, 3803500.

Subunit 21b: From USGS 1:24,000 quadrangle maps Victorville, Hesperia, and Helendale, the lands bounded by the following UTM coordinates (E, N): 467250, 3831750; 468750, 3831750; 468750, 3829500; 469000, 3829500; 469000, 3829000; 469250, 3829000; 469250, 3828500; 469500, 3828500; 469500, 3828000; 469750, 3828000; 469750, 3826250; 470000, 3826250; 470000, 3826000; 470500, 3826000; 470500, 3825750; 471000, 3825750; 471000, 3825500; 471250, 3825500; 471250, 3825250; 472000, 3825250; 472000, 3825000; 472250, 3825000; 472250, 3824750; 472750, 3824750; 472750, 3824500; 473000, 3824500; 473000, 3824250; 473250, 3824250;

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Subunit 21c: From USGS 1:24,000 quadrangle maps Cajon, and Silverwood Lake, the lands bounded by the following UTM coordinates (E, N): 466000, 3794250; 468250, 3794250; 468250, 3793500; 467500, 3793500; 467500, 3793250; 467000, 3793250; 467000, 3793500; 466750, 3793500; 466750, 3793750; 466500, 3793750; 466500, 3793500; 465750, 3793500; 465750, 3793250; 465250, 3793250; 465250, 3793500; 465000, 3793500; 465000, 3793750; 465500, 3793750; 465500, 3794000; 466000, 3794000; 466000, 3794250.

Map Unit 22 (see map of Units 9 and 22): Whitewater River, Riverside County, California. From USGS 1:24,000 quadrangle maps Catclaw Flat, and White Water, the lands bounded by the following UTM coordinates (E, N): 530250, 3764000; 531000, 3764000; 531000, 3763250; 531250, 3763250; 531250, 3762250; 531500, 3762250; 531500, 3762000; 531750, 3762000; 531750, 3761250; 532000, 3761250; 532000, 3760750; 532250, 3760750; 532250, 3760500; 532500, 3760500; 532500, 3759750; 532750, 3759750; 532750, 3758750; 533000, 3758750; 533000, 3757750; 533250, 3757750; 533250, 3757500; 533500, 3757500; 533500, 3756250; 533750, 3756250; 533750, 3754750; 533500, 3754750; 533500, 3755000; 533000, 3755000; 533000, 3755250; 532750, 3755250; 532750, 3757250; 532500, 3757250; 532500, 3757500; 532250, 3757500; 532250, 3758000; 532000, 3758000; 532000, 3759000; 531750, 3759000; 531750, 3760000; 531500, 3760000; 531500, 3760750; 531000, 3760750; 531000, 3761000; 530750, 3761000; 530750, 3761500; 530500, 3761500; 530500, 3762000; 530250, 3762000; 530250, 3763250; 530000, 3763250; 530000, 3763750; 530250, 3763750; 530250, 3764000.

* * * * *

Dated: January 19, 2001.

**Kenneth L. Smith,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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# Part III

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Quino Checkerspot Butterfly; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AH03**

## Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Quino Checkerspot Butterfly

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U. S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Quino checkerspot butterfly (*Euphydras editha quino*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 121,814 hectares (301,010 acres) in Riverside and San Diego Counties, California, are proposed for designation as critical habitat for the Quino checkerspot butterfly.

If this proposal is made final, section 7 of the Act requires Federal agencies 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.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries prior to final designation based on habitat and butterfly surveys, public comments on the Draft Quino Checkerspot Butterfly Recovery Plan and this proposed critical habitat rule, input from the recovery team, and new scientific and commercial information.

**DATES:** We will accept comments until the close of business on April 9, 2001. Requests for public hearings must be received by March 26, 2001.

**ADDRESSES:** *Comment submission:* If you wish to comment, you may submit your comments and materials by any one of several methods:

You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U. S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office at the address given above.

You may send comments by electronic mail (e-mail) to fw1cfwolqcb@fws.gov. See the Public Comments Solicited section below for file format and other information on electronic filing.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9624).

**SUPPLEMENTARY INFORMATION:**

### Background

The Quino checkerspot butterfly (*Euphydras editha quino*) is a member of the family Nymphalidae (brush-footed butterflies) and the subfamily Melitaeinae (checkerspots and fritillaries). The Quino checkerspot butterfly is a subspecies of *Euphydryas editha;* it differs in physical appearance from other subspecies in size, wing coloration, larval, and pupal characteristics (Mattoni *et al.* 1997).

The Quino checkerspot butterfly has undergone several nomenclatural changes. Originally described as *Melitaea quino* (Behr 1863), Gunder (1929) reduced it to a subspecies of *Euphydras chalcedona*. At the same time, he described *Euphydryas editha wrighti* from a checkerspot specimen collected in San Diego County. After reexamining Behr's descriptions and specimens, Emmel *et al.* (1998) concluded that the Quino checkerspot butterfly should be associated with *E. editha*, not *E. chalcedona*. For the Quino checkerspot butterfly, *E. editha quino* is now the accepted scientific name.

The adult Quino checkerspot butterfly has a wingspan of approximately 4 centimeters (1.5 inches). The top sides of the wings have a red, black, and cream colored checkered pattern and the bottom sides are dominated by a red and cream marbled pattern. The abdomen of Quino checkerspot butterflies has red stripes across the top. Quino checkerspot butterfly larvae (immature, wormlike phase) are black with a row of nine orange fleshy/hairy extensions on their back. Pupae (intermediate phase between larva and adult) are mottled black on a pale blue-gray background and extremely well camouflaged.

The life cycle of the Quino checkerspot butterfly typically includes one generation of adults per year, with a 4- to 6-week flight period beginning between late February and May, depending on weather conditions (Emmel and Emmel 1973). If sufficient rain falls in late summer or early fall, a rare second generation of reduced adult numbers may occur (Mattoni *et al.* 1997). Females are usually mated on the day they emerge from pupae, and lay one or two egg clusters per day for most of their adult life. *Euphydryas editha* egg clusters typically contain 20–150 eggs (M. Singer, C. Parmesan, and G. Pratt 1999). Eggs deposited by adults on hostplants hatch in 10–14 days. Adult emergence from pupae is staggered, resulting in a 1-to 2-month flight season, with each adult butterfly living from 10–14 days. Peak emergence in most butterfly species, and probably for Quino checkerspot butterflies as well, occurs shortly after the beginning of the flight season, usually in the second week (Zonneveld 1991).

Quino checkerspot butterfly larvae may undergo as many as seven molts (shedding skin) prior to pupation. During the first two instars (period between molts), pre-diapause (before dormancy) larvae cannot move more than a few centimeters and are usually restricted to the plant on which the eggs were laid (primary hostplant). Prior to diapause, larvae spin a web and feed gregariously. During the third instar (about 10 days after hatching), larvae are able to move among individual hostplants. Third instar larvae usually wander independently in search of food, and may switch from feeding on the plant on which they hatched to another plant of the same species, or another hostplant species (secondary hostplant). As hostplants age and become dry and inedible, larvae enter diapause if they have accumulated sufficient energy reserves. Although the location of diapausing Quino checkerspot butterfly larvae in the field is not known, the presence of clusters of postdiapause (after dormancy) larvae found near dense grass and shrub cover indicates they may diapause in these areas (Osborne and Redak 2000). Additionally, Quino checkerspot butterfly larvae are capable of sustaining multiple-year diapause (M. Singer, pers. comm., 2000).

Sufficient rainfall, usually during November or December, causes larvae to break diapause. Records of late second flight seasons following unusual summer rains indicate that the Quino checkerspot butterfly does not require winter chilling to break diapause, and may not diapause at all under some circumstances (Mattoni *et al.* 1997). Rain stimulates germination and growth

of the hostplants fed upon by postdiapause larvae, which can crawl up to several meters in search of food. Postdiapause larval dispersal has been well documented in the bay checkerspot butterfly (*Euphydryas editha bayensis*). Larvae of this subspecies have been observed to travel up to 3.5 meters (m) (11.5 feet (ft)) during a 4-day period (Weiss *et al.* 1987). Postdiapause larvae seek microclimates (small habitats with uniform climate) with high solar radiation, which helps speed development (White 1974; Weiss *et al.* 1987; Osborne and Redak 2000). Because of variable weather during winter and early spring, the time between diapause termination and pupation can range from 2 weeks if conditions are warm and sunny, to 2 or 3 months if cold, rainy conditions prevail (G. Pratt, pers. comm., 2001). Postdiapause larvae undergo three to as many as seven instars prior to pupating in silken shelters near ground level. Adults emerge from pupae after approximately 10 days, again depending on weather (Mattoni *et al.* 1997).

Adult Quino checkerspot butterflies spend time searching for mates, basking in the sun to regulate body temperature, feeding on nectar, defending territories, and in the case of females, searching for sites to deposit eggs. The Quino checkerspot butterfly, like other subspecies of *Euphydryas editha*, shows a habitat preference for low-growing vegetation interspersed with barren spots (Osborne and Redak 2000). Quino checkerspot butterflies tend to avoid flying over trees, buildings, or other objects taller than 2–2.5 m (6–8 ft) (G. Pratt, pers. comm., 2001). The thermodynamic requirements of the butterfly, and natural avoidance of shaded areas, deters flight in densely wooded areas and other types of closed-canopy vegetation (C. Parmesan, pers. comm., 2001).

Male Quino checkerspot butterflies, and to a lesser extent, females, are frequently observed on hilltops and ridgelines (Service, unpublished data), and a number of behaviors characteristic of species known to inhabit hilltops has been documented (K. Osborne and G. Pratt, pers comm., 2001). Largely untested explanations for this behavior include: 1) The active dispersal of male and female butterflies to local hilltops or ridgelines during years of low adult density where the probability of finding mates is increased (facultative hilltopping behavior); 2) the presence of areas of exposed soil resulting in warmer microclimates and superior basking sites than surrounding vegetated slopes and valleys; and 3) the attraction of males to the activities of other butterfly species on hilltops.

Data from mark-recapture studies indicate that long-distance dispersal (greater than 1 kilometer (km) (0.6 miles (mi)) in *Euphydryas editha* is rare. Nonetheless, Murphy and White (1984) suggested that long-distance dispersal events associated with population outbreaks may contribute significantly to colonization or recolonization of unoccupied areas, and hence to long-term survival of the Quino checkerspot butterfly.

Most *Euphydryas editha* subspecies exhibit generally sedentary behavior, with adults frequently remaining in the same habitat patch in which they developed as larvae (Ehrlich 1961, 1965; Boughton 1999, 2000). However, female bay checkerspots, a species similar to the Quino checkerspot, were found to be more likely to emigrate than males (Ehrlich *et al.* 1984). Adult dispersal by the bay checkerspot, is typically less than 150 m (490 ft) between recaptures (Ehrlich 1961, 1965; Gilbert and Singer 1973). Harrison (1989) recaptured bay checkerspots greater than 1 km (0.6 mi) from the point of release in only 5 percent of cases. Though a study of the Quino checkerspot at Otay Lakes in San Diego County included an estimate of less than 100 m (330 ft) dispersal distances (White and Levin 1981), this study was not designed to detect long-distance dispersal. Harrison (1989) recaptured bay checkerspots greater than 1 kilometer (0.6 mile) from the point of release in only 5 percent of cases. Long-distance dispersal in bay checkerspot butterflies has been documented as far as 7.6 km (4.7 miles) (D. Murphy pers. comm.), 5.6 km (3.5 miles) (1 male), and 3 km (2 miles) (1 female) (Harrison 1989).

