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Proclamation 7449 of June 8, 2001

The President

To Implement the Agreement Between the United States of America and the Socialist Republic of Vietnam on Trade Relations

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in the President by the Constitution and the laws of the United States, and acting through duly empowered representatives, the United States entered into negotiations with representatives of the Socialist Republic of Vietnam (“Vietnam”) to conclude an agreement on trade relations between the United States and Vietnam.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974, as amended (19 U.S.C. 2431 *et seq.*) (the “Trade Act”).

3. As a result of these negotiations, an “Agreement Between the United States of America and the Socialist Republic of Vietnam on Trade Relations” (the “Agreement”), including annexes and an exchange of letters which form an integral part of the Agreement, the foregoing in English and Vietnamese, was signed on July 13, 2000, by duly empowered representatives of the two Governments, and is set forth as an annex to this proclamation.

4. The Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Chapter VII, Article 8:1 of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

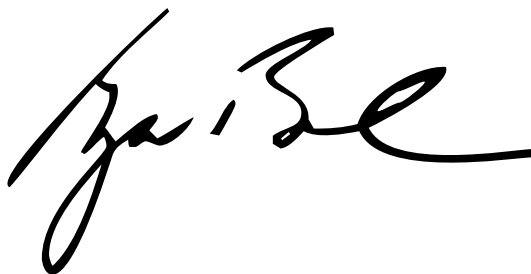
6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country denied such treatment prior to the date of enactment of the Trade Act, and a proclamation implementing such agreement, shall take effect only if a joint resolution described in section 151(b)(3) of the Trade Act (19 U.S.C. 2191(b)(3)) that approves of the Agreement is enacted into law.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under authority vested in me by the Constitution and the laws of the United States, including, but not limited to, sections 404, 405, and 604 of the Trade Act, do proclaim that:

- (1) This proclamation shall become effective, the Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of Vietnam, in accordance with the terms of the Agreement, and after Congress approves the Agreement by joint resolution, on the date of exchange of written notices of acceptance in accordance with Chapter VII, Article 8:1 of the Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**.
- (2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date provided in paragraph (1) of this proclamation, general note 3(b) to the HTS, enumerating those countries whose products are subject to duty at rates set forth in Rates of Duty Column 2 of the tariff schedule, is modified by striking out "Socialist Republic of Vietnam."

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of June, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

A handwritten signature in black ink, appearing to read "Bill Clinton", is centered below the text.

**AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND THE SOCIALIST REPUBLIC OF VIETNAM
ON TRADE RELATIONS**

The Government of the United States of America and the Government of the Socialist Republic of Vietnam (hereinafter referred to collectively as "Parties" and individually as "Party"),

Desiring to establish and develop mutually beneficial and equitable economic and trade relations on the basis of mutual respect for their respective independence and sovereignty;

Acknowledging that the adoption of and compliance with international trade norms and standards by the Parties will aid the development of mutually beneficial trade relations, and should be the underlying basis of those relations;

Noting that Vietnam is a developing country at a low level of development, is in the process of economic transition and is taking steps to integrate into the regional and world economy by, *inter alia*, joining the Association of Southeast Asian Nations (ASEAN), the ASEAN Free Trade Area (AFTA), and the Asia Pacific Economic Cooperation forum (APEC), and working toward membership in the World Trade Organization (WTO);

Having agreed that economic and trade ties and intellectual property rights protection are an important and necessary element in the strengthening of their bilateral relations; and

Being convinced that an agreement on trade relations between the Parties will best serve their mutual interests,

Have agreed as follows:



CHAPTER I

TRADE IN GOODS

Article 1.

Most Favored Nation (*Normal Trade Relations*)¹

1. Each Party shall accord immediately and unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:
 - A. customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;
 - B. methods of payment for imports and exports, and the international transfer of such payments;
 - C. rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;
 - D. taxes and other internal charges of any kind applied directly or indirectly to imported products;
 - E. laws, regulations and other requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market; and
 - F. the application of quantitative restrictions and the granting of licenses.
2. The provisions of paragraph 1 of this Article shall not apply to action by a Party which is consistent with such Party's obligations under the World Trade Organization and the agreements administered thereby. A Party shall nonetheless extend to the products originating in the territory of the other Party most-favored nation treatment in respect of any tariff reductions resulting from multilateral negotiations under the auspices of the World Trade Organization provided such Party accords such benefits to all other WTO members.
3. The provisions of paragraph 1 of this Article shall not apply to:

¹ As used in this Agreement, the term "normal trade relations" shall have the same meaning as the term "most favored nation" treatment.



- A. advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area, and
 - B. advantages accorded to third countries for the facilitation of frontier traffic.
4. The provisions of sub-paragraph 1.F of this Article shall not apply to trade in textiles and textile products.

Article 2

National Treatment

1. Each Party shall administer tariff and nontariff measures affecting trade in a manner which affords meaningful competitive opportunities for products of the other Party with respect to domestic competitors.
2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.
3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and other requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.
4. In addition to the obligations of paragraphs 2 and 3 of this Article, the charges and measures described in paragraphs 2 and 3 of this Article shall not otherwise be applied to imported or domestic products so as to afford protection to domestic production.
5. The obligations of paragraphs 2, 3 and 4 of this Article shall be subject to the exceptions set forth in Article III of GATT 1994 and Annex A to this Agreement.
6. Consistent with the provisions of GATT 1994, the Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade or to protect domestic production. Furthermore, each Party shall accord products imported from the territory of the other Party treatment no less favorable than the better of the treatment accorded to like domestic products or like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification. Accordingly, the Parties shall:
 - A. ensure that any sanitary or phytosanitary measure which is not inconsistent with the provisions of the GATT 1994, is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not

maintained without sufficient evidence (*i.e.*, a risk assessment), taking into account the availability of relevant scientific information and regional conditions, such as pest free zones;

- B. ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks non- fulfillment would create. Such legitimate objectives include national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration include available scientific and technical information, related processing technology or intended end- uses of products.
7. Upon the entry into force of this Agreement, each Party shall grant trading rights to the nationals and companies of the other Party. With respect to Vietnam, such trading rights shall be granted in accordance with the following schedule:
- A. Upon entry into force of this Agreement, all domestic enterprises shall be allowed to engage in trading activities in all products, subject to restrictions listed in Annexes B and C.
 - B. Upon entry into force of this Agreement, enterprises with capital directly invested by U.S. nationals and companies shall be allowed, subject to the restrictions in Annexes B and C, to import goods and products to be used in, or in connection with their production or export activities whether or not such imports are specifically identified in their initial investment license.
 - C. Three years after entry into force of this Agreement, enterprises with capital directly invested by U.S. nationals and companies, in production and manufacturing sectors, shall be allowed to engage in trading activities, subject to the restrictions listed in Annexes B, C and D, and provided such enterprises are (i) engaged in substantial business activities in the production and manufacturing sectors; and (ii) are lawfully operating in Vietnam.
 - D. Three years after entry into force of this Agreement, U.S. nationals and companies shall be allowed to enter into joint ventures with Vietnamese counterparts to engage in trading activities in all products, subject to restrictions listed in Annexes B, C and D. Equity contributed by U.S. companies shall not exceed 49% of such joint ventures' legal capital. Three years thereafter, this limitation on U.S. ownership shall be 51%.



- E. Seven years after entry into force of this Agreement, U.S. companies shall be allowed to establish 100% U.S.- owned companies to engage in trading activities in all products, subject to restrictions listed in Annexes B, C and D.
8. If a Party has not acceded to the International Convention on the Harmonized Commodity Description and Coding System, it will undertake every reasonable effort to do so as soon as possible, but no later than one year after the entry into force of this Agreement.

Article 3 General Obligations with Respect to Trade

1. The Parties shall seek to achieve a satisfactory balance of market access opportunities through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade in goods resulting from multilateral negotiations.
2. The Parties shall except as specifically provided in Annexes B and C to this Agreement, eliminate all import and export restrictions, quotas, licensing requirements, and controls for all product and service categories, other than those that would be permitted by GATT 1994.
3. The Parties shall, within two years of the entry into force of this Agreement, limit all fees and charges of whatever character (other than import and export duties and other taxes within the purview of Article 2 of this Chapter) imposed on or in connection with importation or exportation to an amount approximate to the cost of services rendered, and ensure that such fees and charges do not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes;
4. The Parties shall, within two years of the entry into force of this Agreement, adopt a system of customs valuation based on the transaction value of the imported merchandise on which duty is assessed, or of like merchandise, rather than on the value of merchandise of national origin or on arbitrary or fictitious values, with the transaction value being the price actually paid or payable for the goods when sold for export to the country of importation in accordance with the standards established in the Agreement on Implementation of Article VII of the GATT 1994; and
5. Within two years of entry into force of this Agreement, the Parties shall ensure that the fees and charges referred to in paragraph 3 of this Article and the customs valuation system referred to in paragraph 4 of this Article are imposed or implemented uniformly and consistently throughout each Party's customs territory.
6. In addition to the obligations set forth in Article 1, Vietnam shall provide tariff treatment to products originating in the customs territory of the United States in accordance with the provisions of Annex E.

7. Neither Party shall require its nationals or companies to engage in barter or countertrade transactions with nationals or companies of the other Party. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties may furnish them information to facilitate the transaction and assist them as they would with respect to other export and import operations.
8. The United States shall consider Vietnam's eligibility for the Generalized System of Preferences.

Article 4 Expansion and Promotion of Trade

Each Party shall encourage and facilitate the holding of trade promotional events such as trade fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

Article 5 Government Commercial Offices

1. Subject to its laws and regulations governing foreign missions, each Party shall allow government commercial offices of the other Party to hire host-country nationals and, subject to immigration laws and procedures, third-country nationals.
2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.
3. Each Party shall allow the participation of its nationals and companies in the commercial activities of the other Party's government commercial offices.
4. Each Party shall allow access by government commercial office personnel of the other Party to the relevant host-country officials, and to representatives of nationals and companies of the host Party.

Article 6
Emergency Action on Imports

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1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry. The consultations provided in this paragraph shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultations, unless the Parties agree otherwise.
2. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate, and for such period of time it deems necessary, to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions introduced in connection with market disruption. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.
3. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time without prior notice or consultation, on the condition that consultations shall be effected immediately after taking such action.
4. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products, and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

Article 7 Commercial Disputes

For the purposes of Chapter I of this Agreement:

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all competent courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not be entitled to claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards, or other liability in the territory of the other Party with

respect to commercial transactions. They also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States of America and nationals or companies of the Socialist Republic of Vietnam. Such arbitration may be provided for by agreements in contracts between such nationals and companies, or in separate written agreements between them.
3. The parties to such transactions may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules of December 15, 1976, and any modifications thereto, in which case the parties should designate an Appointing Authority under said rules in a country other than the United States of America or the Socialist Republic of Vietnam.
4. The parties to the dispute, unless otherwise agreed between them, should specify as the place of arbitration a country other than the United States of America or the Socialist Republic of Vietnam, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.
5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or on the law to be applied in such arbitration, or other form of dispute settlement which they mutually prefer and agree best suits their particular needs.
6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

Article 8 State Trading

1. The parties may establish or maintain a state enterprise, or grant to any enterprise, formally or in effect, exclusive or special privileges, to import and export the products listed in Annex C, provided however, that any such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.
2. The provisions of paragraph 1 of this Article shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations, including

price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other Party adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

3. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in government use and not otherwise for resale or use in the production of goods for sale. With respect to such imports, each Party shall accord to the trade of the other Party fair and equitable treatment.

Article 9 Definitions

As used in this Chapter, the terms set forth below shall have the following meaning:

1. "company," means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization.
2. "enterprise," means a company.
3. "national," means a natural person who is a national of a Party under its applicable law.
4. "commercial dispute," means a dispute between parties to a commercial transaction which arises out of that transaction.
5. "trading rights," means the right to engage in import or export activities.