Long-distance habitat patch colonization may be achieved within a single season through long-distance dispersal of individual butterflies, or over several seasons through stepping-stone habitat patch colonization and dispersal events. In a study of the Morgan Hill bay checkerspot island-mainland type metapopulation, no unoccupied habitat patches farther than 4.5 km (2.8 mi) from the source population were colonized over a 10 year period (Harrison *et al.* 1988). A metapopulation is a series of interconnected subpopulations that exchange individuals and/or genetic material. The interchange of individuals within a metapopulation can prevent an otherwise isolated subpopulation from going extinct and enhances genetic fitness. A model, which was conservative with respect to extinction, predicted habitat patches at a distance greater than 7 to 8 kilometers (4 to 5 miles) from the primary source population were not likely to support populations (Harrison *et al.* 1988).

Most Quino checkerspot butterfly oviposition (egg laying) has been documented on *Plantago erecta* (dwarf plantain); however, egg clusters and prediapause larvae have been recently documented on *Plantago patagonica* (woolly plantain), which appears to be the sole primary host for the Silverado metapopulation in southern Riverside County (Pratt 2000). Additionally, *Cordylanthus rigidus* (bird's beak) was observed on two occasions in 1999 with egg clusters in southern San Diego County (G. Pratt, pers. comm., 2001). Dwarf plantain occurs in coastal sage scrub, open chaparral, grassland, and similar plant communities. It is often associated with cryptogamic crusts, and fine-textured clay soils derived from gabbro and basalt.

The selection of specific plants by *Euphydryas editha* on which to oviposit is genetically determined (Singer *et al.* 1991). The ability of *Euphydryas editha* larvae to grow and survive on particular host plant species is variable among individual larvae (Singer *et al.* 1988) and among larval populations (Singer *et al.* 1994; Rausher 1982). Singer *et al.* (1991) found that Quino checkerspot butterflies from the lower Otay Lakes area preferred to deposit eggs on dwarf plantain over *Collinsia tinctoria* (sticky chinese houses). When female *Euphydryas editha* butterflies fail to encounter preferred hostplants, the likelihood of emigration to other suitable habitat patches increases (Thomas and Singer 1987).

The two most important factors affecting the suitability of hostplants for Quino checkerspot buttefly oviposition are exposure to solar radiation and phenology (timing of the plant's development). Quino checkerspot butterflies deposit eggs on plants located in full sun, preferably surrounded by bare ground or sparse, low vegetation (Weiss *et al.* 1987, 1988; Osborne and Redak 2000). Primary hostplants must remain edible for approximately 8 weeks for larval feeding (Singer 1972; Singer and Ehrlich 1979).

Secondary hostplants may be important before and after diapause. Secondary hostplants are important when the primary hosts undergo senescence before larvae can enter diapause. Such is the case in many populations of the bay checkerspot, where dwarf plantain is the primary host, but most larvae survive to diapause by migrating to *Castilleja exserta* (owl's clover). Prediapause

larvae feed on owl's clover until diapause, then return to feeding on dwarf plantain when they break diapause in winter (Singer 1972, Ehrlich *et al.* 1975). Some metapopulations of the Quino checkerspot butterfly may be dependent for persistence on secondary hosts.

*Euphydryas editha* butterflies use a much wider range of plants for adult nectar feeding than for larval foliage feeding. The butterflies frequently take nectar from *Lomatium* spp. (lomatium), *Muilla* spp. (goldenstar), *Achillea millefolium* (milfoil or yarrow), *Amsinkia* spp. (fiddleneck), *Lasthenia* spp. (goldfields), *Plagyobothrys* and *Cryptantha* spp. (popcorn flowers), *Gilia* spp, (gilia), *Eriogonum fasiculatum* (California buckwheat), *Allium* spp. (onion), and *Eriodictyon* spp. (yerba santa) (D. Murphy and G. Pratt, pers. comm., 2000). Quino checkerspots butterflies have been observed flying several hundred meters from the nearest larval habitat patch to nectar sources.

Local habitats alone are generally not sufficient to ensure the long-term persistence of the Quino checkerspot butterfly. A local population may be expected to persist on the time scale of years. Persistence for longer terms results from the interaction of sets of local habitat patch populations at larger geographic scales (metapopulation). Although member populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extinction and mutual recolonization, processes that can occur on the order of every 10 to 100 generations (Harrison *et al.* 1988). The ability and propensity of larvae to undergo multiple-year diapause in the field, and survival rates during repeated diapause (currently unknown), will also affect the persistence time of local populations.

The timescale of extirpation and recolonization depends on the geographic scale of the metapopulation. Smaller metapopulations, composed of sets of local habitat patches described above, should be stable over the course of decades, with habitat patches recolonized within a few years of extirpation. The distance between habitat patches determines the colonization rate, and for small metapopulations, this distance is likely to be under 1 km (0.6 mi). The long-term persistence of species with metapopulation dynamics depends on maintenance of habitat patches and rare long-distance dispersal and recolonization events that link larger metapopulations together.

The Quino checkerspot butterfly is threatened primarily by urban and agriculture development, non-native plant species invasion, off-road vehicle use, grazing, and fire management practices (62 FR 2313). Quino checkerspot butterfly population decline likely has been, and will continue to be, caused in part by enhanced nitrogen deposition (Allen *et al.* 1998), elevated atmospheric carbon dioxide concentrations (Coviella *et al.* 1999), and climate change (Parmesan 1996; Field *et al.* 1999). Nonetheless, urban development poses the greatest threat and exacerbates the other threats. Activities resulting in habitat fragmentation, or host or nectar plant removal, reduces habitat quality and increases the probability of Quino checkerspot butterfly extinction.

Stamp (1984) and White (1986) examined the effects of parasitism and predation on the genus *Euphydryas*, although it is not clear whether these mortality factors pose a significant threat to the species. Predation by Argentine ants (*Iridomyrmex humilis*) has been observed in colonies of the butterfly in the laboratory (G. Pratt, pers. comm., 2001), and predation by imported Brazilian fire ants (*Solenopsis invicta*) is likely if it were to co-occur with Quino checkerspot butterflies (Porter and Savignano 1990). Brazilian fire ants were discovered in 1998 in the vicinity of historic Orange County butterfly habitat, and have subsequently been found in San Diego, Riverside and Los Angeles Counties (California Department of Food and Agriculture 2000).

Other threats to the species identified in the final listing rule (62 FR 2313) includes illegal trash dumping, which is a problem for some populations (G. Pratt pers. comm., 2000), and over-collection by butterfly collectors, although the magnitude of this activity is unknown.

**Previous Federal Action**

On September 30, 1988, we received a petition dated September 26, 1988, from Dr. Dennis Murphy of the Stanford University Center for Conservation Biology, to list the Quino checkerspot butterfly as endangered under the Act. At the time the petition was submitted, this taxon had not been seen for several years. The status of the Quino checkerspot butterfly had been under review since 1984 (49 FR 21664) and was classified as a Category 1 candidate species on November 21, 1991 (56 FR 58804), meaning that information on file was sufficient to support a proposal to list this subspecies as endangered or threatened.

On August 4, 1994, a proposed rule and petition finding was published in the **Federal Register** (59 FR 39868) to list the Quino checkerspot butterfly as endangered. The notice included the 90-day petition finding that the petition presented substantial information that listing the Quino checkerspot butterfly may be warranted, the 12-month petition finding that listing the Quino checkerspot butterfly was warranted, and the proposed listing rule for the subspecies. On September 26, 1994, we published a notice announcing a public hearing on several proposed species listings, including the Quino checkerspot butterfly, and to extend the comment period (59 FR 49045). We published a final rule listing the Quino checkerspot butterfly as endangered on January 16, 1997 (62 FR 2313). This rule contained a not prudent finding for critical habitat.

On June 30, 1999, the Center for Biological Diversity filed a 60-day notice of intent to sue us in District Court challenging the ''not prudent'' finding for critical habitat as published in the final listing rule for the Quino checkerspot butterfly. The plaintiff contended that we did not properly consider the benefits in designating critical habitat or adequately document known perceived threats that would result from a critical habitat designation. On February 16, 2000, we agreed to a stipulated settlement agreement that required us to re-evaluate the existing ''not prudent'' finding. If we found that critical habitat is prudent, then a proposal to designate critical habitat was to be submitted for publication in the **Federal Register** by February 1, 2001, and a final designation by October 1, 2001. If we found that critical habitat is not prudent, then a final determination was to be submitted for publication in the **Federal Register** by June 1, 2001. Publication of this proposed rule is consistent with the settlement agreement.

**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 threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through 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 would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of 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)).

Section 4 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.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. 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 the Service represent the best scientific and commercial data available. It requires Service 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, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, 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.

*Prudency Redetermination*

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. At the time of the final listing determination (62 FR 2313), we found that designation of critical habitat was not prudent for the Quino checkerspot butterfly. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In our final listing rule, we believed that publication of precise maps and descriptions of critical habitat for the Quino checkerspot butterfly could result in increased collection of specimens by collectors and hobbyists. Additionally, the commercial trade in rare butterflies could increase demand for this taxa following listing as endangered under the Act. Consequently, critical habitat maps could lead unscrupulous collectors to endangered populations. We further believed that the publication of maps showing critical habitat units would result in additional habitat destruction through trampling, discing, grading, and intentional acts of habitat vandalism.

We also described the threat posed by vandalism towards the Quino

checkerspot butterfly and its habitat in the final listing rule. We cited several cases under investigation by our Law Enforcement Division prior to listing, and documented other instances of unauthorized Quino checkerspot butterfly habitat destruction since. We determined that the designation of critical habitat would increase the instances of habitat destruction and exacerbate threats to the Quino checkerspot butterfly.

We acknowledged that critical habitat designation, in some situations, may provide some benefit to the species, for example, by identifying areas important for conservation and calling attention to those areas in need of special protection. But, we concluded that the vandalism threat posed by designating critical habitat would outweigh the benefit provided by such a designation.

However, following publication of the final listing rule, we made available three successive survey guidelines and protocols for determining presence of Quino checkerspot butterflies, providing guidance that minimizes take of the subspecies. Within each protocol, we described requisite Quino checkerspot butterfly habitat and known locations throughout the historic range of the butterfly. In the latter two protocols, we published maps indicating the location of potential suitable Quino checkerspot butterfly habitat, and the general locations of recent butterfly observations. These maps were subsequently published in local newspapers. Additionally, in the spirit of partnership with local jurisdictions, planning for conservation and management of the Quino checkerspot butterfly, and in compliance with several Freedom of Information Act requests, we distributed maps and electronic files of historic and recent Quino checkerspot butterfly locations. Furthermore, in the recently published Draft Quino Checkerspot Butterfly Recovery Plan (Service 2001), we included maps showing locations of both historic and recent butterfly observations. The release of these data resulted in the widespread distribution of Quino checkerspot butterfly occurrence locations to the public.

Since the release of these data, we have not documented an increase in the threats to the subspecies through vandalism, collection, habitat destruction, or other means. In contrast, we have witnessed an increase in public interest in the subspecies and its conservation through survey efforts by species experts, scientific research, regional and local planning, and educational outreach. Based on the lack of an increase in vandalism threats, we have reconsidered our evaluation of our original prudency determination. We have determined that the threats to the Quino checkerspot butterfly and its habitat from the specific instances of habitat destruction we identified in the final listing rule do not outweigh the broader educational, regulatory, and other possible benefits that a designation of critical habitat would provide for this subspecies. The instances of likely vandalism, though real, were relatively isolated. Consequently, we conclude that designating critical habitat will not increase incidences of habitat vandalism above current levels for this subspecies.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and, (4) preventing people from causing inadvertent harm to the species.