ANNEX A

VIETNAM

Exceptions on National Treatment

The provisions of Chapter I, Article 2 are not applied to the following:

1. Special consumption tax on vehicles under 12 seats, inputs of production of cigarettes, and cigars.
2. Supplemental tax on fuels, metals and fertilizers.

The aforementioned exceptions in this Annex (paragraphs 1 and 2) will be eliminated within 3 years from the entry into force of this Agreement.



ANNEX B

VIETNAM

*Note: Phase-out period in Annex B shall be calculated from date of entry into force of this Agreement

Annex B1 - Import Quantitative Restrictions - Agricultural Products

HS Number	Description	Phase-Out Period (yrs.)*
0201	Meat of bovine animals, fresh/chilled	4
0207	Poultry meat & offals - frsh/chilled/fz	5
0401	Milk - fresh milk...	4
0402	Condensed milk or cream	4
0403	Buttermilk, yogurt, kephir and other fermented or acidified milk	4
0404	Whey, concentrated or containing added sugar...	4
0805	Citrus fruits: fresh or dried	4
1005.10.90	- Other (corn)	4
1005.90.00	- Other	4
1103.13.00	- Of corn	4
1104.19.10	- Corn	4
1104.23.00	- Of corn	4
1507	Soybean oil and its fractions, whether or not refined, but not chemically modified	
1507.90.10	- refined	4
1507.90.90	- other	4

1508	Ground nut oil and its fractions, whether or not refined, but not chemically modified	
1508.90.10	- refined	4
1508.90.90	- other	4
1509	Olive oil and its fractions, whether or not refined, but not chemically modified	
1509.90.10	- refined	4
1509.90.90	- other	4
1510.00	Other oils and their fractions, obtained solely from olives, whether or not refined..	
1510.00.91	- refined	4
1510.00.99	- other	4
1511	Palm oil and its fractions, whether or not refined, but not chemically modified	
1511.90.90	- other	4
1512	Sunflower, safflower or cotton seed oil and fractions thereof, whether or not refined but not chemically modified	
1512.19.10	- refined	4
1512.19.90	- other	4
1512.29.10	- refined	4
1512.29.90	- other	4
1513	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined but not chemically modified	
1513.19.10	- refined	4
1513.19.90	- other	4
1513.29.10	- refined	4
1513.29.90	- other	4
1514	Rape, colza or mustard oil and ...	
1514.90.10	- refined	4
1514.90.90	- other	4

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1515	Other fixed vegetable fats and oils...	
1515.19.00	- other	4
1515.29.90	- other	4
1515.30.90	- other	4
1515.40.90	- other	4
1515.50.90	- other	4
1515.60.90	- other	4
1515.90.12	- other	4
1515.90.99	- other	4
1516	Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified...	
1516.20.00	- vegetable fats and oils and fractions	4
1601	Sausages and similar products, of meat, meat offal or blood...	3
1602	Other prepared and preserved meat...	3
1701.11.00	- cane-sugar	10
1701.12.00	- beet sugar	10
1701.91.00	- containing added flavoring or coloring matter	10
1701.99.10	- white sugar	10
1701.99.90	- other	10
2006	Vegetables, fruit, nuts, fruit and other parts of plants, pr/pr by sugar	5
2007	Jams, fruit jellies, marmalades, fruit or nut puree...	3
2009	Fruit juices (including grape must) and vegetable juices...	
	- orange juices	
2009.11.00	- frozen	5
2009.19.00	- other	5
2009.20.00	- grapefruit juice	3
2009.30.00	- juice of any other single citrus fruit	5

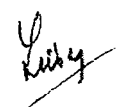
2009.40.00	- pineapple juice	5
2009.50.00	- tomatoes juice	5
2009.60.00	- grape juice (including grape must)	3
2009.70.00	- apple juice	3
2009.80.00	- juice of any other single fruit/vegetable	5
2009.90.00	- mixtures of juices	5
2101	Extracts, essences and concentrates, of coffee, tea...	
2101.11.10	- Instant coffee	4
2101.11.90	- Other	4
2101.12.00	- Preparations with a basic of extracts, essences or concentrates or with a basic of coffee	4
2204	Wine or fresh grapes, including fortified wines; grape must other than that of heading No. 2009	5
2205	Vermouth and other wine of fresh grapes flavored with plants or aromatics substances	5
2206	Other fermented beverages	5
2207	Undenatured ethyl alcohol > 80%	5
2208	Undenatured ethyl alcohol < 80%	5
2309	Preparations of a kind used in animal feeding	
2309.90.10	- Shrimp food	4
2309.90.90	- Other	4

Annex B1 - Import Quantitative Restrictions - Industrial Products

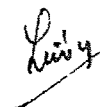
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HS Number	Description	Phase-Out Period (yrs) *
25231000	--Cement clinkers	6
25232100	--White portland cement whthr or nt art colored	6
25232910	--Portland cement except white portland cement	6
25232920	--Portland cement except white portland cement	6
27072000	--Toluene	7
27101100	--Aviation spirit	7
27101200	--White spirit (for producing paints)	7
27101900	--Other petroleum oils and oil preparations	7
27102000	--Diesel	7
27103000	--Mazout	7
27104000	--Other light oils & preparation	7
27105000	--Other medium oils & preparations	7
27106000	--Other medium oils & preparations	7
27107000	--Other medium oils & preparations	7
27109000	--Petroleum oils and oil preparations, other	7
27111100	--Natural gas, liquified	7
27111200	--Propane, liquefied	7
27111300	--Butanes, liquefied	7
27111400	--Ethylene, propylene, butylene and butadiene liquified	7
27111900	--Petroleum gases etc., liquified, nesoi	7
28061000	--Hydrogen chloride (hydrochloric acid)	3
28070000	--Sulfuric acid; oleum	3
28092010	--Phosphoric acid and polyphosphoric acids	3
28141000	--Anhydrous ammonia	3
28142000	--Ammonia in aqueous solution	3
28151100	--Sodium hydroxide (caustic soda), solid	3
28151200	--Sodium hydroxide in aqueous solution	3
31051000	--Fertilizers... in packages of a gross weight =<10kg	5
31052000	--Mineral or chemical fertilizers with nitrogen, phosphorus and potassium	5
31053000	--Diammonium hydrogenorthophosphate (diammonium phosphate)	5
31054000	--Ammonium dihydrogenorthophosphate (monoammonium phosphate)	5



31055100	--Mineral or chemical fertilizers containing nitrates and phosphates	5
31055900	--Mineral or chemical fertilizers with nitrogen and phosphorus, nes	5
31056000	--Mineral or chemical fertilizers with phosphorus and potassium, nes	5
31059000	--Other fertilizers, nes	5
32081020	-- Other varnishes	3
32081040	-- Base paints	3
32081050	-- Other, including enamels	3
32081090	-- Other	3
32082020	-- Other varnishes	3
32082040	-- Base paint	3
32082050	-- Other, including enamels	3
32082090	-- Other	3
32089020	-- Other varnishes	3
32089040	-- Base paints	3
32089050	-- Other, including enamels	3
32089090	-- Other	3
32091020	-- Other varnishes	3
32091040	-- Base paints	3
32091050	-- Other, including enamels	3
32091090	-- Other	3
32099020	-- Other varnishes	3
32099040	-- Base paints	3
32099050	-- Other, including enamels	3
32099090	-- Other	3
32100020	-- Other varnishes	3
32100040	-- Base paints	3
32100050	-- Other, including enamels	3
32100060	-- Other	3
38122000	--Compound plasticizers for rubber or plastics	3
38123010	--Antioxidizing prep & oth compnd,for rubber/plastic	3
40111000	--New pneumatic tires of rubber, for motor cars	4
40112010	--New pneumatic tires of rubber, for buses or trucks	4
40112090	--New pneumatic tires of rubber, for buses or trucks	4
40114000	--New pneumatic tires, of rubber, used on motorcycle	7



40115000	--New pneumatic tires, of rubber, used on bicycles	7
40119110	--Tires with a width of 450 mm	7
40119190	-- Other	7
40119910	--Tires with a width of 450 mm	7
40119990	-- Other	7
40131010	--Inner tubes of rubber for mot cars, buses & trucks	7
40131090	--Inner tubes of rubber for mot cars, buses & trucks	7
40132000	--Inner tubes, of rubber, of a kind used on bicycles	7
40139010	--Inner tubes, of rubber, of a kind used on aircraft	7
40139020	--Inner tubes, of rubber, of a kind used on motorcycles	7
40139091	--Inner tubes, of rubber, for tires with a width of 450 mm	7
40139099	--Inner tubes, of rubber, for tires with a width over 450 mm	7
48010000	--Newsprint, in rolls or sheets	5
48021000	--Handmade paper and paperboard	5
48025110	--Paper, nov 10% fiber by mech pr, un40g/m2 uc	5
48025190	--Paper nesoi, nov 10% fiber by mech pr, un40g/m2 uc	5
48025210	--Paper, nov 10% fib mech pr, 40g/m2nov150g/m2	5
48025290	--Paper nesoi, nov 10% fib mech pr, 40g/m2nov150g/m2	5
48025300	--Paper nesoi, nov 10% fiber by mech pr, ov150g/m2 u	5
48026010	--Paper, over 10% (wt) fiber by mechan proc uc	5
48026090	-- Other	5
48041100	--Kraftliner, uncoated unbleached in rolls or sheets	4
48041900	-- Other	4
48044190	--Kraft paper nesoi, ov 150 g/m2 un 225 g/m2 uc unbl	4
48044200	--Kraft paper nesoi, ov150g/m2und225g/m2, bl, 95% wf uc	4
48044900	--Kraft paper/pprbrd unctd blchd nesoi 151-224g/m2	4
48045190	-- Other	4
48045200	--Kraft pr nesoi, not un 225g/m2, bl, 95% w fib chem	4
48045900	-- Other	4
48079000	-- Other	4
48101110	--Paper, writ etc, nov 10% mech pr fib nov150g/m2 ct	5
48101210	--Paper/pbrd writing etc nesoi clay ctd ov 150g/m2 etc	5
48102110	--Paper, light-wgh coated writing etc over 10% mech	5
48102910	--Paper/pbrd ex lit-wgh writing etc clay ctd ov 10% mec	5
48202000	--Exercise books, of paper or paperboard	5
48235110	--Paper/pbrd for graphics nesoi prnt/embssd etc cut sz	5
48235910	--Paper & paperbd cut to size etc, for photocopy	5

50071000	--Woven fabrics of noil silk	5
50072000	--Wov fab ov 85% silk or silk waste except noil silk	5
50079000	--Woven fabrics of silk or silk waste, nesoi	5
68101910	--Tiles, flagstones etc, cement etc or artif stone	3
69049000	-- Other	3
69059000	-- Other	3
69071000	--Unglzd ceramic tiles, cubes etc, sides ls thn 7 cm	3
69079000	-- Other	3
69081000	--Glazed ceramic tiles cubes etc fitng in sq un 7cm	3
69089000	-- Other	3
69101000	--Ceramic sanitary fixtures of porcelain or china	3
69109000	--Ceramic sanitary fixtures oth thn of porcln/china	3
70031290	--Nonwrd shts cast/rld glass, colrd, opac, flshd, layrd	6
70031990	--Cast or rolled glass in nonwired sheets, nesoi	6
70042090	--Drawn/blown glass sheets colored opac flash spec layer	6
70049090	--Drawn/blown glass shts w/wo absorb/rfct lyr n oth wrkd	6
70052190	--Nonwrd glass clrd opc flshd or srfc grnd n ab/rf ly	6
70052990	--Nonwired glass nesoi in sheets	6
70169000	--Gls cons art nesoi;ld wndws;mltclr/fmd gls artcls	6
72091500	--Flt-cold-rol irn, noaly, coil, 600mm wide, 3mm > thick	6
72091600	--Fl-cld-rl irn, nesoi, st, coil, 600mm wide, >1mm but <3mm	6
72091700	--Fl-cld-rl irn, st, coil, 600mm wd, 0.5mm but n/o 1mm tk	6
72091800	--Flat-cold-rld ir, stl, coils, 600mm wide, <0.5mm thick	6
72092500	--Flt-cld-rld ir, st, not coil, 600mm wide, 3mm or > thk	6
72092600	--Flt-cld-rld ir, st, not coil, 600mm wd, >1mm <3mm thk	6
72092700	--Flt-cld-rld, not coil 600mm w, >0.5mm but n/o 1mm thk	6
72092800	--Flt-cld-rld ir, nonal, not coil, 600mm wide, >0.5mm thk	6
72099000	--Other	6
72103010	--Flat-rld iron, nonal stl, 600mm wide, elec platd zinc	6
72103090	--Other	6
72104110	- Of a thickness not more than 1.2 mm	6
72104190	--Other	6
72104910	--Fr ir/nas ctd/pltd w zinc nt elec nt corr 600mm om	6
72104990	-- Other	6
72105000	--Fr ios na 600mm ao w ctd/pltd w cro or cr and cro	6
72106110	--Fr iron/nonalloy steel 600mm ao, pltd/ctd alum-znc	6
72106190	--Other	6