Therefore, we conclude that the benefits of designating critical habitat on lands essential for the conservation of the Quino checkerspot butterfly outweigh the risks of increased vandalism resulting from such designation. We proposed that critical habitat is prudent for the Quino checkerspot butterfly.

*Methods*

In determining areas that are essential to conserve the Quino checkerspot butterfly, we used the best scientific and commercial data available. We reviewed available information that pertains to the habitat requirements of this subspecies, including data from research and survey observations published in peer-reviewed articles; information from private and institutional collections; regional GIS coverages; data collected from biological reports submitted by holders of section 10(a)(1)(A) recovery permits; and recommendations from the Quino checkerspot butterfly recovery team during the development of the draft recovery plan for the butterfly.

*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 (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations and protection. These 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 (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for the Quino checkerspot butterfly contain one or more of these physical or biological features.

The areas designated as critical habitat are designed to provide sufficient habitat to maintain self-sustaining populations of Quino checkerspot butterflies throughout its range, and provide those habitat components essential for the conservation of the subspecies. Habitat components that are essential for the Quino checkerspot butterfly include the biological needs of larval diapause, feeding, and pupation, and adult oviposition, nectaring, roosting and basking, dispersal, genetic exchange, and shelter. The critical habitat units are configured to provide for dispersal and migration corridors, as well as allowing room for population expansion, which is essential for the conservation of the species.

Primary constituent elements occur in undeveloped areas that support various types of open woody canopy plant communities. They include, but are not limited to, plant communities in their natural state, or those that have been recently disturbed (e.g., by fire or grubbing) that provide populations of host plant and nectar sources for the Quino checkerspot butterfly. Habitat patch suitability is determined primarily by larval host plant density, topographic diversity, nectar resource availability, and climatic conditions (Singer 1972; Murphy 1982; Weiss *et al.* 1988; Murphy *et al.* 1990; and Osborne and Redak 2000).

The primary and secondary host plants that have been documented for the butterfly include *Plantago erecta* (dwarf plantain), *Plantago patagonica* (wooly plantain), *Castilleja exserta* (owl's clover), and *Cordylanthus rigidus* (bird's beak), with dwarf plantain being the most common. Dwarf plantain is an annual herb found in coastal sage scrub,

open chaparral, grassland and similar plant communities. It is often associated with cryptogamic crusts, and fine-textured clay soils derived from gabbro and basalt.

Some local populations or metapopulations of the Quino checkerspot butterfly may be dependent on secondary hosts for persistence. Typically, prediapause secondary hosts are important when the primary hosts undergo senescence (growth phase in plant from maturity to death) before larvae can respond by entering diapause (Singer 1972; Ehrlich *et al.* 1975).

Adult Quino checkerspot butterflies use a variety of plants for adult nectar feeding. *Euphydryas editha* prefers flowers with a platform-like surface on which they can remain upright while feeding (D. Murphy, G. Pratt, and M. Singer, pers. comm., 2000). The butterflies frequently take nectar from *Lomatium* spp., *Muilla* spp., *Achillea millefolium* (yarrow), *Amsinckia* spp. (fiddleneck), *Lasthenia* spp. (goldfields), *Plagiobothrys* spp. (popcornflower), *Cryptantha* spp., *Gilia* spp., *Eriogonum fasiculatum* (California buckwheat), *Allium* spp. (onion), and *Eriodictyon* spp. (yerba santa) (D. Murphy and G. Pratt, pers. comm., 2000).

**Criteria Used To Identify Critical Habitat Units**

The draft recovery plan (Service 2001) for the Quino checkerspot butterfly identified the specific recovery needs of the subspecies, and serves as a starting point for identifying areas essential to its conservation. The draft recovery strategy focuses on lands described as essential for the long-term conservation of the Quino checkerspot butterfly because they: (1) Contain occupied habitat complexes (source populations) that must be stabilized to recover the subspecies; (2) contain habitats that were part of a historical population distribution adjacent to occupied areas and are most likely to contain the suitable habitat needed for (expansion and) stability of small, low-density habitat complexes; and (3) provide the landscape connectivity between habitat complexes that may belong to a single metapopulation, or at least are required to maintain natural long-term stability and genetic exchange among smaller populations or metapopulations. To recover the Quino checkerspot butterfly to the point where it can be downlisted, it is essential to preserve the subspecies' genetic diversity as well as the habitat in which it persists.

Areas supporting core populations or that have the potential to support larger populations are essential because they represent the foundation for continued persistence of the species. Furthermore, some habitat areas that would not be considered essential if geographically isolated are, in fact, essential when situated in locations where they facilitate continued connectivity between surrounding populations or play a significant role in maintaining metapopulation viability (e.g., by providing additional areas of occupancy that provide resilience to periodic extirpations of adjacent habitat patches). Populations on the periphery of the species range, or in atypical environments, are important for maintaining the genetic diversity of the species which could be essential to evolutionary adaptation to changing climatic and environmental conditions.

To identify and map areas essential to the conservation of the subspecies, we used the characteristics of essential habitat described above, data on known Quino checkerspot butterfly locations, criteria in the draft recovery plan for reclassification of the subspecies, aerial photography at a scale of 1:24,000 (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map), current aerial photography prints, boundaries of approved habitat conservation plans (HCPs), and projects authorized for take through section 7 consultations. For the purpose of this proposed determination, critical habitat units have been described using Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD 27) coordinates derived from a 100-m grid that approximated the boundaries delineated from the digital aerial photography with the exception of Unit 3 (Otay Unit). The Otay unit was described using a combination of UTM coordinates and by referencing boundaries for the Multiple Habitat Preservation Area, the Major Amendment Area, and the City of Chula Vista Preserve Design of the San Diego County Multiple Species Conservation Program, State and Federal lands, and State Route 94.

To identify critical habitat units, we first examined those lands under Federal jurisdiction. Those lands include areas managed by the Bureau of Land Management (BLM), U.S. Forest Service (Forest Service), Department of Defense (DOD) lands, and the Service. We also considered the existing status of non-Federal and private lands in designating areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) for Quino checkerspot butterfly under section 10(a)(1)(B) of the Act are not designated as critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

We are also including a portion of the Cahuilla Band of Mission Indian Reservation because it contains areas of high-quality habitat within a unit that is essential to the conservation of the Quino checkerspot butterfly. We initiated coordination with this Tribe on this designation under the guidance of the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, which requires us to coordinate with federally recognized Tribes on a Government-to-Government basis.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for Quino checkerspot butterfly conservation. Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. However, this minimum mapping unit does not exclude all developed areas, such as buildings, aqueducts, railroads, airports, and other lands unlikely to contain the primary constituent elements. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

*Critical Habitat Proposal*

The approximate area encompassing the proposed designation of critical habitat by county and land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP (AREA ESTIMATES REFLECT CRITICAL HABITAT UNIT BOUNDARIES, NOT THE PRIMARY CONSTITUENT ELEMENTS WITHIN.[1])

| County | Federal[2] | Tribal | Local/State | Private | Total |
|---|---|---|---|---|---|
| Riverside | 9,292 ha (22,960 ac) | 4,407 ha (10,890 ac) | 2,877 ha (7,110 ac) | 62,111 ha (153,480 ac) | 78,687 ha (194,440 ac) |
| San Diego | 15,188 ha (37,530 ac) | 0 ha (0 ac) | 3,784 ha (9,350 ac) | 24,155 ha (59,690 ac) | 43,127 ha (106,570 ac) |
| Total | 24,480 ha (60,490 ac) | 4,407 ha (10,890 ac) | 6,661 ha (16,460 ac) | 86,266 ha (213,170 ac) | 121,814 ha (301,010 ac) |

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, approximate hectares have been rounded to the nearest 5, and acres to the nearest 10, if greater than or equal to 100 (≥ 100); both hectares and acres are rounded to the nearest 5 if less than 100 ( < 100).

[2] Federal lands include BLM, Department of Defense, National Forest, and Service lands.

Critical habitat includes Quino checkerspot butterfly habitat throughout the subspecies' current range in the United States (i.e., Riverside and San Diego Counties, California). Lands proposed are under private, local, State, Federal, and Tribal ownership, with Federal lands including lands owned or managed by BLM, Forest Service, DOD, and Service lands. Lands proposed as critical habitat have been divided into four critical habitat units.

We are proposing to designate critical habitat on lands that are considered essential to the conservation of the Quino checkerspot butterfly. Using the draft recovery plan for guidance (Service 2001), we determined an area was essential if it had one or more of the following characteristics: (1) Lands considered to be occupied within recovery unit boundaries and within a 4.8 km (3 mile) dispersal distance of confirmed recent (since 1985) Quino checkerspot butterfly locations that are part of identified habitat complexes; (2) lands not known to be occupied but provide landscape connectivity between adjacent occupied habitat complexes; and (3) lands not known to be occupied that contain confirmed historic Quino checkerspot locations and are part of identified habitat complexes, and are contiguous with occupied lands. The areas designated as critical habitat are designed to provide sufficient habitat to maintain self-sustaining populations of Quino checkerspot butterflies throughout its range, and provide those habitat components essential for the conservation of the subspecies. The critical habitat units are configured to provide for dispersal and migration corridors, as well as allowing room for population expansion, which, as stated in the draft recovery plan (Service 2001), is essential for the conservation of the species.

A brief description of each unit, and reasons for proposing to designate it as critical habitat are presented below.

Unit 1: Lake Mathews Unit

Unit 1 encompasses approximately 12,982 ha (32,080 ac) within the northwestern portion of Riverside County. Approximately 550 ha (1,360 ac) of this unit occurs on BLM land, and the rest 12,432 ha (30,720 ac) occurs on State/local lands or private lands.

Lands considered to be occupied encompass 4,905 ha (12,120 ac) in the Gavilan Hills southeast of Lake Mathews, and 8,077 ha (19,960 ac) adjacent to and south of the lake that are not known to be occupied but determined to be essential in the draft recovery plan. The unit supports one habitat complex identified by the draft Quino Checkerspot Butterfly Recovery Plan. The Gavilan Hills habitat complex occurs within the Northwest Riverside Recovery Unit described in the draft recovery plan. Quino checkerspot butterflies were observed in Harford Springs County Park in 1998, a site that was once part of a more extensive, well documented distribution. Quino checkerspot butterflies were last observed at the southern margin of Lake Mathews in 1986. The Quino checkerspot butterfly was historically abundant in this area, with consistently high densities reported by collectors from the 1950s to the mid 1980s (Orsak 1978; K. Osborne and G. Pratt, pers. comm. 2000). This unit, therefore, includes the vicinity of Harford Springs County Park.

The unit also includes habitat areas south of Lake Mathews not currently known to be occupied that are part of the Gavilan Hills habitat complex, but is considered essential to the species because it is a documented historical population location, and contains large, dense, contiguous stands of dwarf plantain and is needed for the recovery of the species (K. Osborne pers. comm. 2000). This area should have the population restored, if in fact, it does not exist there, in order to support a larger and stable population distribution within the habitat complex.

The Lake Mathews/Gavilan Hills area is characterized by diverse topography and high-quality habitat patches with extensive stands of dense dwarf plantain spp. in open spaces within juniper woodland, coastal sage scrub, and grassland. Landscape connectivity is broken primarily by Cajalco Road. Landscape connectivity still exists between Harford Springs County Park and Lake Mathews, and apparently suitable habitat containing dense stands of dwarf plantain exists south of Lake Mathews in the vicinity of Black Rocks, west of Monument Peak (K. Osborne pers. comm., 2000). Stands of dwarf plantain also occur in the vicinities of Estelle Mountain, Railroad Canyon Reservoir, and the town of Sun City (G. Pratt, pers. comm., 2000).

Unit 2: Southwest Riverside Unit

Unit 2 encompasses approximately 70,237 ha (173,560 ac) within southwestern Riverside County and Northwestern San Diego County. Lands considered to be occupied encompass 65,907 ha (162,860 ac) stretching east from the cities of Temecula and Murrieta to almost the desert's edge, north to near the town of Hemet, and south into Oak Grove Valley in San Diego County. Lands not known to be occupied but determined to be essential in the draft recovery plan encompass 4,330 ha (10,700 ac) south of Brown Canyon and northeast of Oak Grove Valley. The unit supports seven habitat complexes identified as essential in the draft recovery plan. The Warm Springs Creek and Skinner/Johnson habitat complexes occur within the Southwest Riverside Recovery Unit described by the draft recovery plan. Recent Quino checkerspot observations are distributed in the vicinity of Warm Springs Creek

north of Murrieta Hot Springs Road to at least Scott Road, although much of the habitat at the southern end of the Hogbacks, where butterflies were recently observed, was disturbed in 1998. Recent observations are also distributed throughout the Southwest Riverside County Multiple Species Reserve, and are concentrated around Lake Skinner, and south of Benton and Borel Roads (Johnson Ranch). Landscape connectivity between the Warm Springs Creek and Skinner/Johnson habitat complexes has been severed by State Route 79 and associated development. Landscape connectivity between Warm Springs Creek and Skinner/Johnson habitat complexes is constrained by State Route 79 and associated development.

The Oak Mountain/Vail Lake, Sage Road/Billy Goat Mountain, and Brown Canyon habitat complexes occur within the South Riverside Recovery Unit described by the draft recovery plan. Recent Quino checkerspot butterfly observations are concentrated in the vicinities of Oak Mountain, Vail Lake, Pauba Valley, and in the vicinity of Sage Road from Magee Hills and the town of Sage south and east to Wilson Valley and Billy Goat Mountain. One possibly isolated population occurs just southeast of Hemet in Brown Canyon. Landscape connectivity in the habitat complex areas is generally good, and habitat is largely unfragmented. Landscape connectivity most likely exists between the Oak Mountain/Vail Lake and Sage Road/Billy Goat Mountain habitat complexes. Lands not known to be occupied between the Brown Canyon and Sage Road/Billygoat Mountain habitat complexes are considered essential because they provide landscape connectivity between them that allows for a sufficient rate of genetic exchange and recolonization events, and therefore, the long-term stability of both.

The Silverado and Dameron Valley/Oak Grove habitat complexes occur within the South Riverside/North San Diego Recovery unit described by the draft recovery plan. Recent Quino checkerspot butterfly observations are distributed across BLM lands and the Silverado Ranch Mitigation Bank south of the Cahuilla Indian Reservation. Increased survey efforts in 2000 expanded the Silverado habitat complex distribution, though much of the area remains to be surveyed. Two recent butterfly observation sites are found distant from the Silverado mitigation bank, one in northern Dameron Valley south of State Route 79, and one just south of that in Oak Grove Valley. Lands not known to be occupied between the Silverado and Dameron Valley/Oak Grove habitat complexes are considered essential because they provide landscape connectivity between them that allows for a sufficient rate of genetic exchange and recolonization events, and therefore, the long-term stability of both.

Habitat patches appear to be well connected in the Silverado Ranch area, and are largely unfragmented. The known distribution of this metapopulation is relatively well protected since the habitat areas are primarily owned by the BLM and Silverado Ranch Mitigation Bank (Pratt 2000). A management plan is being developed for this mitigation bank, but it is not complete. Oak Grove Valley is highly invaded by non-native grasses at lower elevations, but much habitat appears to remain on the hills. Habitat in areas surrounding Oak Grove Valley remain relatively undeveloped, including Chihuahua Valley to the east.

This unit includes 4,407 ha (10,890 ac) of Tribal lands of the Cahuilla Band of Mission Indians, just north of the Silverado Ranch mitigation bank, and approximately 19,433 ha (48,020 ac) of Forest Service and BLM lands.

Unit 3: Otay Unit

Unit 3 encompasses approximately 29,328 ha (72,470 ac) within the southern portion of San Diego County. Approximately 10,582 ha (26,150 ac) occur on Federal land, including 182 ha (450 ac) on lands owned by the DOD, which consists of the Naval Space Surveillance Station.

Lands considered to be occupied encompass 26,973 ha (66,660 ac) stretching south from the San Diego National Wildlife Refuge (SDNWR) complex and State Route 94 to the international border with Mexico, west along Otay River Valley and the northern rim of Otay Mesa, and east to the town of Tecate. Lands not known to be occupied but determined to be essential in the draft recovery plan encompass 2,351 ha (5,810 ac) south of Sweetwater Reservoir, and adjacent to State Route 94 east of San Miguel Mountain, Proctor Valley, and Otay Lake. It supports six habitat complexes identified as essential by the draft recovery plan. The SDNWR, Otay Lake, Otay Mesa, and Otay Mountain Foothills habitat complexes occur west of Otay Mountain within the Southwest San Diego Recovery Unit described by the draft recovery plan. Recent Quino checkerspot butterfly observations in the area are concentrated north and southeast of Otay Lake, with a smaller cluster concentrated along the southwestern slope of Otay Mountain.

Other recent butterfly observations are located on the SDNWR, northeast of Sweetwater Reservoir, and along the mesa rim above the Otay River and at the Salt Creek confluence. The Otay Lakes area historically supported a large population that extended south to Otay Mesa and across the international border (Murphy and White 1984). The historic population distribution extended across the entire mesa, and there are current Quino checkerspot butterfly habitat restoration activities being undertaken adjacent to a recent butterfly observation on the mesa rim just west of Johnson Canyon (Service 1999). The draft recovery plan calls for this habitat restoration and re-establishment of this population of Quino checkerspot butterfly (Service 2001). Restoration of vernal pool habitat that includes essential elements of Quino checkerspot butterfly habitat is also ongoing at the site of a collection record on the mesa top adjacent to Dennery and Spring canyons (Service 1997). The Otay Mesa habitat complex distribution includes Otay Valley from the Salt Creek confluence to Dennary Canyon, and the adjacent undeveloped mesa tops, canyons and ridges south of Otay Valley (in the vicinity of Brown Field). Lands not known to be occupied between the SDNWR and Otay Lakes are considered essential because they provide landscape connectivity between them that allows for a low rate of genetic exchange and recolonization events, and therefore, the long-term stability of both.

Landscape connectivity along the western margin of Otay Lake is constrained by the Olympic Training Center and other development, although some habitat remains along the Salt Creek drainage. Landscape connectivity on the eastern margin of Otay Lake is constrained by stands of woodland vegetation dominated by non-native species. Historic records indicate that habitat (now in the SDNWR) near Sweetwater River was, and still is, connected to Proctor Valley, San Miguel Mountain, and thus to currently occupied habitat around Otay Lake. Landscape connectivity on the mesas northeast of Brown Field and southwest of lower Otay Lake is reduced, although no significant dispersal barriers exist.

The Marron Valley and Tecate habitat complexes occur east of Otay Mountain within the Southwest San Diego recovery unit described by the draft recovery plan. Recent Quino checkerspot butterfly observations are concentrated on the eastern slope of Otay Mountain and ridgelines along the international border in the vicinity of Marron Valley. Occupancy likely

extends south across the international border, and it is possible that the majority of the habitat complex is in Baja California, Mexico. Another recent record is located east of Marron Valley near the town of Tecate. Lands not known to be occupied between the Otay Lakes and Marron Valley habitat complexes are considered essential because they provide landscape connectivity between them that allows for a low rate of genetic exchange and recolonization events, and therefore, the long-term stability of both. Habitat patches within this complex remain relatively well connected. In addition, some degree of landscape connectivity may exist north and south of Otay Mountain between the Otay Mesa and Marron Valley habitat complexes. Most occupied habitat in this area occurs on publicly owned land.

Unit 4: Jacumba Unit

Unit 4 encompasses approximately 9,267 ha (22,900 ac) in southeastern San Diego County. Approximately 2,966 ha (7,330 ac) occurs on BLM land.

Lands considered to be occupied encompass 5,610 ha (13,860 ac) north and south of Interstate 8 in the vicinity of the town of Jacumba. Lands not known to be occupied but determined to be essential in the draft recovery plan encompass 3,658 ha (9,040 ac) north and south of Interstate 8 in the vicinity of Table Mountain.

The unit supports one habitat complex identified as essential by the draft recovery plan. The Jacumba habitat complex occurs within the Southeast San Diego Recovery Unit described by the draft recovery plan. Recent Quino checkerspot butterfly observations are concentrated northwest of the community of Jacumba on State Park and private lands. Occupancy likely extends south across the international border, and it is possible that the majority of the habitat complex is in Baja California, Mexico. Occupancy has been documented approximately 6 km (4 mi) to the south in El Condor (Baja California, Mexico), and the U.S. habitat complex may belong to the same population distribution. A historic butterfly record occurs north of Interstate 8 in the Table Mountain area. The Table Mountain site and apparently suitable surrounding habitat areas (G. Pratt, pers. comm., 2000) are within the BLM Jacumba National Cooperative Land and Wildlife Management Area. Current habitat and landscape connectivity in the Jacumba area are relatively intact. No habitat fragmentation or severing of landscape connectivity has occurred or is likely to occur in the Table Mountain area. Landscape connectivity between Table Mountain and Jacumba Peak is constrained by Interstate 8.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) 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, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. The conservation recommendations in a conference report are advisory.

Activities on Federal lands that may affect the Quino checkerspot butterfly 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 (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.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the

critical habitat is designated, if no substantial 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 Quino checkerspot butterfly 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 Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration or Federal Emergency Management Agency funding), 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 and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the survival and recovery of the Quino checkerspot butterfly. Within critical habitat, this pertains only to those areas containing primary constituent elements. We note that such activities may also jeopardize the continued existence of the subspecies.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the Quino checkerspot butterfly is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by the subspecies may have some effect if we do not consult in these areas now, and we will investigate this possibility through our economic analysis.

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 Corps under section 404 of the Clean Water Act;

(2) Regulation of grazing, mining, and recreation by the BLM, Forest Service or Service;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Construction of roads and fences along the International Border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Construction of communication sites licensed by the Federal Communications Commission; and

(8) Activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

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. Within much of the lands not known to be occupied by the Quino checkerspot butterfly, we already consult on other listed species and designated critical habitat, including the California coastal gnatcatcher (*Polioptila californica californica*) and its critical habitat, Stephen's kangaroo rat (*Dipodomys stephensi*) and Munz' onion (*Allium munzii*) (Riverside County only), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and southwestern arroyo toad (*Bufo californicus*). Thus, we do not anticipate additional regulatory burden will result from critical habitat designation, but we will examine this in our economic analysis.

*Exclusions Under Section 4(b)(2)*

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. For the following reasons, we believe that in most instances the benefits of excluding legally operative HCPs for which the Quino checkerspot is a covered species and take has been authorized, from critical habitat designations will outweigh the benefits of including them.