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72106910	--Fr iron/nonalloy steel,600mm ao,pltd/ctd othr alum	6
72106990	--Other	6
72107000	--Fr ir/nas 600mm w om, painted, varnished, plastic	6
72109000	--Other	6
72111300	--Fr hs ios na un600mm w hr pl unvrsl mllplte	6
72111400	--Fr hs ios na un600mm w hr pl 4.75mm ao thck	6
72111900	--Oth fr hi-str st un 600mm w npld un4.75mm thck	6
72112300	--Flat-hot-rolled iron,nonalystl, <600mm wide, nesoi	6
72112900	--Other	6
72119000	--Other	6
72131010	--Bars and rods irregular coils concrete reinforcing	6
72131020	--Bars and rods irregular coils concrete reinforcing	6
72132000	--Brs rods hot-rlld irreg coils free-cutting steel	6
72139100	--Bars,rodshot-roll,irnnoal st coil circ,<14mm nesoi	6
72139900	--Other	6
72141010	--Other bars and rods iron or nonalloy steel, forged	6
72141020	--Other	6
72142010	--Oth brs rds ios na hot-wrkd, conc reinfrng	6
72142020	--Other	6
72143010	--Other bars and rods free-cutting steel, hot-worked	6
72143020	--Other	6
72149100	--Bars,rods,hot-rolled,-drawn,-ext,rectangular,nesoi	6
72149900	--Other	6
72151010	--Oth brs and rds free-cting stl cold-fmd or fnshd	6
72151090	--Other	6
72155010	--Bars,rods,irn,noal,cold-formed,cold-finished,nesoi	6
72155090	--Other	6
72159010	--Bars and rods iron or nonalloy steel, nesoi	6
72159090	--Other	6
72161000	--U-i-h-sections ir/nas hot/wrkd ls thn 80mm high	6
72162100	--L sec ios na hot-wkd lss th 80mm high	6
72162200	--T sec ios na hot-wkd lss th 80mm high	6
72163110	--U sec ios na hot-wkd 80mm or more high	6
72163190	--Other	6
72163210	--I sec ios na hot-wkd 80mm ao high (standard beams)	6
72163290	--Other	6
72163310	--H sections irn/nas, hot-wrkd, 80mm hi or more	6

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72163390	--Other	6
72164010	--L or t sections ir/nas hot-wrkd, 80mm hi or more	6
72164090	--Other	6
72165010	--Oth angls shps sec ios na hot-wkd	6
72165090	--Other	6
72166100	--Angls shps sec ir/nas nt frthr cld-wrkd frm fr pro	6
72166900	--Other	6
72169100	--Angls shps sec ir/nas oth cld-wrkd fr fr products	6
72169900	--Other	6
72171000	--Other	6
72172000	--Other	6
72173000	--Other	6
72179000	--Other	6
73030000	--Tubes, pipes and hollow profiles of cast iron	6
73043191	--Oth ios na ps tb hlw pfl smls cir cs cold-wrkd	6
73043991	--Oth ios na ps tb hlw pfl smls cir cs nt cld-wrkd	6
73049091	--Tubes, pipes etc, seamless nesoi, ir nesoi & steel	6
73049099	--Tubes, pipes etc, seamless nesoi, ir nesoi & steel	6
73053920	--Other pipe, ov16in iron or steel, welded nesoi	6
73063091	--Pipe etc nesoi, weld cir cr sect, iron or nonal st	6
73069091	--Pipes etc nesoi, riveted etc, of iron or steel	6
73130000	--Barbed wire and twisted wire for fencing, iron/stl	6
73141900	--Woven products iron or steel, nesoi	6
73142000	--Grill netting fencing wld ir/st wr 3mmcs 100cm2msh	6
73143100	--Oth grill ntng a fncng wldd at intrsct galvnzed st	2
73143900	--Other	2
73144100	--Oth grill, nettg fncg ios ctd/pl w zn nesoi nt wld	2
73144200	--Grill netting fencing, plastic coated ios wr nesoi	2
73144900	--Other	2
73145000	--Expanded metal, iron or steel	2
ex8407	--Engines with a capacity not exceeding 30 cv	7
ex8407	--Engines with a capacity exceeding 30 cv but not exceeding 100 cv	6
ex8408	--Engines with a capacity not exceeding 30 cv	7
ex8408	--Engines with a capacity exceeding 30 cv but not exceeding 100 cv	6
84145100	--Table, floor etc fans electric not exceed 125 w	3



84145900	--Other	3
87021000	--Mv trnsp >ten prsns com-igntn intr comb pist(disl)	5
87029000	--Other	5
87031010	--Pass veh for snow; golf carts & similar vehicles	5
87031020	--Pass veh for snow; golf carts & similar vehicles	5
87032110	--Pass mtr veh, spark ign eng, not ov 1,000 cc	5
87032120	--Pass mtr veh, spark ign eng, not ov 1,000 cc	5
87032210	--Pass mtr veh,spark ign eng, >1000cc but =<1500cc	5
87032220	--Pass mtr veh,spark ign eng, >1000cc but =<1500cc	5
87032310	--Pass veh spk-ig int com rcpr p eng >1500 nov 3m cc	5
87032320	--Pass veh spk-ig int com rcpr p eng >1500 nov 3m cc	5
87032410	--Pass veh spk-ig int com rcpr p eng > 3000 cc	5
87032420	--Pass veh spk-ig int com rcpr p eng > 3000 cc	5
87033110	--Pass mtr veh, diesel eng, not ov 1500 cc	5
87033120	--Pass mtr veh, diesel eng, not ov 1500 cc	5
87033210	--Pass veh com-ig int com eng > 1500 nov 2500 cc	5
87033220	--Pass veh com-ig int com eng > 1500 nov 2500 cc	5
87033310	--Pass veh com-ig int com eng > 2500 cc	5
87033320	--Pass veh com-ig int com eng > 2500 cc	5
87039010	--Passenger motor vehicles, nesoi	5
87039020	--Passenger motor vehicles, nesoi	5
87042100	--Trucks, nesoi, diesel eng, gvw 5 metric tons & und	5
87043100	--Mtr veh trans gds spk ig in c p eng, gvw nov 5 mtn	5
87049010	--Mtr veh of gross weight not > 5 tons	5
ex8711	--Motorcycles with an engine capacity of less than 175cv	5
87120010	--Bicycles & oth cycles (inc del tricycle) no motor	5
87120020	--Bicycles & oth cycles (inc del tricycle) no motor	5
87120090	--Bicycles & oth cycles (inc del tricycle) no motor	5
87149100	--Frames and forks, and prts for bicycles etc.	3
87149200	--Wheel rims and spokes for bicycles etc.	3
87149300	--Hubs,other than coster brakn hubs,hb brks,spk,whls	3
87149400	--Brakes, incl coaster brkng hubs,hub brks,prts,nes	3
87149500	--Saddles for bicycles etc.	3
87149600	--Pedals and crank-gear, parts of bicycles etc.	3
87149900	--Other	3
89011090	-- other (cruise ships, etc, less than 5,000 dwt)	5
89012090	-- other (tankers, less than 5,000 dwt)	5

89013090	-- other (refrig vessels, less than 5,000 dwt)	5
89019090	--other (less than 5,000dwt)	5
89020010	--Fishing vessels;factory ships & shps,ves, nesoi	5
89020090	--Other	5

Annex B2: Export Quantitative Restrictions

HS Number	Description	Phase-Out Period *
10063000	Semi- milled or wholly milled rice	Unbound
10064000	Broken rice	Unbound

Annex B3 - Prohibited Imports

1. Cigarettes (except for those as personal effects in prescribed quantity).
2. Used consumer goods (except for transferred assets including goods to service the personal requirements of individuals with diplomatic status of foreign countries, international organizations and personal effects in prescribed quantity).
3. Cars with right hand drive (including those in unassembled form and those with steering wheel modified prior to importation into Vietnam). As far as self-propelled special-purpose vehicles with right hand drive operating in narrow fields, such as cranes, trench and canal digging machines, garbage trucks, road sweepers, road construction trucks, airport passenger buses, and forklifts are concerned, importation is permitted and the Minister of Trade shall approve when there is demand.
4. Used spare parts of automobiles of all kinds, motorbikes and motor tricycles - including chassis mounted with used automobile engines of all kinds.
5. Used internal combustion engines with capacity of less than 30CV.
6. Motorcycles, scooters and motor tricycles with cylinder of 175 cc and higher. In case of importation for defense, security and professional sports, to be subject to Prime Minister's approval.

7. Other goods that may be within the scope of an exception set forth in Chapter I or Chapter VII of this Agreement.

Annex B4 - Export Prohibitions

1. Logs, sawn and peeled timber, firewood, charcoal from wood or firewood; wood and forest products and semi-products which are subject to export prohibitions provided for in Decision 65/1998/QD-TTg dated 24 March 1998 by Prime Minister of Vietnam.
2. Other goods that may be within the scope of an exception set forth in Chapter I or Chapter VII of this Agreement.

ANNEX C

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Note:

U = Unbound

* Phase-out period in Annex C shall be calculated from the date of entry into force of this Agreement

Annex C1- Imports Subject to State Trading and Phase-Out Schedule

HS Number	Description	Phase Out Period (yrs.)*
27101100	Aviation spirit	U
27101200	White spirit (for producing paints)	U
27101900	Other petroleum oils and oil preparations	U
27102000	Diesel	U
27103000	Mazut	U
27104000	Light oils	U
27105000	Medium oils	U
27106000	Naptha	U
27107000	Condensate	U
27109000	Petroleum oils, other	U
3102	Mineral or chemical fertilizers, nitrogenous	5
3103	Mineral or chemical fertilizers, phosphatic	5
3104	Mineral or chemical fertilizers, potassic	5
3105	Mineral or chemical fertilizers, other	5
3601	Propellant powders	U
3602	Prepared explosives other than propellant powders	U
3603	Safety fuses; detonating fuse; percussion caps etc	U
3706	Motion-picture film, exposed and developed	U
4901	Books, brochures & similar printed matter	U

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4902	Newspapers, journals & periodicals	U
4903	Children's picture, drawing or coloring books	U
4907	Unused postage, check forms, banknotes, stock, etc	U
4909	Printed or illust post cards, greeting cards, etc.	U
4910	Calendars, calendar blocks of any kind, printed	U
4911	Printed matter nesoi, incl print pictures & photos	U
8442	Mach etc nesoi for typeset, making pr plates etc	U
8443	Print mach incl ink-jet mach ancil t prnt pt nesoi	U
8524	Records, tapes & other recorded sound media etc	U
8525	Trans appar for radiotele etc; tv camera & rec	U
8526	Radar apparatus, radio navig aid & remote cont app	U
ex85291000	Only satellite aerials for broadcasting	U
ex85299000	Only aerials for equipment in 8525 adn 8526	U
9704	Postage or revenue stamps, firstday covers	U

Annex C2- Exports Subject to State Trading and Phase-Out Schedule

HS Number	Description	Phase-Out Period *
10063000	Semi-milled or wholly-milled rice	U
10064000	Broken rice	U
27090010	Petroleum oils, crude	U
27090090	Petroleum oils, other	U
27112100	Natural gas	U
27112900	Petroleum gases, other	U
7102	Diamonds	U
7103	Precious stones	U
7104	Synthetic precious stones	U
7105	Dust or powder of precious stones	U
7106	Silver	U
7108	Gold	U



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ANNEX D

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**Annex D1- Phase-out Periods for Restrictions on Import
Trading Rights and Distribution Rights -
Agricultural Products**

NOTE:

0* = No phase-out period

U = Unbound

* - For purposes of Annex D1, phase-out periods for Import Trading Rights shall begin on the date on which joint ventures are first permitted under Article 2.7.D of Chapter I of this Agreement.