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally 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. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementation agreements. These HCPs and IAs include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and through the consultation on the HCP. Our experience is also that, 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.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

(2) Benefits of Exclusion

The benefits of excluding HCPs from being designated as critical habitat may be more significant. It includes relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Most regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in which the Quino checkerspot butterfly is a covered species on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

*Relationship To Habitat Conservation Plans*

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of HCPs for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Quino checkerspot butterfly, while directing development and habitat modification to nonessential areas of lower habitat value.

Only HCPs within the boundaries of the proposed critical habitat units are discussed herein. Those approved and legally operative HCPs that provide coverage and incidental take approval for the Quino checkerspot butterfly have been excluded from this proposed designation. These include several habitat conservation planning efforts that have been completed within the proposed critical habitat. These include the Assessment District 161 Subregional HCP and the Rancho Bella Vista HCP in Riverside County that provide coverage and incidental take authorization for the Quino checkerspot butterfly.

The Riverside County Assessment District 161 Subregional HCP, which authorizes the take of the Quino checkerspot butterfly, has been completed and approved. This HCP includes habitat protection, habitat restoration research, educational outreach, and captive propagation. The Rancho Bella Vista HCP also occurs within the Riverside County Assessment District 161, but an independent HCP was approved for this project. Although it is not currently known to occur within the project boundaries, the Quino checkerspot butterfly is known from adjacent occupied habitat patches and is covered by the Rancho Bella Vista HCP. This HCP provides conservation of the Quino checkerspot butterfly through monitoring of this subspecies, habitat and dispersal corridor preservation and management, and habitat restoration and enhancement.

The benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential

economic burdens, reinforcing the regulatory assurances provided for in the implementation agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including these approved HCPs in critical habitat for the Quino checkerspot butterfly include increased educational benefits and minor additional management protections and measures. The benefits of excluding HCPs from being proposed as critical habitat for the Quino checkerspot butterfly include the additional conservation measures for this and other listed species, preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of critical habitat. The benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the subspecies. We have already completed section 7 consultation on the impacts of these HCPs on the subspecies.

We determined that the approved HCPs will not jeopardize the continued existence of the Quino checkerspot butterfly, which means that they will not appreciably reduce likelihood of the survival and recovery of the subspecies. Additionally, excluding these lands from the critical habitat designation will not result in the extinction of the species. Consequently, these lands have not been designated as critical habitat for the subspecies.

The Lake Mathews Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (MSHCP) has been completed and approved by the California Department of Fish and Game (CDFG) and the Service. Although it is not currently known to occur within the reserve boundaries, the Quino checkerspot butterfly is conditionally covered by the Lake Mathews Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan. Since the Quino checkerspot butterfly is only conditionally covered, we are including this HCP in the proposed critical habitat designation.

The San Diego Multiple Species Conservation Program (MSCP) encompasses approximately 236,000 ha (582,000 ac) of southwestern San Diego County, and involves multiple jurisdictions. Approximately 69,600 ha (172,000 ac) are targeted to be conserved within a preserve. We approved the overall MSCP and the City of San Diego's Subarea Plan in July 1997. The City of Poway's plan was approved in 1996; the County of San Diego's in 1998; San Diego Gas and Electric in 1995; and the City of La Mesa in 2000. Other jurisdictions, including the City of Chula Vista, are expected to complete their subarea planning processes in the future. The Quino checkerspot butterfly is not a covered subspecies for any of the subarea plans within the MSCP. However, both the County of San Diego and San Diego Gas and Electric are developing amendments to their permits to gain permit coverage for the Quino checkerspot butterfly. The Quino checkerspot butterfly is also a target subspecies for the North San Diego County Subarea of the MSCP which encompasses unincorporated lands east of the existing Multiple Habitat Conservation Program, and north of the MSCP planning areas. Since the Quino checkerspot butterfly is not yet a covered species, we are including this MSCP in the proposed critical habitat designation.

The Western Riverside Multiple Species Habitat Conservation Plan was initiated by the County of Riverside on October 8, 1998. The planning area encompasses 530,000 ha (1.3 million ac) and is proposed to include conservation measures for over 100 species, including the Quino checkerspot butterfly. Currently, 12 cities within the western portion of Riverside County have endorsed, and will participate, in the planning efforts. A draft Multiple Species Habitat Conservation Plan is proposed to be released for public review in late 2001. Since this HCP is not yet completed, we are including it in the proposed critical habitat designation.

Habitat conservation plans currently under development or being amended are intended to provide for protection and management of habitat areas essential for the conservation of the Quino checkerspot butterfly, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Quino checkerspot butterfly. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of proposed HCPs and proposed projects under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Quino checkerspot butterfly, and appropriate conservation and management actions. Several HCP efforts are currently under way that address listed and nonlisted species in areas within the range of the Quino checkerspot butterfly, and in areas we propose as critical habitat. The take minimization and mitigation measures provided under these HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule and provide for the conservation of the covered species. If an HCP that addresses the Quino checkerspot butterfly is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

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 the proposed designation accordingly. Similarly, if new information indicates any of these areas should not be included in the proposed critical habitat designation because they no longer meet the definition of critical habitat, we may revise the proposal. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Offices (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Avenue, Portland, Oregon

97232 (telephone 503/231–2063; facsimile 503/231–6243).

**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. We will conduct an economic analysis for this proposal prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period on the draft economic analysis and proposed rule at that time.

**Public Comments Solicited**

We intend that any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of the Quino checkerspot butterfly habitat, and what habitat is essential to the conservation of the subspecies and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the Quino checkerspot butterfly, such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, equestrian trails, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). If submitting comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: 1018–AH03'' and your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760/431–9440.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

**Clarity of the Rule**

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

(a) This rule is not expected to have an annual economic effect of $100 million or more or adversely affect an

economic sector, productivity, jobs, the environment, or other units of government. The Quino checkerspot butterfly was listed as an endangered subspecies in 1997. In fiscal years 1997 through 2000, we have conducted, or in the process of conducting, an estimated 11 formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Quino checkerspot butterfly. We have also issued section 10(a)(1)(B) incidental take permits for approximately 12 projects in areas where the subspecies occurs in which the project proponents have prepared either individual HCPs or were signatories to the AD161 HCP in western Riverside County.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the subspecies and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' under the Act (see Table 2).

Accordingly, the designation of occupied critical habitat areas for the Quino checkerspot butterfly are not anticipated to 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 (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species). Designation of critical habitat in areas of unknown occupancy may have some effect if we do not consult in these areas now, and we will investigate this possibility through our economic analysis.

(b) This rule is not expected to 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 Quino checkerspot butterfly since the listing in 1997. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist. Because of the potential for impacts on other Federal agency activities for lands not known to be occupied, we will review this action for any inconsistencies with other Federal agency actions.

(c) This rule is not expected to 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 subspecies, 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 is not expected to raise novel legal or policy issues. This proposed determination follows the requirements for determining critical habitat contained in the Act.

TABLE 2.—IMPACTS OF QUINO CHECKERSPOT BUTTERFLY LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially affected by species listing only [1] | Additional activities potentially affected by critical habitat designation [2] |
|---|---|---|
| Federal Activities Potentially Affected [3]. | Activities the Federal Government carries out such as removing, thinning, or destroying Quino checkerspot butterfly habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation. | None. |
| Private Activities Potentially Affected [4]. | Activities such as removing, thinning, or destroying Quino checkerspot butterfly habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding). | None. |

[1] This column represents the activities potentially affected by listing the Quino checkerspot butterfly as an endangered subspecies (January 16, 1997, 62 FR 2313) 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 subspecies.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

In the economic analysis, we will determine if designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, and in this proposed determination, this rule is expected to result in few, if any, restrictions in addition to those currently in existence. As indicated on Table 1 (see Critical Habitat Designation section), we proposed property owned by Federal, State, Tribal, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agencies;

(3) Regulation of grazing, mining, and recreation by the BLM, Forest Service, or Service;

(4) Road construction and maintenance, right of way designation, and regulation of agricultural activities;

(5) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(6) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(7) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(8) Construction of communication sites licensed by the Federal Communications Commission; and

(9) Activities funded by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Many of the 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. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the subspecies remain in effect, and this proposed determination will add no further restrictions.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we will determine whether designation of critical habitat 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.

*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, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the subspecies, and no further restrictions are anticipated.

(b) This rule, as proposed, 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 Quino checkerspot butterfly. Due to current public knowledge of the subspecies' protection, the prohibition against take of the subspecies both within and outside of the proposed 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. Owners of 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 and recovery of the Quino checkerspot butterfly.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. The designation of critical habitat within the geographic range occupied by the Quino checkerspot butterfly 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 subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the subspecies 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 are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Quino checkerspot butterfly.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule references permits for HCPs which contain information collection activity. The Service has OMB approval for the collection under OMB Control Number 1018–0094 which expires on February 28, 2001. The Service 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.

*National Environmental Policy Act*

We determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed 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), Executive Order 13175, and 512 DM 2, we are coordinating with federally recognized Tribes on a Government-to-Government basis. We determined that 4,405 ha (10,890 ac) within the Cahuilla Band of Mission Indians Reservation in western Riverside County are essential for the conservation of the Quino checkerspot butterfly because they are directly adjacent to Quino checkerspot butterfly populations within the Silverado habitat complex, and provide essential dispersal and metapopulation habitat between core populations. Therefore, we are considering designating critical habitat for the Quino checkerspot butterfly on Tribal lands. 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 according to section(4)(b)(2) of the Act. However, we cannot exclude such areas from critical habitat when such exclusions will result in the extinction of the subspecies.

**Relationship to Mexico**

We are not aware of any existing regulatory mechanism in Mexico that would protect the Quino checkerspot butterfly or its habitat. Although Mexico has laws that could provide protection for rare species, they are not easily enforced. At this time, Mexico enforces no specific protections for this subspecies, or its habitat. If specific protections were available and enforceable in Mexico, the portion of the range in Mexico alone, in isolation, would not be adequate to ensure the long-term conservation of this subspecies. Furthermore, according to CFR 402.12(h) ''Critical habitat shall not be designated with foreign countries or in other areas outside of the United States jurisdiction.''

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

**Authors**

The primary authors of this proposed rule are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Butterfly, Quino checkerspot''' under ''INSECTS'' 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 rates |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * * * | * | * | * | | * | |
| INSECTS | | | | | | | |
| * | * * * | * | * | * | | * | |
| Butterfly, Quino checkerspot ..... | *Euphydryas editha quino* ..... | U.S.A. (CA), Mexico.. | .....do..... | E | 604 | 17.95(i) | NA |
| * | * * * | * | * | * | | * | |

3. Amend § 17.95(i) by adding critical habitat for the Quino checkerspot butterfly (*Euphydras editha quino*) in the same alphabetical order as this subspecies occurs in § 17.11(h).