** - For purposes of Annex D1, phase-out periods for Distribution Rights shall begin on the date on which joint ventures are first permitted under Annex G, section IV (Distribution Services) of this Agreement.

HS Number	Description	Import Trading Rights - Phase-out Period* (yrs.)	Distribution Rights - Phase-out Period** (yrs.)
0102	Live bovine animals	U	U
0103	Live swine	U	U
0105	Live Poultry (not more than 185g)	U	U
0106	Other live animals	U	U
0201	Meat of bovine animals, fresh/chilled	5	5
0202	Meat of bovine animals, frozen	3	5
0203	Meat of Swine - frsh/chilled/frzn	3	5
0206	Edible offals bovines -frsh/chilled/fz	3	5
0207	Poultry meat & offals.- frsh/chilled/fz	5	5
0209	Unrendered pig fat, free of lean meat and poultry meat...	3	5
0210	Meat and edible meat offal salted....	3	5

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0401	Milk - fresh milk...	3	5
0402	Condensed Milk or Cream	5	5
0403	Buttermilk, yogurt, keohir and other fermented or acidified milk	5	5
0404	Whey, concentrated or containing added sugar...	3	5
0805	Citrus Fruits: fresh or dried	5	5
1005	Corn	3	5
1006	Rice	U	U
1101	Wheat or meslin flour	5	U
1507	Soybean oil and its fractions....	3	5
1508	Ground nut oil and its fractions....	5	5
1511	Palm oil and its fractions....	3	5
1513	Coconut (copra), palm kernel or babassu oil and fractions	5	5
1601	Sausages and similar products, of meat, meat offal or blood...	3	5
1602	Other prepared and preserved meat...	3	5
1701	Cane or beet sugar and chemically pure sucrose, in solid form	6	U
2006	Vegetables, fruit, nuts, fruit and other parts of	5	5

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	plants, pr/pr by sugar		
2007	Jams, fruit jellies, marmalades, fruit or nut puree...	3	5
2009	Fruit juices (including grape must) and vegetable juices...	5	5
2101	Extracts, essences and concentrates, of coffee, tea...	3	5
2203	Beer made from malt	5	U
2204	Wine or fresh grapes, including fortified wines; grape must other than that of heading No. 2009	5	U
2205	Vermouth and other wine of fresh grapes flavored with plants	5	U
2206	Other fermented beverages	5	U
2207	Undenatured ethyl alcohol > 80%	5	U
2208	Undenatured ethyl alcohol < 80%	5	U
2302	Brans, and other residues whether in the form of pellets....	0*	5
2303	Residues of starch manufacture and similar residues...	0*	3
2309	Preparations of a kind used in animal feeding	4	5
2401	Unmanufactured tobacco; tobacco refuse	U	U
2402	Cigars, cheroots, cigarillos and cigarettes	U	U
2403	Other manufactured tobacco and manufactured tobacco substitutes	U	U

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**Annex D1- Phase-out Periods for Restrictions on
Import Trading Rights and Distribution Rights -
Industrial Products**

*Notes:**0= No phase-out period**U= Unbound**C= Subject to state trading, Annex C**G= Subject to services commitment in Annex G on audio-visual services*

** - For purposes of Annex D1, phase-out periods for Import Trading Rights shall begin on the date on which joint ventures are first permitted under Article 2.7.D of Chapter I of this Agreement.*

*** - For purposes of Annex D1, phase-out periods for Distribution Rights shall begin on the date on which joint ventures are first permitted under Annex G, section IV (Distribution Services) of this Agreement.*

HS Number	Description	Import Trading rights - Phase-out Period* (yrs.)	Distribution rights - Phase-out Period** (yrs.)
2523	Portland cement, aluminous cement, slag cement etc	5	7
2709	Crude oil from petroleum and bituminous minerals	5	U
2710	Oil (not crude) from petrol & bitum mineral etc.	7	U
2711	Petroleum gases & other gaseous hydrocarbons	6	U
2802	Sulfur, sublimed or precipitated; collodial sulfur	3	5
2804	Hydrogen, rare gases and other nonmetals	2	5
2805	Alkali metals etc; rare-earth metals etc; mercury	2	5
2806	Hydrogen chloride; chlorosulfuric acid	5	5
2807	Sulfuric acid; oleum	5	5
2808	Nitric acid, sulfonitric acids	5	5
2809	Diphosphorus pentaoxide; phosphoric acid etc	3	5
2810	Oxides of boron; boric acids	3	5
2813	Sulfides of nonmetals; commercial phosp trisulfide	3	5
2814	Ammonia, anhydrous or in aqueous solution	3	5

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2815	Sodium hydrox; potass hydrox; sod or potass perox	3	5
2817	Zinc oxide and zinc peroxide	3	5
2818	Artfl corundum w/nt chem defnd alum oxid/hydroxide	3	5
2819	Chromium oxides and hydroxides	3	5
2820	Manganese oxides	3	5
2821	Iron oxides & hydroxides; earth colors nun 70% ir	3	5
2823	Titanium oxides	3	5
2824	Lead oxides; red lead and orange lead	3	0
2829	Chlorates etc; bromates etc; iodates etc.	3	0
2830	Sulfides; polysulfides	3	5
2833	Sulfates; alums; peroxosulfates (persulfates)	3	5
2834	Nitrites; nitrates	3	5
2835	Phosphinates, phosphonates, phosphates & polyphosp	3	5
2836	Carbonates; peroxocarbonates; comm amm carbonate	3	5
2840	Borates; peroxoborates	3	5
2843	Colloidal prec metal; prec metal comp & amalgams	3	5
2847	Hydrogen peroxide, whether/not solidified w/ urea	3	5
2907	Phenols; phenol-alcohols	3	5
2909	Ethers, ether-alcohols, alcohol peroxides etc.	5	5
2910	Epoxides with a 3-memb ring & halog, sulfon etc	5	5
2912	Aldehydes, its cyclic polymers; paraformaldehyde	5	5
2914	Ketones & quinones & halogenatd, sulfonatd der etc	3	5
2915	Sat acyclic nonocarbox acid & anhyd, halogon etc	3	5
2916	Unsat acyclic & cyclic monocarbox acid & anhyd etc	3	5
2917	Polycarboxylic acids & anhyd etc, halog, sulf etc	3	5
2918	Carboxylic acid, added oxygen & anhy etc, hal etc	3	5
2935	Sulfonamides	3	5
2936	Provitamins and vitamins & derivatives & intermixs	3	U
2937	Hormones; derivatives & steriods used as hormones	3	U
2938	Glycosides, natural or synth & salts, ethers etc.	3	U
2939	Veg alkaloids, nat or synth & salts, ethers etc.	3	U
2940	Sugars, chem pure (exc sucrose, lactose, etc)	3	U
2941	Antibiotics	3	U
2942	Organic compounds nesoi	3	U
3003	Medicaments nesoi of mixtures, not dosage etc form	6	U
3004	Medicaments nesoi, mixed or not, in dosage etc fm	6	U
3006	Pharmaceutical goods in note 4 to chapter 30	6	U

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3102	Mineral or chemical fertilizers, nitrogenous	5	U
3103	Mineral or chemical fertilizers, phosphatic	5	U
3104	Mineral or chemical fertilizers, potassic	5	U
3105	Mineral or chemical fertilizers, other	5	U
3208	Paint & varnish from synth etc polymers nonaq, etc	3	3
3209	Paint & varnish from synth etc polymers aqueous md	3	3
3210	Paints & varnishes nesoi; watr pigmts for leather	3	3
3403	Lubricating preps, antirust & treating textiles etc	3	5
3601	Propellant powders	C	U
3602	Prepared explosives other than propellent powders	C	U
3603	Safety fuses; detonating fuse; percussion caps etc	C	U
3604	Fireworks, signalling flares, rain rockets etc.	0	U
3706	Motion-picture film, exposed and developed	C	G
3808	Insecticides, rodenticides; fungicides etc, retail	5	U
3812	Prepared rubber accelerators; com plasticizers etc	5	5
3819	Hydraulic brake fluids/liq for hydraulic trans etc	3	5
3901	Polymers of ethylene, in primary forms	0	4
3902	Polymers of propylene or other olefins, prim forms	0	4
3903	Polymers of styrene, in primary forms	0	4
3904	Polymers of vinyl chloride etc., in primary forms	0	4
3905	Polymers of vinyl acetate & oth vinyl polym, pr fm	0	4
3906	Acrylic polymers in primary forms	0	4
3907	Polyethers, expoxides & polyesters, primary forms	0	4
3908	Polyamides in primary forms	0	4
3909	Amino-resins, phenolics & polyurethanes, prim form	0	4
3910	Silicones, in primary forms	0	4
3911	Petro resins, polysulfides etc nesoi, primary form	0	4
3912	Cellulose and chemical deriv nesoi, primary forms	0	4
3913	Natural polymers and modified natural polymers	0	4
40111000	Tires of a kind used on motor cars	5	5
40112010	Tires with a width of 450 mm	5	5
40114000	Tires of a kind used on motorcycles	5	5
40131010	Inner tubes for tires of a width of 450 mm	2	3
40139020	Inner tubes of a kind used on motorcycles	2	3
4801	Newsprint, in rolls or sheets	5	7
4802	Paper, uncoat, for writing etc, rolls; hndmd paper	5	7
4804	Kraft paper & paperboard, uncoat nesoi, rolls etc	5	7

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4807	Composite paper & paperboard, no surf coat, rl etc	5	7
4810	Paper & paperboard, coated with kaolin etc, rl etc	5	7
4820	Registers, notebooks, binders, bus forms etc, papr	0	7
4823	Paper, paperboard, cellul wad to size & arts nesoi	5	7
4901	Books, brochures & similar printed matter	C	U
4902	Newspapers, journals & periodicals	C	U
4903	Children's picture, drawing or coloring books	C	U
4907	Unused postage, check forms, banknotes, stock, etc	C	U
4909	Printed or illust post cards, greeting cards, etc.	C	U
4910	Calendars, calendar blocks of any kind, printed	C	U
4911	Printed matter nesoi, incl print pictures & photos	C	U
5007	Woven fabrics of silk or silk waste	5	5
5111	Woven fabrics of carded wool or fine animal hair	5	5
5112	Woven fabrics of combed wool or fine animal hair	5	5
5208	Woven cotton fabrics, nu 85% cot, wt nov 200 g/m2	5	5
5209	Woven cotton fabrics, nu 85% cot, wt ov 200 g/m2	5	5
5210	Woven cotton fabrics, un85%cot, mmfmix, nov200g/m2	5	5
5211	Woven cotton fabrics, un85%cot, mmfmix, ov200g/m2	5	5
5212	Woven cotton fabrics nesoi	5	5
6001	Pile fabrics, knitted or crocheted	5	5
6002	Knitted or crocheted fabrics, nesoi	5	5
6810	Articles of cement, concrete or artificial stone	5	5
6908	Glazed ceramic flags & paving, hearth tiles, etc	5	5
6910	Ceramic sinks, washbasins, water closet bowls etc	5	5
7004	Drawn & blown glass, in sheets etc	5	7
7005	Float glass & surf ground or polished sheets etc	5	7
7016	Glass paving blocks etc; gl cubes, lead window etc	5	7
7208	Fl-rl iron & na steel nun600mm wd hot-rl, not clad	5	5
7209	Fl-rl iron & na steel nun600mm wd cold-rl, no clad	5	5
7210	Fl-rl iron & na steel nun600mm wd, clad etc	5	5
7211	Fl-rl iron & na steel un 600mm wd, not clad etc	5	5
7212	Fl-rl iron & na steel un 600mm wd, clad etc	5	5
7213	Bars & rods, iron & na steel, h-r irreg coils	5	5
7214	Bars & rods, iron & na steel nesoi, h-r etc	5	5
7215	Bars & rods, iron & na steel nesoi	5	5