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(i) *Insects.* * * *

Quino Checkerspot Butterfly (*Euphydras editha quino*)

1. Critical habitat units are depicted for Riverside and San Diego Counties, California, on the maps below.

2. The primary constituent elements for the Quino checkerspot butterfly are those habitat components that are essential for the primary biological needs of larval diapause, feeding, and pupation, and adult oviposition (egg-laying), nectaring, roosting and basking, dispersal, genetic exchange, and shelter. Primary constituent elements occur in undeveloped areas that support various types of open woody canopy plant communities. They include, but are not limited to, plant communities in their natural state, or those that have been recently disturbed (e.g., by fire or grubbing) that provide populations of host plant and nectar sources for the Quino checkerspot butterfly. Habitat patch suitability is determined primarily by larval host plant density, topographic diversity, nectar resource availability, and climatic conditions (Osborne and Redak 2000; Singer 1972; Murphy 1982; Weiss et al. 1988; Murphy *et al.* 1990). The primary and secondary host plants that have been documented for the butterfly include *Plantago erecta* (dwarf plantain), *Plantago patagonica* (wooly plantain), *Castilleja exserta* (owl's clover), and *Cordylanthus rigidus* (bird's beak), with dwarf plantain being the most common. Dwarf plantain is an annual herb found in coastal sage scrub, open chaparral, grassland and similar plant communities. It is often associated with cryptogamic crusts, and fine-textured clay soils derived from gabbro and basalt. Some local populations or metapopulations of the Quino checkerspot butterfly may be dependent on secondary hosts for persistence. Typically, prediapause secondary hosts are important when the primary hosts undergo senescence before larvae can respond by entering diapause (Singer 1972, Ehrlich *et al.* 1975). Adult Quino checkerspot butterflies use a variety of plants for adult nectar feeding. *Euphydryas editha* prefers flowers with a platform-like surface on which they can remain upright while feeding (D. Murphy, G. Pratt, and M. Singer, pers. comm., 2000). The butterflies frequently

take nectar from *Lomatium* spp., *Muilla* spp., *Achillea millefolium* (yarrow), *Amsinckia* spp. (fiddleneck), *Lasthenia* spp. (goldfields), *Plagiobothrys* spp. (popcornflower), *Cryptantha* spp., *Gilia* spp., *Eriogonum fasiculatum* (California buckwheat), *Allium* spp. (onion), and *Eriodictyon* spp. (yerba santa) (D. Murphy and G. Pratt, pers. comm., 2000).

3. Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for which the Quino checkerspot butterfly is a covered species and has take authorization, issued under section 10(a)(1)(B) of the Act on or before [date of **Federal Register** publication of final rule].

4. Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, paved or improved roads, aqueducts, railroads, airports, other paved areas, lawns, large areas of closed canopy chaparral, agricultural fields, and other urban landscaped areas are not constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the subspecies and/or primary constituent elements in adjacent critical habitat.

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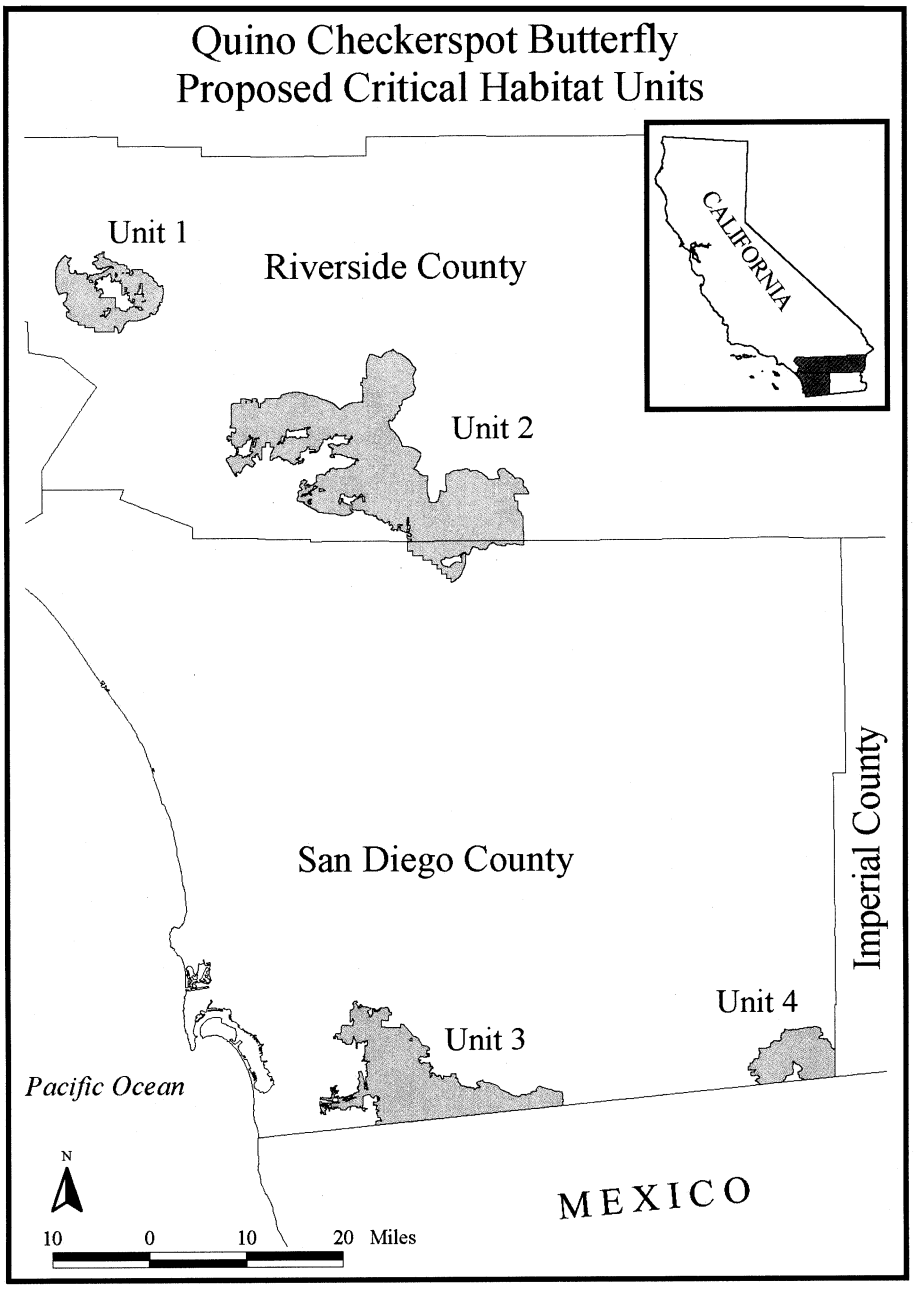
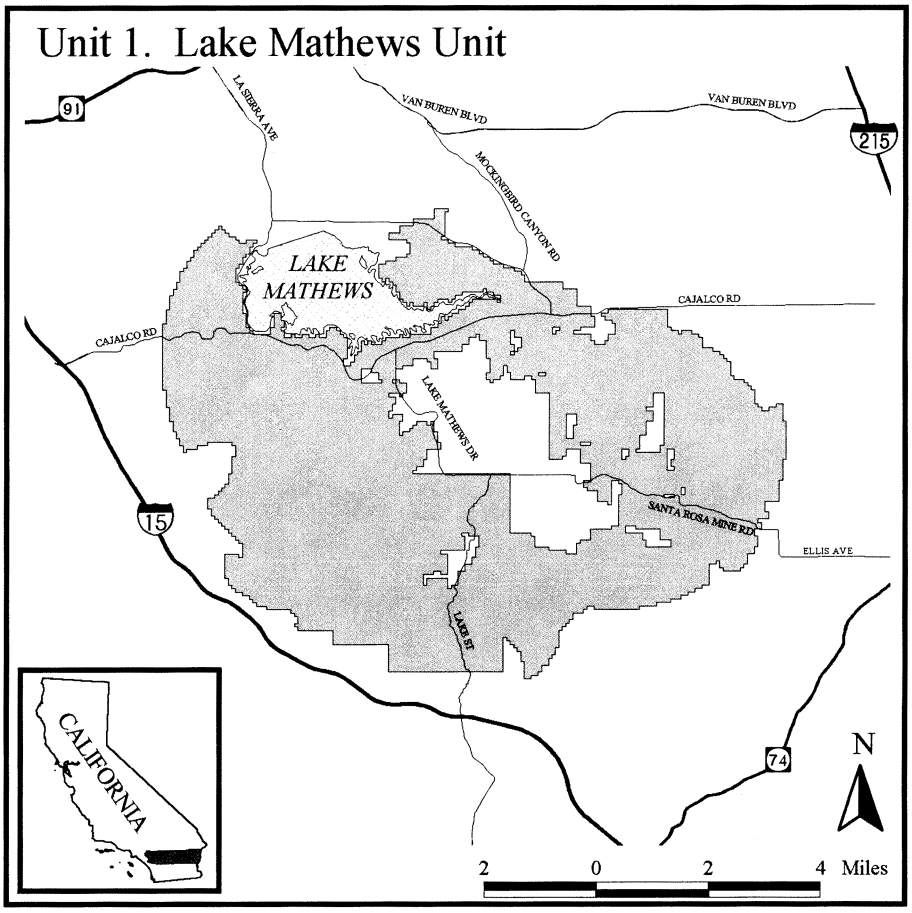

Quino Checkerspot Butterfly
Proposed Critical Habitat Units
CALIFORNIA
Unit 1
Riverside County
Unit 2
San Diego County
Imperial County
Unit 4
Unit 3
Pacific Ocean
N
MEXICO
10 0 10 20 Miles




BILLING CODE 4310–55–C

*Map Unit 1:* Lake Mathews, Riverside County, California. From USGS 1:24,000 quadrangle maps Alberhill, Lake Elsinore, Lake Mathews, and Steele Peak, lands bounded by the following Universal Transverse Mercator (UTM) zone 11, North American Datum of 1927 (NAD27) coordinates (E, N): 462800, 3746700; 463200, 3746700; 463200, 3746600; 463100, 3746600; 463100, 3745900; 463000, 3745900; 463000, 3745800; 463200, 3745800; 463200, 3745700; 463400, 3745700; 463400, 3745600; 463900, 3745600; 463900, 3745500; 464100, 3745500; 464100, 3745400; 464200, 3745400; 464200, 3745300; 464400, 3745300; 464400, 3745200; 464500, 3745200; 464500, 3745100; 464800, 3745100; 464800, 3745000; 465100, 3745000; 465100, 3744900; 465300, 3744900; 465300, 3744800; 465400, 3744800; 465400, 3744600; 466500, 3744600; 466500, 3744400; 466900, 3744400; 466900, 3743900; 467300, 3743900; 467300, 3743600; 467400, 3743600; 467400, 3743300; 467000, 3743300; 467000, 3743200; 466800, 3743200; 466800, 3743100; 467300, 3743100; 467300, 3742900; 467400, 3742900; 467400, 3742800; 467700, 3742800; 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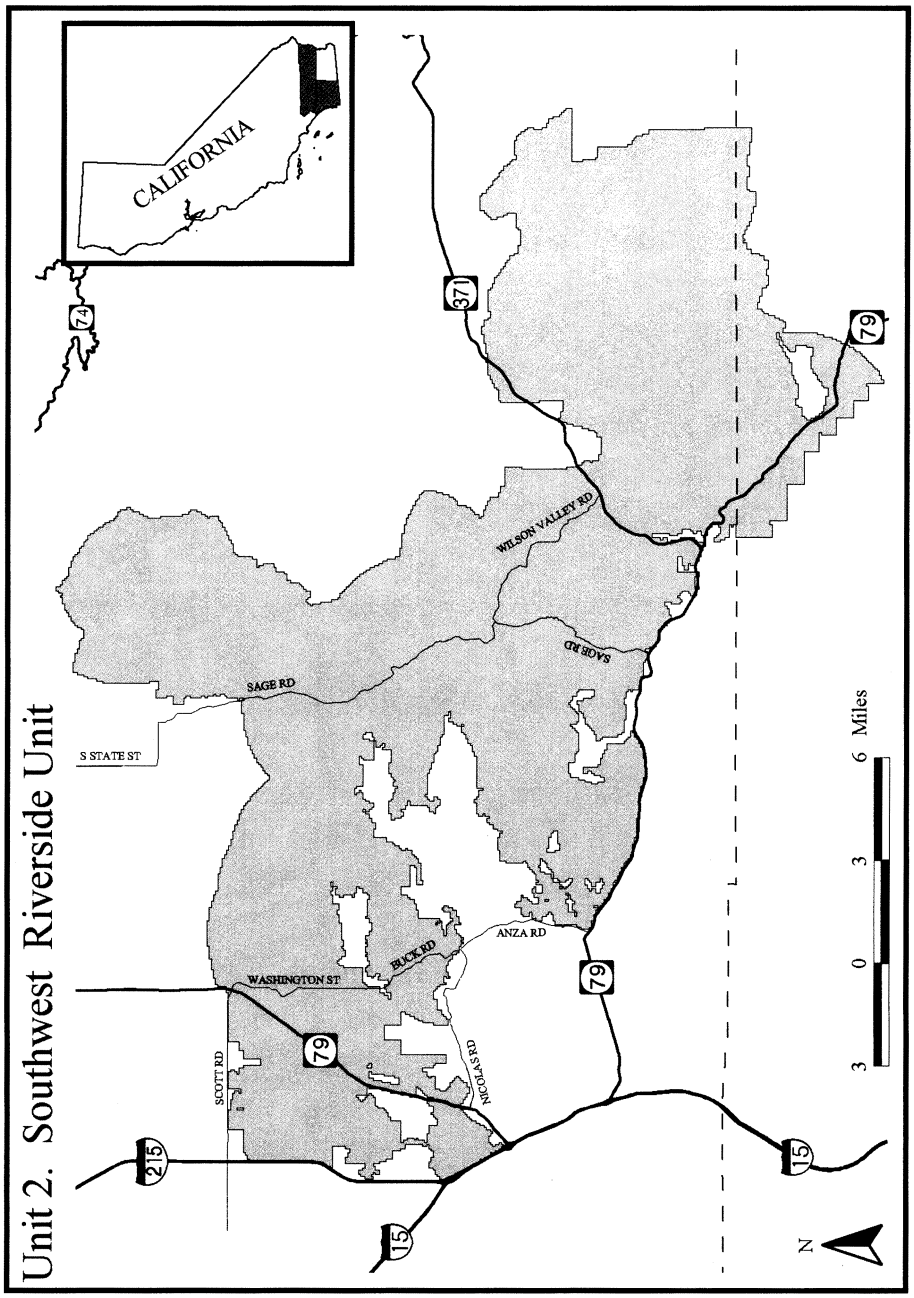

*Map Unit 2:* Southwest Riverside, Riverside County, California. From USGS 1:24,000 quadrangle maps Romoland, Winchester, Hemet, Blackburn Canyon, Murrieta, Bachelor Mountain, Sage, Cahuilla Mountain, Anza, Pechanga, Vail Lake, Aguanga, Beauty Mountain, and Palomar Observatory, land bounded by the following UTM NAD27 coordinates (E, N): 495500, 3712300; 495500, 3712200; 495100, 3712200; 495100, 3712100; 494800, 3712100; 494800, 3712000; 495300, 3712000; 495300, 3711900; 495400, 3711900; 495400, 3711800; 495500, 3711800; 495500, 3711700; 495600, 3711700; 495600, 3711800; 495900, 3711800; 495900, 3712100; 496000, 3712100; 496000, 3712200; 496100, 3712200; 496100, 3712100; 496200, 3712100; 496200, 3711900; 496100, 3711900; 496100, 3711700; 496000, 3711700; 496000, 3711500; 495700, 3711500; 495700, 3711400; 495400, 3711400; 495400, 3711300; 495300, 3711300; 495300, 3711600; 495100, 3711600; 495100, 3711500; 494900, 3711500; 494900, 3711400; 494800, 3711400; 494800, 3711300; 494700, 3711300; 494700, 3711200; 494600, 3711200; 494600, 3711300; 494500, 3711300; 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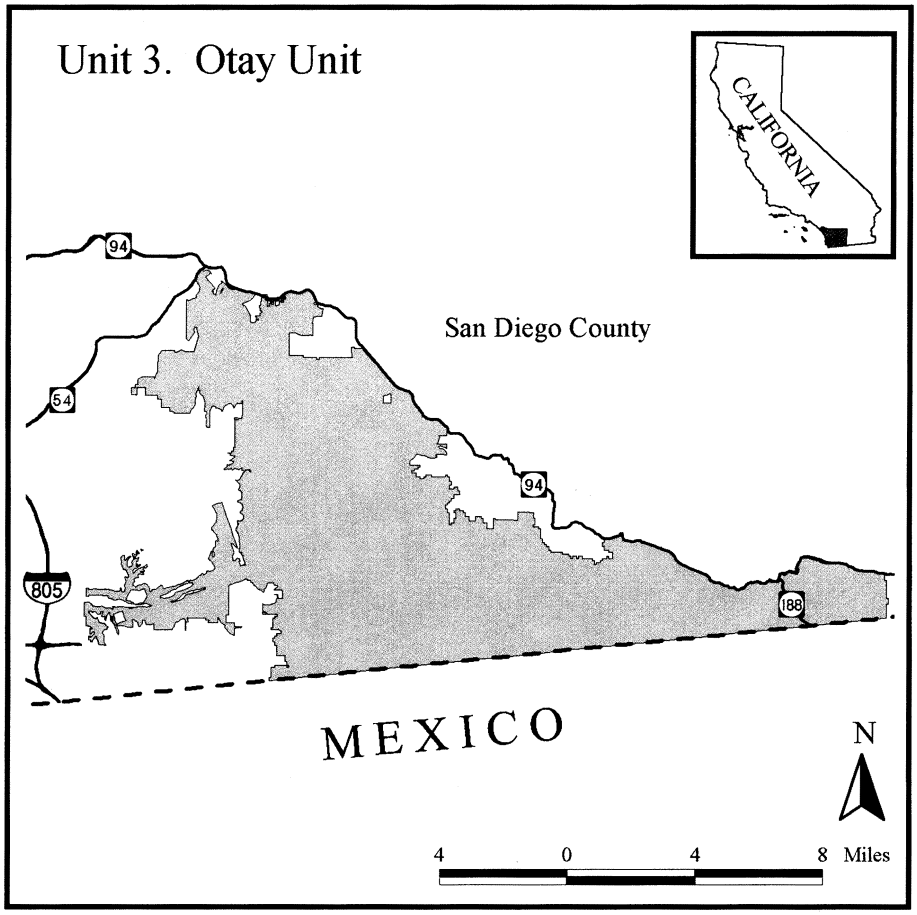


BILLING CODE 4310–55–C

*Map Unit 3:* Otay, San Diego County, California. From USGS 1:24,000 quadrangle maps Dulzura, Jamul Mountains, Potrero, Tecate, Otay Mountain, Imperial Beach, and Otay Mesa. Beginning at the U.S./Mexico border at UTM NAD27 x-coordinate 507800 thence north along the following UTM NAD27 coordinates (E, N): 507800, 3601600 ; 507900, 3601600; 507900, 3602100; 508100, 3602100; 508100, 3602200; 508700, 3602200; 508700, 3602400; 508600, 3602400; 508600, 3602700; 508200, 3602700; 508200, 3603200; 508100, 3603200; 508100, 3603400; 508000, 3603400; 508000, 3603600; 508100, 3603600; 508100, 3603700; 508200, 3603700; 508200, 3603800; 508400, 3603800; thence north to the County of San Diego Major Amendment (CSDMA) boundary at UTM x-coordinate 508400; thence northwest following the CSDMA boundary to UTM x-coordinate 508300; thence south and returning north following UTM coordinates 508300, 3604000; 507900, 3604000; 507900, 3604100; 508000, 3604100; 508000, 3604600; 508100, 3604600; 508100, 3604700; thence east to the CSDMA boundary at UTM y-coordinate 3604700; thence north along the CSDMA boundary to the Multiple Habitat Planning Area (MHPA) boundary; thence northwestward along the MHPA boundary to CSDMA boundary; thence around the CSDMA boundary to the MHPA boundary; thence northward along the MHPA boundary to UTM y-coordinate 3606500; thence west to UTM coordinates (E, N): 506700, 3606500; thence north to the City of Chula Vista Preserve Design (CCVPD) boundary at UTM x-coordinate 506700; thence southwestward along the CCVPD boundary to the CSDMA boundary; thence around the CSDMA boundary to the CCVPD boundary; thence along the CCVPD boundary to UTM y-coordinate 3604500; thence east following UTM coordinates 504600, 3604500; 504600, 3604600; 503700, 3604600; thence north to the CCVPD boundary at UTM x-coordinate 503700; thence west along the CCVPD boundary and continuing along Federal lands boundaries; thence west and north along the Federal lands boundaries to the CCVPD boundary; thence westward along the CCVPD boundary to Otay Mesa Road; thence west along Otay Mesa Road to the CCVPD boundary; thence northward along the CCVPD boundary to UTM x-coordinate 498900; thence south and following UTM coordinates 498900, 3603400; 498800, 3603400; 498800, 3603500; 498700, 3603500; 498700, 3603700; 498800, 3603700; thence south to the CCVPD boundary at UTM x-coordinate 498800; thence northward along the CCVPD boundary to UTM y-coordinate 3604200; thence east and following UTM coordinates 498600, 3604200; 498600, 3604700; 498500, 3604700; 498500, 3605400; 498700, 3605400; thence to the CCVPD boundary at UTM x-coordinate 498700; thence east and back west along the CCVPD boundary to UTM x-coordinate 489700; thence south and following UTM coordinates 498700, 3605700; 498600, 3605700; 498600, 3606100; 498700, 3606100; thence south to the CCVPD boundary at UTM x-coordinate 498700; thence eastward along the CCVPD boundary to the MHPA boundary; thence northward along the MHPA boundary at UTM x-coordinate 506400; thence west and following UTM coordinates 506400, 3607900; 506300, 3607900; 506300, 3608100; thence east to the MHPA boundary at UTM y-coordinate 3608100; thence northward along the MHPA to UTM x-coordinate 505900; thence northward following