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7216	Angles, shapes & sections of iron & nonalloy steel	5	5
7217	Wire of iron & nonalloy steel	5	5
7303	Tubes, pipes and hollow profiles of cast iron	5	5
7304	Tubes, pipes etc, seamless, iron nesoi & steel	5	5
7305	Tubes & pipes nesoi, ext dia ov406-4mm, ir & steel	5	5
7306	Tubes, pipes & hollow profiles nesoi, iron & steel	5	5
7604	Aluminum bars, rods and profiles	3	4
7614	Stranded wire, cables etc, aluminum, no elec insul	3	4
8407	Spark-ignition recip or rotary int comb piston eng	4	5
8408	Compression-ignition internal comb piston engines	4	5
8409	Parts for engines of heading 8407 or 8408	3	5
8414	Air or vac pumps, compr & fans; hoods & fans; pts	3	5
8415	Air conditioning machines (temp & hum change), pts	3	5
8418	Refrigerators, freezers etc; heat pumps nesoi, pts	3	5
8420	Calendering machines etc nesoi & cylinders, parts	4	5
8421	Centrifuges; filter etc mach for liq or gases; pts	0	2
84248100	Mech appl to disperse liq etc; sand etc blast mach	0	2
8426	Ship's derricks; cranes; mobile lifting frames etc	0	5
8427	Fork-lift trucks; oth works trucks with lifts etc.	0	5
8428	Lifting, handling, loading & unload machines nesoi	0	5
8429	Self-propelled bulldozers, graders, scrapers etc	4	5
8430	Mach nesoi, moving, grad etc; pile-dr; snoplow etc	5	5
8431	Parts for machinery of headings 8425 to 8430	5	5
8432	Agricult etc mach for soil etc; lawn rollers; pts	5	7
8433	Harvest etc machines, cleaning eggs etc nesoi, pts	5	7
8435	Presses etc for wine, cider, fruit juice etc, pts	4	7
8436	Agri etc & poultry etc equip, inc incubators, pts	5	7
8437	Mach for cleaning seed etc & work cereal etc, pts	5	7
8438	Mach nesoi, ind prep of food or drink etc, parts	5	7
8442	Mach etc nesoi for typeset, making pr plates etc	C	U
8443	Print mach incl ink-jet mach ancil t prnt pt nesoi	C	U
8444	Machines extruding, drawing etc manmade textiles	3	5
8445	Machines for preparing textile fibers & yarns	3	5
8446	Weaving machines (looms)	3	5
8447	Machines, knitting, stitch-bond, lace, net etc.	3	5
8448	Auxiliary machinery for use with textile machines	3	5
8451	Machinery (not laundry) for cleaning, drying etc	3	5



8452	Sewing machines (not book-sew), cover etc; needles	3	5
8453	Machinery for work leather etc & footwear etc, pts	3	5
8455	Metal-rolling mills and rolls therefor; parts	5	5
8458	Lathes for removing metal, incl turning centers	5	5
8459	Machine tools for drilling, boring, milling etc	5	5
8460	Machine tools for honing or finishing metal etc	5	5
8461	Machine tools for shaping, slotting, gear cut etc	5	5
8462	Machine tools for forging, bending, stamping etc	5	5
8466	Parts etc for machine tools of head 8456 to 8465	5	5
8468	Machines, solder etc; gas surf temper machines, pt	5	5
8469	Typewriters & word processing machines	5	7
8470	Calculating & account machines, cash registers etc	5	7
8471	Automatic data process machines; magn reader etc	3	7
8472	Office machines nesoi (hectograph, addressing etc)	5	5
8473	Parts etc for typewriters & other office machines	3	7
8476	Automatic goods-vending machines, parts	5	5
8477	Machinery for working rubber & plast etc nesoi, pt	4	5
8501	Electric motors and generators (no sets)	5	5
8502	Electric generating sets and rotary converters	5	5
8504	Elec trans, static conv & induct, adp pwr supp, pt	5	7
8506	Primary cells & batteries, parts	4	7
8507	Electric storage batteries, incl separators, parts	5	7
8516	Elec water, space & soil heaters; hair etc dry, pt	5	5
8517	Electric apparatus for line telephony etc, parts	0	5
8519	Turntables, record & cassette players etc.	5	7
8520	Magnetic tape & other sound recorders	5	7
8521	Video recrdng/reproduc appar wheth/nt video tuner	5	7
8524	Records, tapes & other recorded sound media etc	C	U
8525	Trans appar for radiotele etc; tv camera & rec	C	U
8526	Radar apparatus, radio navig aid & remote cont app	C	U
8527	Reception apparatus for radiotelephony etc	0	7
8528	Tv recvrs, incl video monitors & projectors	5	7
8529	Parts for television, radio and radar apparatus	U	U
8535	Electrical apparatus for switching etc, ov 1000 v	5	5
8536	Electrical apparatus for switching etc, nov 1000 v	3	5
8537	Boards, panels etc elec switch and n/c appar etc.	5	5
8540	Thermionic, cold cathode or photocathode tubes, pt	3	3

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8542	Electronic integrated circuits & microassembl, pts	0	5
8544	Insulated wire, cable etc; opt sheath fib cables	5	5
8701	Tractors (other than works trucks of heading 8709)	6	7
8702	Motor vehicle f trnspt >ten persons includ driver	6	7
8703	Motor cars & vehicles for transporting persons	6	7
8704	Motor vehicles for transport of goods	6	7
8705	Special purpose motor vehicles nesoi	6	7
8706	Chas w eng f trac, mtr veh f pass/gd & special pur	6	7
8707	Bodies (including cabs), for specif motor vehicles	3	7
8708	Parts & access for motor vehicles (head 8701-8705)	5	7
8709	Works trucks, self-prop, no lift; stat tractrs; pt	5	7
8711	Motorcycles (incl mopeds) & cycles with aux motor	5	7
8714	Parts & access for cycles & invalid carriages	5	7
8716	Trailers etc; other vehicles, not mech propeld, pt	5	5
9001	Opt fibers & bund etc; pol sheets; unmoun opt elem	5	5
9704	Postage or revenue stamps, firstday covers	C	U

Annex D2- Phase-Out Periods for Restrictions on Export Trading Rights

Notes:

U=Unbound

For purposes of Annex D2, phase-out periods for Export Trading Rights shall begin on the date upon which joint ventures are first permitted under Chapter I, Article 2, paragraph 7(D) of the Agreement

IS Heading	Description	Phase-Out Period (yrs.)*
901	Coffee; coffee husks etc; substitutes with coffee	7
1006	Rice	U
1002	Unroasted iron pyrites	5
1009	Chalk	5
11	Natural barium sulfate; nat barium carbonate nesoi	5
19	Magnesite; fused magnesia; d-b magn; m oxide nesoi	5
24	Asbestos	5
25	Mica, including splittings; mica waste	5
26	Natural steatite, roughly trimmed etc; talc	5
27	Natural cryolite; natural chiolite	5
28	Natural borates & conc; natural boric acid nov 85%	5

2529	Feldspar, leucite, nepheline, n syenite; fluorspar	5
2530	Mineral substances nesoi	5
2601	Iron ores & concentrates, including roast pyrites	5
2602	Manganese ores a concntrts inc ferr mangn iron ore	5
2603	Copper ores and concentrates	5
2604	Nickel ores and concentrates	5
2605	Cobalt ores and concentrates	5
2606	Aluminum ores and concentrates	5
2607	Lead ores and concentrates	5
2608	Zinc ores and concentrates	5
2609	Tin ores and concentrates.	5
2610	Chromium ores and concentrates.	5
2611	Tungsten ores and concentrates.	5
2612	Uranium or thorium ores and concentrates.	5
2613	Molybdenum ores and concentrates.	5
2614	Titanium ores and concentrates.	5
2615	Niobium, tantalum, vanadium or zirconium ores and concentrates.	5
2616	Precius metal ores and concentrates.	7
2617	Other ores and concentrates.	5
2618	Granulated slag (slag sand) from the manufacture of iron or steel.	3
2701	Coal, briquettes, ovoids and similar solid fuels manufactured from coal.	3
2707	Oils and other products of the distillation of high temperature coal tars; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents.	5
2708	Pitch and pitch coke, obtained from coal or from other mineral tars.	5
709	Petroleum oils and oils obtained from bituminous minerals crude.	U
711	Petroleum gases and other gaseous hydrocarbons.	U

2712	Petroleum jelly, paraffin wax, micro-crystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes and similar products obtained by synthesis or by other processes.	3
2713	Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals.	5
2714	Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks.	5
2715	Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or mineral tar pitch (for example, bituminous mastics, cut-backs).	5
2716	Electrical energy	7
4001	Natural rubber	7
4002	Synthetic rubber and factive derived from oils	7
7102	Diamonds, whether or not worked, but not mounted or set.	U
7103	Precious stones (other than diamonds) and semi-precious stone, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport.	U
7104	Synthetic and reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport.	U
7105	Dust and powder of natural or synthetic precious or semi-precious stones.	U
7106	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms.	U
7108	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form.	U

ANNEX E - TARIFFS

VIETNAM

Tariffs on Agricultural Products

Notes:

* - Tariffs marked with an (*) are to be implemented 6 years from the date of entry into force of this Agreement.

HS Number	Description	Current Tariffs	Tariffs to be Implemented by three years after the date of entry into force of this Agreement
0204	Meat of sheeps or goats, chilled or frozen		
0204.10.00	- Carcasses and half-carcasses of lamb, fresh or chilled	20%	10%
	- Other meat of sheep, fresh or chilled		
0204.21.00	- Carcasses and half carcasses	20%	10%
0204.22.00	- Other cuts with bone in	20%	10%
0204.23.00	- Boneless	20%	10%
0204.30.00	- Carcasses and half carcasses of lamb, frozen	20%	10%
	- Other meat of sheep, frozen:		
0204.41.00	- Carcasses and half carcasses	20%	10%
0204.42.00	- Other cuts with bone in	20%	10%
0204.43.00	- Boneless	20%	10%
0204.50.00	- Meat of goats	20%	10%
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen		
0206.10.00	- Of bovine animals, fresh or chilled	20%	15%
	- Of bovine animals, frozen		
0206.21.00	- Tongues	20%	15%

0206.22.00	- Livers	20%	15%
0206.29.00	- Other	20%	15%
0206.30.00	- Of swine, fresh or chilled	20%	15%
	- Of swine, frozen:		
0206.41.00	- Livers	20%	15%
0206.49.00	- Other	20%	15%
0206.80.00	- Other, fresh or chilled	20%	10%
0206.90.00	- Other, frozen	20%	10%
0207	Meat and edible offal, of the poultry of heading No. 01.05, fresh, chilled or frozen		
	- Of duck, geese or guinea fowls:		
0207.34.00	- Fatty livers, fresh or chilled	20%	15%
0207.35.00	- Other, fresh or chilled	20%	15%
0207.36.00	- Other, frozen	20%	15%
0208	Other meat and edible meat offal, fresh, chilled or frozen		
0208.10.00	- Of rabbits or hares	20%	10%
0208.20.00	- Frog" legs	20%	10%
0208.90.00	- Other	20%	10%
0406	Cheese and curd		
0406.10	- Fresh cheese (including whey cheese), not fermented, and curd		
0406.10.10	- Fresh cheese (including whey cheese), not fermented	30%	10%
0406.10.20	- Curd	15%	10%
0406.20.00	- Grated or powdered cheese, of all kinds	30%	10%
0406.30.00	- Processed cheese, not grated or powdered	30%	10%
0406.40.00	- Blue-veined cheese	30%	10%
0406.90.00	- Other	30%	10%
0409.00.00	Natural Honey	20%	10%
0410.00	Edible products of animal origin, not elsewhere specified or included		

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0410.00.10	- Swallow's net	20%	5%
0410.00.90	- Other	20%	5%
0701	Potatoes, fresh or chilled		
0701.90.00	- Other	30%	20%
0702.00.00	Tomatoes, fresh or chilled	30%	20%
0703	Onions, shallots, garlic, leeks, and alliaceous vegetables, fresh or chilled		
0703.10.00	- Onions and shallots	30%	20%
0703.20.00	- Garlic	30%	20%
0703.90.00	- Leeks and other alliaceous vegetables	30%	20%
0704	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled		
0704.10.00	- Cauliflowers and headed broccoli	30%	20%
0704.20.00	- Brussels sprouts	30%	20%
0704.90.00	- Other	30%	20%
0705	Lettuce (<i>lactuca sativa</i>) and chicory (<i>cichorium</i> spp.), fresh or chilled		
	- Lettuce:		
0705.11.00	- Cabbage lettuce (headed lettuce)	30%	20%
0705.19.00	- Other	30%	20%
	- Chicory		
0705.21.00	- Witloof chicory (<i>cichorium intybus</i> var. <i>foliosum</i>)	30%	20%
0705.29.00	- Other	30%	20%
0706	Carrots, turnip, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled		
0706.10.00	- Carrots and turnips	30%	20%
0706.90.00	- Other	30%	20%
0707.00.00	Cucumbers and gherkins, fresh or	30%	20%

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	chilled		
0709	Other vegetables, fresh or chilled		
0709.10.00	- Globe artichokes	30%	15%
0709.20.00	- Asparagus	30%	15%
0709.30.00	- Aubergines (egg plants)	30%	20%
0709.40.00	- Celery other than celeriac	30%	15%
	- Mushrooms and truffles		
0709.51.00	- Mushrooms	30%	20%
0709.52.00	- Truffles	30%	20%
0709.60	- Fruit of the genus Capsicum or of the genus Pimenta		
0709.60.10	- Chilies	30%	20%
0709.60.90	- Other	30%	20%
0709.70.00	- Spinach, New Zealand spinach and orache spinach (garden spinach)	30%	20%
0709.90.00	- Other	30%	20%
0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen		
0710.10.00	- Potatoes	30%	20%
0710.30.00	- Spinach, New Zealand spinach and orange spinach (garden spinach)	30%	15%
0711	Vegetables provisionally prepared (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption		
0711.20.00	- Olives	30%	15%
0711.30.00	- Capers	30%	15%
0806	Grapes: fresh or dried		
0806.10.00	- Fresh	40%	25%
0806.20.00	- Dried	40%	25%
0808	Apples, pears and quinces: fresh		
0808.10.00	- Apples	40%	25%
0808.20.00	- Pears and quinces	40%	25%




	Other fruit, fresh		
0	- Strawberries	40%	15%
0	- Raspberries, blackberries, mulberries and loganberries	40%	15%
0	- Black, white or red currants and gooseberries	40%	15%
00	- Cranberries, bilberries and other fruits of the genus Vaccinium	40%	15%
00	- Kiwifruit	40%	15%
00	Rye	3%	3%
00	Barley	3%	3%
00	Oats	3%	3%
00	Grain sorghum	10%	5%
	Buckwheat, millet and canary seed; other cereals		
00	- Buckwheat	10%	5%
00	- Millet	10%	5%
00	- Other cereals	10%	5%
	Wheat or meslin flour		
0.10	- Wheat flour	20%	20%
	Cereal flours other than of wheat or meslin		
0.00	- Rye flour	20%	15%
0.00	- Maize (corn) flour	20%	15%
0.00	- Other	20%	15%
	Cereal groats, meal and pellets		
	- Groats and meal:		
3.00	- Of maize (corn)	10%	10%
	Cereal grains otherwise worked (for		



0810	Other fruit, fresh		
0810.10.00	- Strawberries	40%	15%
0810.20.00	- Raspberries, blackberries, mulberries and loganberries	40%	15%
0810.30.00	- Black, white or red currants and gooseberries	40%	15%
0810.40.00	- Cranberries, bilberries and other fruits of the genus Vaccinium	40%	15%
0810.50.00	- Kiwifruit	40%	15%
1002.00.00	Rye	3%	3%
1003.00.00	Barley	3%	3%
1004.00.00	Oats	3%	3%
1007.00.00	Grain sorghum	10%	5%
1008	Buckwheat, millet and canary seed; other cereals		
1008.10.00	- Buckwheat	10%	5%
1008.20.00	- Millet	10%	5%
1008.90.00	- Other cereals	10%	5%
1101	Wheat or meslin flour		
1101.00.10	- Wheat flour	20%	20%
1102	Cereal flours other than of wheat or meslin		
1102.10.00	- Rye flour	20%	15%
1102.20.00	- Maize (corn) flour	20%	15%
1102.90.00	- Other	20%	15%
1103	Cereal groats, meal and pellets		
	- Groats and meal:		
1103.13.00	- Of maize (corn)	10%	10%
1104	Cereal grains otherwise worked (for		

	example, hulled, rolled, flaked, pearled, sliced or kibbed), except rice of heading No. 10.06; germ of cereals, whole, rolled, flaked or ground		
1104.23	- Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbed)		
1104.23.00	- Of maize (corn)	10%	10%
1201.00.00	Soya beans, whether or not broken	10%	5%
1202	Ground nuts, not roasted or otherwise cooked, whether or not shelled or broken		
1202.10.00	- In shell	10%	10%
1202.20.00	- Shelled, whether or not broken	10%	10%
1203.00.00	Copra (coconut)	10%	10%
1206.00.00	Sunflower seeds, whether or not broken	30%	10%
1207	Other oil seeds and oleaginous fruits, whether or not broken		
1207.20.00	- Cotton seeds	10%	5%
1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified		
1507.90	- Other:		
1507.90.10	- Refined	40%	30%
1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified		
1508.90	- Other:		
1508.90.10	- Refined	40%	30%



	example, hulled, rolled, flaked, pearled, sliced or kibbed), except rice of heading No. 10.06; germ of cereals, whole, rolled, flaked or ground		
1104.23	- Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbed)		
1104.23.00	- Of maize (corn)	10%	10%
1201.00.00	Soya beans, whether or not broken	10%	5%
1202	Ground nuts, not roasted or otherwise cooked, whether or not shelled or broken		
1202.10.00	- In shell	10%	10%
1202.20.00	- Shelled, whether or not broken	10%	10%
1203.00.00	Copra (coconut)	10%	10%
1206.00.00	Sunflower seeds, whether or not broken	30%	10%
1207	Other oil seeds and oleaginous fruits, whether or not broken		
1207.20.00	- Cotton seeds	10%	5%
1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified		
1507.90	- Other:		
1507.90.10	- Refined	40%	30%
1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified		
1508.90	- Other:		
1508.90.10	- Refined	40%	30%

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1509	Olive oil and its fractions, whether or not refined, but not chemically modified		
1509.10.00	- Virgin	5%	5%
1509.90	- Other:		
1509.90.10	- Refined	40%	30%
1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading No. 1519		
1510.00.10	- Crude oils	5%	5%
	- Other:		
1510.00.91	- Refined	40%	30%
1511	Palm oil and its fractions, whether or not refined, but not chemically modified		
1511.10	- Crude oil		
1511.10.10	- Palm oil	5%	5%
1511.10.90	- Other	5%	5%
1511.90	- Other:		
1511.90.90	- Other	40%	30%
1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined but not chemically modified		
	- Sunflower-seed or safflower oil and fractions thereof:		
1512.11.00	- Crude oil	5%	5%
1512.19	- Other		
1512.19.10	- Refined:	40%	30%




1509	Olive oil and its fractions, whether or not refined, but not chemically modified		
1509.10.00	- Virgin	5%	5%
1509.90	- Other:		
1509.90.10	- Refined	40%	30%
1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading No. 1519		
1510.00.10	- Crude oils	5%	5%
	- Other:		
1510.00.91	- Refined	40%	30%
1511	Palm oil and its fractions, whether or not refined, but not chemically modified		
1511.10	- Crude oil		
1511.10.10	- Palm oil	5%	5%
1511.10.90	- Other	5%	5%
1511.90	- Other:		
1511.90.90	- Other	40%	30%
1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined but not chemically modified		
	- Sunflower-seed or safflower oil and fractions thereof:		
1512.11.00	- Crude oil	5%	5%
1512.19	- Other		
1512.19.10	- Refined:	40%	30%



1513	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined but not chemically modified		
	- Coconut (copra) oil and its fractions:		
1513.19	- Other:		
1513.19.10	- Refined	40%	30%
1514	Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified		
1514.10.00	- Crude oil	5%	5%
1514.90	- Other:		
1514.90.10	- Refined	40%	30%
1515	Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified		
1515.90	- Other:		
1515.90.99	- Other	40%	30%
1516	Animal or vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared		
1516.10.00	- Animal fats and oils and their fractions	40%	30%
1516.20.00	- Vegetable fats and oils and their fractions	40%	30%
1517	Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, other than edible fats or oils or their fractions of heading		
1517.10.00	- Margarine, excluding liquid margarine	40%	30%

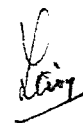
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products	50%	40%*
1602	Other prepared and preserved meat, meat offal or blood		
1602.10.00	- Homogenized preparations	50%	40%*
1602.20.00	- Of liver of any animal	50%	40%*
	- Of poultry of heading No. 0105:		
1602-31.00	- Of turkeys	50%	40%*
1602.32.00	- Of fowls of the species Gallus domesticus	50%	40%*
1602.39.00	- Other	50%	40%*
	- Of swine:		
1602.41.00	- Hams and cuts thereof	50%	40%*
1602.42.00	- Shoulders and cuts thereof	50%	40%*
1602.49.00	- Other, including mixtures	50%	40%*
1602.50.00	- Of bovine animals	50%	40%*
1602.90.00	- Other, including preparations of blood of any animal	50%	40%*
1603.00.00	Extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates	50%	30%
1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs		
	- Fish, whole or in pieces, but not minced:		
1604.11.00	- Salmon	50%	40%
1604.12.00	- Herrings	50%	40%
1604.13.00	- Sardines, sardinella and brisling or sprats	50%	40%

1604.14.00	- Tunas, skipjack and bonito (Sarda spp.)	50%	40%
1604.15.00	- Mackerel	50%	40%
1604.16.00	- Anchovies	50%	40%
1604.19.00	- Other	50%	40%
1604.20.00	- Other prepared or preserved fish	50%	40%
1604.30.00	- Caviar and caviar substitutes	50%	40%
1605	Crustaceans, molluscs and other aquatic invertebrates, prepared or preserved		
1605.10.00	- Crab	50%	40%
1605.20.00	- Shrimps and prawns	50%	40%
1605.30.00	- Lobster	50%	40%
1605.40.00	- Other crustaceans	50%	40%
1605.90.00	- Other	50%	40%
1806	Chocolate and other food preparations containing cocoa		
1806.10.00	- Cocoa powder, containing added sugar or other sweetening matter	30%	20%
1806.20.00	- Other preparations in blocks or slabs weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packing, of a content exceeding 2 kg	30%	20%
	- Other, in blocks, slabs or bars		
1902	Pasta, whether or not cooked or stuffed (with meat or other substances or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared		
	- Uncooked pasta, not stuffed or otherwise prepared:		
1902.11.00	- Containing eggs	50%	40%