UTM coordinates 505900, 3613000; 506000, 3613000; 506000, 3613200; thence east to the CSDMA boundary at UTM y-coordinate 3613200; thence north along the CSDMA boundary to the CCVPD boundary; thence around the CCVPD boundary to the San Diego National Wildlife Refuge (SDNWR) boundary; thence north along the SDNWR boundary to UTM y-coordinate 3615500; thence west and following UTM coordinates 506400, 3615500, 506400, 3615400; 506200, 3615400; thence north to the CCVPD boundary at UTM x-coordinate 506200; thence southwestward along the CCVPD boundary to the MHPA boundary; thence around the MHPA boundary to UTM x-coordinate 503800; thence south and following UTM coordinates 503800, 3614900; 503000, 3614900; thence north to the SDNWR boundary at UTM x-coordinate 503000; thence around the SDNWR boundary to the MHPA boundary; thence southeastward along the MHPA boundary to the SDNWR boundary; thence northeastward and returning southwestward along the SDNWR boundary to the MHPA boundary; thence south along the MHPA boundary to the CSDMA boundary; thence south along the CSDMA boundary to the MHPA boundary; thence north along the MHPA boundary to UTM y-coordinate 3620200; thence west and following UTM coordinates 507300, 3620200; 507300, 3620300; thence east to the MHPA boundary at UTM y-coordinate 3620300; thence north along the MHPA boundary to Highway 94; thence east along Highway 94 to the MHPA boundary; thence southeastward along the MHPA boundary to the SDNWR boundary; thence north along the SDNWR boundary to Highway 94; thence east along Highway 94 to the SDNWR boundary; thence south the SDNWR boundary to UTM y-coordinate 3619400; thence east and following UTM coordinates 510000, 3619400; 510000, 3618800; 509900, 3618800; thence north to the MHPA boundary at UTM x-coordinate 509900; thence west along the MHPA boundary to UTM x-coordinate 509800; thence south and following UTM coordinates 509800, 3618800; 509400, 3618800; thence north to the MHPA boundary at UTM x-coordinate 509400; thence west along the MHPA boundary to UTM x-coordinate 508800; thence south and following UTM coordinates 508800, 3617800; 509500, 3617800; 509500, 3617700; 510200, 3617700; 510200, 3617600; 510300, 3617600; 510300, 3617700; thence east to California Department of Fish and Game (CDFG) lands at UTM y-coordinate 3617700; thence north and east along the CDFG lands to Highway 94; thence southeastward along Highway 94 to the MHPA boundary; thence west along the MHPA boundary to CDFG lands; thence south and west along the CDFG lands to the MHPA boundary; thence around the MHPA boundary to CDFG lands; thence along the CDFG lands to UTM x-coordinate 514900; thence south and following UTM coordinates 514900, 3612300; 515400, 3612300; 515400, 3612200; 515300, 3612200; 515300, 3612100; 515100, 3612100; 515100, 3612000; 515000, 3612000; 515000, 3611900; 515200, 3611900; 515200, 3611700; 515400, 3611700; 515400, 3611600; 515600, 3611600; 515600, 3611700; 515700, 3611700; 515700, 3611800; 516000, 3611800; 516000, 3611700; 516700, 3611700; 516700, 3611800; 516800, 3611800; 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thence east along the MHPA to UTM y-coordinate 3609600; thence south and following UTM coordinates 521200, 3609600; 521200, 3609300; 521100, 3609300; 521100, 3609200; 521400, 3609200; 521400, 3609100; 521500, 3609100; 521500, 3608600; 521600, 3608600; 521600, 3608400; 521700, 3608400; 521700, 3608300; 521800, 3608300; 521800, 3608200; 521900, 3608200; 521900, 3608000; 522000, 3608000; 522000, 3607900; 522600, 3607900; 522600, 3607800; 522900, 3607800; 522900, 3607700; 523000, 3607700; 523000, 3607600; 523100, 3607600; 523100, 3607700; 523300, 3607700; 523300, 3607600; 523400, 3607600; 523400, 3607700; 523600, 3607700; 523600, 3607600; 524100, 3607600; 524100, 3607500; 524200, 3607500; 524200, 3607300; 524300, 3607300; 524300, 3607400; 524500, 3607400; 524500, 3607500; 524600, 3607500; 524600, 3607600; 524800, 3607600; 524800, 3607700; 524900, 3607700; 524900, 3607600; 525100, 3607600; 525100, 3607900; 524900, 3607900; 524900, 3608000; 524700, 3608000; 524700, 3608200; 524600, 3608200; 524600, 3608400; 524700, 3608400; 524700, 3608600; thence east to Highway 94 at UTM y-coordinate 3608600; thence southeastward along Highway 94 to UTM x-coordinate 538800; thence south and following UTM coordinates 538800, 3606900; 538800, 3606500; 538900, 3606500; 538900, 3605600; 539000, 3605600; 539000, 3605300; 538900, 3605300; thence south to the U.S./Mexico border at UTM x-coordinate 538900; returning to the point of beginning on the U.S./Mexico border at UTM x-coordinate 507800; excluding the Otay landfill; the planned recreational areas in the Otay River Valley and the university site as illustrated in the City of Chula Vista's subarea plan; and land bounded by 508700, 3602200; 508700, 3602100; 508800, 3602100; 508800, 3602200; 508700, 3602200.

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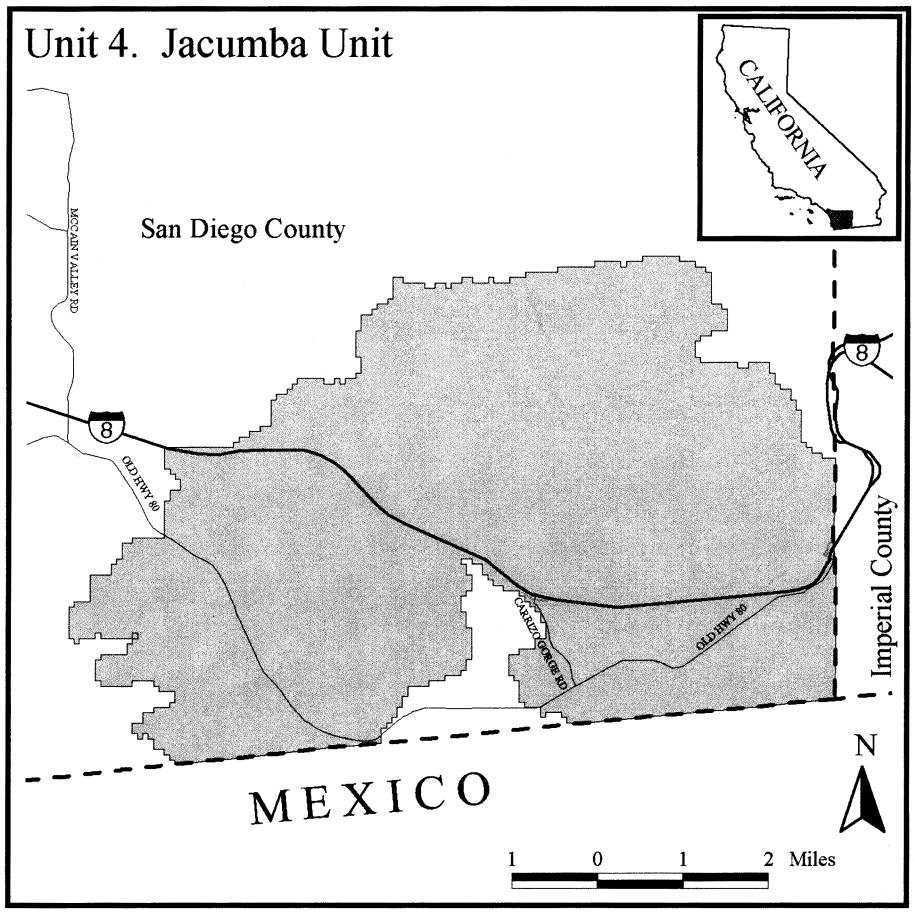


BILLING CODE 4310–55–C

*Map Unit 4:* Jacumba, San Diego County, California. From USGS 1:24,000 quadrangle maps In-Ko-Pah-Gorge, In-Ko-Pah-Gorge OE S, Jacumba, Jacumba OE S, Live Oak Springs, and Tierra Del Sol. Beginning at the U.S./Mexico border at UTM NAD27 x-coordinate 571500, lands bounded by the following UTM NAD27 coordinates (E, N): 571500, 3608000; 571400, 3608000; 571400, 3608100; 571300, 3608100; 571300, 3608200; 571100, 3608200; 571100, 3608400; 571000, 3608400; 571000, 3608500; 570900, 3608500; 570900, 3608400; 570800, 3608400; 570800, 3608500; 570700, 3608500; 570700, 3608700; 570900, 3608700; 570900, 3608900; 571100, 3608900; 571100, 3609000; 571400, 3609000; 571400, 3609100; 571500, 3609100; 571500, 3609300; 571200, 3609300; 571200, 3609400; 571100, 3609400; 571100, 3609500; 570700, 3609500; 570700, 3609400; 570100, 3609400; 570100, 3609500; 570000, 3609500; 570000, 3609900; 570100, 3609900; 570100, 3610000; 570600, 3610000; 570600, 3610200; 570700, 3610200; 570700, 3610300; 570100, 3610300; 570100, 3610400; 570000, 3610400; 570000, 3610300; 569700, 3610300; 569700, 3610200; 569600, 3610200; 569600, 3610300; 569500, 3610300; 569500, 3610900; 569600, 3610900; 569600, 3611000; 569900, 3611000; 569900, 3611500; 570300, 3611500; 570300, 3611700; 570400, 3611700; 570400, 3611800; 570500, 3611800; 570500, 3612100; 570700, 3612100; 570700, 3612200; 571300, 3612200; 571300, 3612900; 571400, 3612900; 571400, 3613100; 571600, 3613100; 571600, 3613300; 571500, 3613300; 571500, 3613400; 571400, 3613400; 571400, 3613500; 571300, 3613500; 571300, 3613900; 572600, 3613900; 572600, 3614000; 572700, 3614000; 572700, 3614100; 572900, 3614100; 572900, 3614200; 573100, 3614200; 573100, 3614300; 573300, 3614300; 573300, 3614800; 573400, 3614800; 573400, 3614900; 573600, 3614900; 573600, 3615000; 573700, 3615000; 573700, 3615100; 573800, 3615100; 573800, 3615200; 574300, 3615200; 574300, 3615100; 574500, 3615100; 574500, 3615200; 574600, 3615200; 574600, 3615100; 574700, 3615100; 574700, 3615200; 574900, 3615200; 574900, 3615300; 575000, 3615300; 575000, 3615600; 574900, 3615600; 574900, 3616100; 575000, 3616100; 575000, 3616400; 575200, 3616400; 575200, 3616500; 575300, 3616500; 575300, 3616600; 575500, 3616600; 575500, 3616700; 575600, 3616700; 575600, 3617100; 575800, 3617100; 575800, 3617000; 576200, 3617000; 576200, 3616900; 576400, 3616900; 576400, 3617000; 576600, 3617000; 576600, 3616900; 576700, 3616900; 576700, 3617000; 576900, 3617000; 576900, 3617100; 577100, 3617100; 577100, 3617000; 577400, 3617000; 577400, 3617100; 577500, 3617100; 577500, 3617000; 577800, 3617000; 577800, 3617100; 578100, 3617100; 578100, 3617200; 578700, 3617200; 578700, 3617300; 579400, 3617300; 579400, 3617400; 579900, 3617400; 579900, 3617300; 580000, 3617300; 580000, 3617400; 580300, 3617400; 580300, 3617500; 581000, 3617500; 581000, 3617400; 581300, 3617400; 581300, 3617300; 581500, 3617300; 581500, 3617200; 581600, 3617200; 581600, 3616600; 581800, 3616600; 581800, 3616500; 581900, 3616500; 581900, 3616100; 581600, 3616100; 581600, 3616000; 581400, 3616000; 581400, 3615900; 581300, 3615900; 581300, 3615600; 581400, 3615600; 581400, 3615500; 582100, 3615500; 582100, 3615400; 582300, 3615400; 582300, 3615500; 582700, 3615500;

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* * * * *

Dated: February 1, 2001.

**Joseph E. Doddridge,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01–3127 Filed 2–6–01; 8:45 am]

BILLING CODE 4310–55–P

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Wednesday, February 7, 2001

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**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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