1902.19.00	- Other	50%	40%
1902.20.00	- Stuffed pasta, whether or not cooked or otherwise prepared	50%	40%
1902.30.00	- Other pasta	50%	40%
1902.40.00	- Couscous	50%	40%
1903.00.00	Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or in similar form	50%	40%
2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid		
2001.10.00	- Cucumbers and gherkins	50%	40%
2001.20.00	- Onions	50%	40%
2001.90.00	- Other	50%	40%
2002	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid		
2002.10.00	- Tomatoes, whole or in pieces	50%	40%
2002.90	- Other:		
2002.90.10	- Tomato paste	50%	40%
2002.90.90	- Other	50%	40%
2003	Mushroom and truffles, prepared or preserved otherwise than by vinegar or acetic acid		
2003.10.00	- Mushrooms	50%	40%
2003.20.00	- Truffles	50%	40%
2004	Other vegetables, prepared or preserved otherwise than by vinegar or acetic acid, frozen other than		



	products of heading No. 2006		
2004.10.00	- Potatoes	50%	40%
2004.90.00	- Other vegetables and mixtures of vegetables	50%	40%
2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading No. 20.06		
2005.10.00	- Homogenized vegetables	50%	40%
2006	Vegetables, fruit, nuts, fruit-peel and other parts of plants, preserved by sugar (drained, glaze or crystallised)		
2006.00.10	- Fruits or nuts	50%	40%
2006.00.90	- Other	50%	40%
2007	Jams, fruit jellies, marmalades, fruit or nut puree and fruit or nut pastes, being cooked preparations, whether or not containing added sugar or other sweetening matter		
2007.10.00	- Homogenized preparation	50%	40%
	- Other:		
2007.91.00	- Citrus fruit	50%	40%
2007.99.00	- Other	50%	40%
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included		
	- Nuts, ground-nuts and other seeds, whether or not mixed together:		
2008.11	- Ground nut:		
2008.11.10	- Oil-roasted and the like	50%	40%

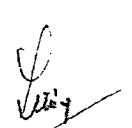



2008.11.20	- Coated with sugar	50%	40%
2008.11.90	- Other	50%	40%
2008.19	- Other, including mixtures		
2008.19.10	- Prepared cashew	50%	40%
2008.19.90	- Other	50%	40%
2008.20.00	- Pineapples	50%	40%
2008.30.00	- Citrus fruit	50%	40%
2008.40.00	- Pears	50%	40%
2008.50.00	- Apricots	50%	40%
2008.60.00	- Cherries	50%	40%
2008.70.00	- Raspberries	50%	40%
2008.80.00	- Strawberries	50%	40%
	- Other, including mixtures other than those of subheading No. 2008.19:		
2008.91.00	- Palm hearts	50%	40%
2008.92.00	- Mixtures	50%	40%
2008.99.00	- Other	50%	40%
2009	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter		
	- Orange juice:		
2009.11.00	- Frozen	50%	40%
2009.19.00	- Other	50%	40%
2009.20.00	- Grapefruit juice	50%	40%
2009.30.00	- Juice of any other single citrus fruit	50%	40%
2009.40.00	- Pineapple juice	50%	40%
2009.50.00	- Tomatoes juice	50%	40%
2009.60.00	- Grape juice (including grape must)	50%	40%
2009.70.00	- Apple juice	50%	40%
2009.80.00	- Juice of any other fruit or vegetable	50%	40%



2009.90.00	- Mixtures of juices	50%	40%
2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; ice and snow		
2201.90.00	- Other	50%	40%
2202	Waters, including mineral waters and aerated water containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit or vegetable juices of heading No. 2009		
2202.10	- Waters, including mineral waters and aerates waters, containing added sugar or other sweetening matter or flavoured:		
2202.10.10	- Beverages, flavovved with fruit juices or essences (orangeade, lemonade, strawberrade...)	50%	40%
2202.10.20	- Cola waters and the like	50%	40%
2202.10.90	- Other	50%	40%
2202.90.00	- Other	50%	40%
2203.00.00	Beer made from malt	100%	80%
2207	Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher; ethyl alcohol or other spirits, denatured, of any strength		
2207.10.00	- Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol or higher	50%	40%
2207.20	- Ethyl alcohol or other spirits, denatured, of any strength:		

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2207.20.90	- Other	50%	40%
2209.00.00	Vinegar and substitutes for vinegar obtained from acetic acid	50%	20%
2304.00.00	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil.	10%	10%
2309	Preparations of a kind used in animal feeding		
2309.10.00	- Dog or cat food, put up for retail sale	10%	10%
2309.90	- Other:		
2309.90.10	- Shrimp food	10%	10%

Tariffs on Industrial Products - Vietnam

HS Number	Product Description	Current Tariffs (<i>ad valorem</i>)	Tariffs to be Implemented three years after the date of entry into force of this Agreement (<i>ad valorem</i>)
33030000	Perfumes and toilet waters	50	30
3304	Beauty or make-up preparations and preparations for care of the skin (other than medicaments), including sunscreen or suntan preparations; manicure or pedicure preparations		
33043000	- Manicure or pedicure preparations	50	30
	- Other:		
33049900	- Other	50	30

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3305	Preparations for use on the hair		
33051000	- Shampoos	50	40
33053000	- Hair lacquers	50	30
330590	- Other:		
33059010	- Hair dyes	50	30
33059090	- Other	50	30
3401	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, molded pieces or shapes, whether or not containing soap; paper, wadding, felt, and nonwovens, impregnated, coated or covered with soap or detergent		
34012000	- Soap in other form (soap noodles only)	50	30
3402	Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading No. 34.01		
340290	- Other:		
34029090	- Other (surfactant for hair care only)	20	10
3701	Photographic plates and film in the flat, sensitized, unexposed, of any materials other than paper, paperboard or textiles; instant print film in the flat, sensitized, unexposed, whether or not in packs		
37013000	- Other plated and film, with any side exceeding 255 mm	15	10
3702	Photographic film in rolls, sensitized, unexposed; of any materials other than paper, paperboard or textiles, instant print film in rolls, sensitized, unexposed		
37023100	- for colour photography (polychrome)	30	20
	- Other film, for color photography (polychrome)		
37025400	- Of a width exceeding 16 mm but not exceeding 35 mm and of a length not exceeding 30 m, excl.	30	20

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	for slides		
37025500	- Of a width exceeding 16 mm but not exceeding 35 mm and of a length exceeding 30 m	30	20
37025600	- Of a width exceeding 35mm	30	20
3703	Photographic paper, paperboard and textiles, sensitized, unexposed		
37032000	-Other, for colour photography (polychrome)	30	20
4804	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading No. 48.02 or 48.03		
	- Kraftliner:		
48041100	- Unbleached	30	20
6406	Parts of footwear; removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof		
64069900	- Of other materials	20	10
7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel		
73239900	--Other	30	20
8408	Compression-ignition internal combustion piston engines (diesel, semi-diesel)		
840820	- Engines of a kind used for propulsion of vehicles of Chapter 87		
	- For other vehicles of Chapter 87		
84082021	- For motor vehicles of sub-heading No. 8711, 8703	40	30
8415	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity can not be separately regulated		
841583	- Not incorporating a refrigerating unit		
84158310	- Of a capacity not exceeding 90,000BTU/h	50	30
84158320	-Of a capacity exceeding 90,000BTU/h but not exceeding 180,000 BTU/h	40	30

84158390	-Other	30	20
841590	-Parts:		
84159019	- Other	30	20
8418	Refrigerators, freezers and other refrigerating of freezing equipment, electric or other; heat pumps other than air conditioning machines of heading No. 84.15		
841830	-Freezers if the chest type, not exceeding 800 l capacity :		
84183010	- With capacity not exceeding 200 l	50	30
84183090	- With capacity exceeding 200 l but not exceeding 800 l	30	20
841840	-Freezers of the upright type, not exceeding 900 l capacity:		
84184010	- With capacity not exceeding 200 l	50	40
84184090	- With capacity exceeding 200 l but not exceeding 900 l	30	20
841850	-Other refrigerating or freezing chests, cabinets, display counters, show cases and similar refrigerating or freezing furniture:		
84185010	- With capacity not exceeding 200 l	50	40
84185090	- With capacity exceeding 200 l	30	20
8419	Machinery, plant or laboratory equipment, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, 'distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric		
	- Other machinery, plant and equipment:		
84198100	-For making hot drinks or for cooking or heating food	30	20
8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus for liquids or gases.		
842121	-For filtering or purifying water		

84212110	-Electrical operated with filtering capacity not exceeding 500 l/h	20	15
8450	Household or laundry-type washing machines, including machines which both wash and dry		
	- Machines, each of a dry linen capacity not exceeding 10 kg:		
84501100	-Fully-automatic machines	50	40
84501200	-Other machines, with built-in centrifugal drier	50	40
84501900	-Other	50	40
84502000	-Machines, each of a dry linen capacity exceeding 10 kg:	50	40
84509000	-Parts	50	40
8481	Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves		
848180	-Other appliances:		
84818060	-Valves for water pipe	20	15
8508	Electro-mechanical tools for working in the hand, with self-contained electric motor.		
85081000	-Drills of all kinds	10	5
8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair dressing apparatus (for example, 'hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading No. 8545		
851660	-Other ovens; cookers, cooking plates, boiling rings, grillers and roasters		
85166020	-Boilers including boiling rings	40	30
85166030	-Ovens cooker	40	30
85166090	-Other	40	30
8523	Prepared unrecorded media for sound recording or similar recording of other		

	phenomena, other than products of Chapter 37		
852313	-Of a width exceeding 6.5 mm:		
85231320	-Computer magnetic tapes	20	15
8525	Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing.		
852520	-Transmission apparatus incorporating reception apparatus:		
85252010	-Cordless telephones (mobile phones)	20	10
85254000	-Still image video cameras and other video camera recorders	30	20
8527	Reception apparatus for radio-telephony, radio-telegraphy or radio broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock		
852790	-Other		
85279010	-Pager	15	10
8529	Parts suitable for use solely or principally with the apparatus of headings Nos. 85.25 to 85.28		
85291000		30	20
9006	Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading No. 8539		
90065300	-Other, for roll film of a width of 35 mm	30	20
9504	Articles for funfair, table or parlour games, including pinball machines, billiards, special tables for casino games and automatic bowling alley equipment		
95041000	-Video games of a kind used with a television receiver	50	30
95049000	-Other	50	30

CHAPTER II**INTELLECTUAL PROPERTY RIGHTS****Article 1****Objectives, Principles and Scope of Obligations**

1. Each Party shall provide in its territory to the nationals of the other Party adequate and effective protection and enforcement of intellectual property rights.
2. The Parties recognize the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives, and ensure that measures to protect and enforce intellectual property rights do not themselves become barriers to legitimate trade.
3. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and the substantive economic provisions of:
 - A. the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);
 - B. the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);
 - C. the Paris Convention for the Protection of Industrial Property, 1967 (Paris Convention);
 - D. the International Convention for the Protection of New Varieties of Plants, 1978 (UPOV Convention (1978)), or the International Convention for the Protection of New Varieties of Plants, 1991 (UPOV Convention (1991)); and
 - E. the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974).

If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall promptly make every effort to accede.
4. A Party may implement in its domestic law more extensive protection and enforcement of intellectual property rights than is required under this Chapter, provided that such protection and enforcement are not inconsistent with this Chapter.



Article 2 Definitions

For purposes of this Chapter:

1. "confidential information" includes trade secrets, privileged information, and other undisclosed information that has not become subject to an unrestricted public disclosure under the Party's domestic law.
2. "encrypted program-carrying satellite signal" means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception of a program carried in that signal by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration.
3. "intellectual property rights" refers to copyrights and related rights, trademarks, patents, layout designs (topographies) of integrated circuits, encrypted program-carrying satellite signals, confidential information (trade secrets), industrial designs and rights in plant varieties.
4. "lawful distributor of an encrypted satellite signal" in a Party means the person who originally transmitted the signal.
5. "national" of a Party shall, in respect of the relevant intellectual property rights, be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention, the Berne Convention, the Geneva Convention, the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the UPOV Convention (1978), the UPOV Convention (1991) or the Treaty on Intellectual Property in Respect of Integrated Circuits adopted at Washington in 1989, as if each Party were a Party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "national of a Party" shall be understood at least to include any person that is a citizen or permanent resident of that Party.
6. "public" includes, with respect to rights of communication and performance of works provided for under Articles 11, 11*bis*(1) and 14(1)(ii) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising

a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works.

7. "right holder" includes the right holder personally, any other natural or legal person authorized by the right holder who is an exclusive licensee of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights.

Article 3 National Treatment

1. Each Party shall accord to nationals of the other Party treatment no less favorable than it accords to its own nationals with regard to the acquisition, protection, enjoyment and enforcement of all intellectual property rights and any benefits derived therefrom.
2. A Party shall not, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions (including fixation, publication or exploitation in the territory of a Party) in order to acquire, enjoy, enforce and exercise rights or benefits in respect of copyright and related rights.
3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of the other Party to designate for service of process or address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1.3 above, provided that such derogation:
 - A. is necessary to secure compliance with measures that are not inconsistent with the Agreement; and
 - B. is not applied in a manner that would constitute a restriction on trade.
4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 4 Copyright and Related Rights

1. Each Party shall protect all works that embody original expression within the meaning of the Berne Convention. In particular:

- A. all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and
- B. compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as works.

The protection a Party provides under subparagraph (B) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

- 2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, and shall provide the right to authorize or prohibit:

- A. the importation into the Party's territory of copies of the work;
- B. the first public distribution of the original and each copy of the work by sale, rental or otherwise;
- C. the communication of a work to the public; and
- D. the rental of the original or a copy of a computer program for the purposes of commercial advantage.

Subparagraph (D) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

- 3. Each Party shall provide that for copyright and related rights:

- A. any person acquiring or holding any economic rights may freely and separately transfer such rights by contract; and
- B. any person acquiring or holding any such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

- 4. Each Party shall provide that, where the term of protection of a work is to be calculated on a basis other than the life of a natural person, the term shall be not less than 75 years from the end of the calendar year of the first authorized publication of the work or, failing such

authorized publication within 25 years from the creation of the work, not less than 100 years from the end of the calendar year of the creation of the work.

5. Neither Party may grant translation or reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.
6. Each Party shall provide to the right holder in a sound recording the right to authorize or prohibit:
 - A. the direct or indirect reproduction, in whole or in part, of the sound recording;
 - B. the importation into the Party's territory of copies of the sound recording;
 - C. the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and
 - D. the rental, lease or lending of the original or a copy of the sound recording for the purposes of commercial advantage.

Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.

7. Each Party shall provide to performers the right to authorize or prohibit:
 - A. the fixation of their live musical performances in a sound recording;
 - B. the reproduction of unauthorized fixations of their live musical performances in a sound recording;
 - C. the transmission or other communication to the public of sounds in a live musical performance; and
 - D. the distribution, sale, rental, disposal or transfer of the unauthorized fixations of their live performances in a sound recording, regardless of where the fixations were made.
8. Each Party shall, through operation of this Agreement, apply the provisions of Article 18 of the Berne Convention to works and, with such modifications as may be necessary, to existing sound recordings.



9. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the right holder.

Article 5 Protection of Encrypted Program-Carrying Satellite Signals

1. For serious violations involving the protection of encrypted program-carrying satellite signals, each Party shall make available appropriate remedies, including civil and criminal remedies.
2. Serious violations involving the protection of encrypted program-carrying satellite signals shall include the following:
 - A. The manufacture, assembly, modification, or distribution (including import, export, sale or lease) of a device or system, by any person knowing or having reason to know that the device or system is primarily of assistance in the unauthorized decoding of an encrypted program-carrying satellite signal; and
 - B. The willful receipt or further distribution of an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal (regardless of the location of such person) or of any other person or persons designated by the original transmitter as authorized distributors of such signal in such Party.
3. Each Party shall provide that civil remedies provided for pursuant to paragraph 1 of this Article shall be available to any person that holds an interest in the encrypted program-carrying satellite signal or the content thereof.

Article 6 Trademarks

1. For the purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including words, personal names, designs, letters, numerals, combinations of colors, figurative elements or the shape of goods or of their packaging. Trademarks shall include service marks, collective marks and certification marks.
2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical, or similar to those goods or services in respect of

which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of making rights available on the basis of use.

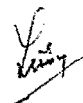
3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. Neither Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.
4. Each Party shall provide a system for the registration of trademarks, which shall include:
 - A. examination of applications;
 - B. notice to be given to an applicant of the reasons for the refusal to register a trademark;
 - C. a reasonable opportunity for the applicant to respond to the notice;
 - D. publication of each trademark either before or promptly after it is registered; and
 - E. a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.
5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of a trademark.
6. Article 6*bis* of the Paris Convention shall apply, with such modifications as may be necessary, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. Neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services or that the trademark be registered.
7. Each Party shall use the International Classification of Goods and Services for registration. Neither Party shall use such classification as the only basis for determining the likelihood of confusion.
8. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years, and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.



9. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non-use only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. The law shall recognize, as valid reasons for non-use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.
10. Each Party shall recognize the use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.
11. Neither Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.
12. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted. The owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs. However, a Party may require a transfer of goodwill in a mark as part of a valid transfer of the mark.
13. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.
14. A Party may refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or a Party's national symbols, or bring them into contempt or disrepute. Each Party shall prohibit the registration as a trademark of words that generically designate goods or services or types of goods or services to which the trademark applies.

Article 7 Patents

1. Subject to the provision of paragraph 2 of this Article, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that such invention is new, resulted from an inventive step and is capable of industrial application. For purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.



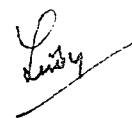
2. Parties may exclude from patentability:
 - A. inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law;
 - B. diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
 - C. essentially biological processes for the production of plants or animals other than non-biological and microbiological processes; animal varieties; plant varieties. The exclusion for plant varieties is limited to those plant varieties that satisfy the definition provided in Article 1(vi) of the UPOV Convention (1991); such definition shall apply *mutatis mutandis* to animal varieties. The exclusions for plant and animal varieties shall not apply to plant or animal inventions that could encompass more than one variety. Moreover, the Parties shall provide for the protection of plant varieties by an effective *sui generis* system in accordance with subparagraph 3.D of Article 1 of this Chapter.
3. Each Party shall provide that:
 - A. where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using, selling, offering for sale or importing for these purposes the subject matter of the patent, without the patent owner's consent; and
 - B. where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, offering for sale or importing for these purposes at least the product obtained directly by that process, without the patent owner's consent.
4. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner.
5. Patents shall be available and patent rights enjoyable without discrimination as to the field of technology or whether products are imported or locally produced.
6. A Party may revoke a patent only when grounds exist that would have justified a refusal to grant the patent.



7. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.
8. A Party may decline to allow use without the authorization of the right holder of a patent. However, where the law of a Party allows for use of the subject matter of a patent, other than use allowed under paragraph 4, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:
 - A. authorization of such use shall be considered on its individual merits;
 - B. such use may be permitted only if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
 - C. the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semiconductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
 - D. such use shall be non-exclusive;
 - E. such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;
 - F. any such use shall be authorized predominantly for the supply of the Party's domestic market;
 - G. authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on petition of an interested party, the continued existence of these circumstances;



- H. the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
 - I. the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;
 - J. any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;
 - K. the Party shall not be obliged to apply the conditions set out in subparagraphs B and F of this Article where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur; and
 - L. the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.
9. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one or more of the following situations:
- A. the product obtained by the patented process is new; or
 - B. a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.
- In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.
10. Each Party shall provide a term of protection for patents that shall not end before the expiration of a period of twenty years counted from the date of filing. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.



Article 8
Layout Designs (Topographies) of Integrated Circuits

1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on May 26, 1989, and, in addition, shall comply with the provisions of paragraphs 2 through 8 of this Article.
2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to reproduce, import or distribute a protected layout design, an integrated circuit in which a protected layout design is incorporated, or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout design.
3. Neither Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design, or any article that incorporates such an integrated circuit, where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.
4. Each Party shall provide that, after the person referred to in paragraph 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.
5. Neither Party may permit the compulsory licensing of layout designs of integrated circuits.
6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the date on which the layout design is first commercially exploited in the world, whichever occurs first.
7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.
8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.

Article 9
Confidential Information (Trade Secrets)

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), each Party shall protect confidential information in accordance with paragraph 2 below and data submitted to government or governmental agencies in accordance with paragraphs 5 and 6 below.
2. Each Party shall provide the legal means for any person to prevent confidential information from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as, and for so long as:
 - A. the information is not generally known or readily ascertainable;
 - B. the information has commercial value because it is secret; and
 - C. the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.
3. For the purposes of this Agreement, "in a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were negligent in failing to know, that such practices were involved in the acquisition.
4. Neither Party may discourage or impede the voluntary licensing of confidential information by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the confidential information.
5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agrochemical products, the submission of undisclosed test or other data, the origination of which involves a considerable effort, the Party shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public.
6. Each Party shall provide that for data of a type referenced in paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no other applicant for product approval may, without permission of the person that submitted them, rely on that data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that

produced the data for approval to market its product, taking into account the nature of the data and the person's efforts and expenditures in producing them.

Article 10 Industrial Designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that:
 - A. designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and
 - B. such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.
3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making, selling, importing or otherwise distributing articles bearing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
4. A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design.
5. Each Party shall provide a term of protection for industrial designs available for the amount of at least 10 years.

Article 11 Enforcement of Intellectual Property Rights

1. As specified in this Article and Articles 12 through 15 hereof, each Party shall provide procedures in its domestic law that permit effective action against infringement of the intellectual property rights covered by this Chapter. These procedures shall include expeditious remedies to prevent infringement and remedies substantial enough to deter

future infringement. Each Party shall apply enforcement procedures in a manner that does not create barriers to legitimate trade and contains effective safeguards against abuse.

2. Each Party shall ensure that its enforcement procedures are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable time limits or unwarranted delays.
3. Each Party shall ensure that decisions on the merits of a case in judicial and administrative enforcement proceedings are:
 - A. in writing and state the reasons on which the decisions are based;
 - B. made available without undue delay at least to the parties in a proceeding; and
 - C. based only on evidence in respect of which such parties were offered the opportunity to be heard.
4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, neither Party shall be required to provide for judicial review of acquittals in criminal cases.

Article 12
Specific Procedural and Remedial Aspects of Civil
and Administrative Procedures

1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right covered by this Agreement. Each Party shall provide that:
 - A. defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims;
 - B. parties in a proceeding are allowed to be represented by independent legal counsel;
 - C. enforcement procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances;
 - D. all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and

- E. the procedures include a means to identify and protect confidential information.
2. Each Party shall authorize its judicial authorities:
- A. where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information;
 - B. where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party's control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;
 - C. to order a party in a proceeding to desist from an infringement, including measures to prevent the entry into the channels of commerce of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods.
 - D. to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement and the profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages;
 - E. to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and
 - F. to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.
3. With respect to the authority referred to in subparagraph 2.D, a Party shall, at least with respect to works protected by copyright or neighboring rights, provide judicial authorities with the authority to order the payment of pre-established damages. Judicial authorities shall exercise such authority at their discretion.



4. Each Party shall, in order to create an effective deterrent to infringement and counterfeiting, authorize its judicial authorities to order that:
 - A. goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder or, unless this would be contrary to existing constitutional requirements, destroyed; and
 - B. materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

In considering whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of other persons. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

5. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party may exempt public authorities and officials from liability, unless their actions were not taken or intended in good faith in the course of the administration of such laws.
6. Notwithstanding the other provisions of Articles 11 through 15 of this Chapter, in any case of infringement of an intellectual property right brought against a Party to this Agreement, remedies available against that Party may be limited to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.
7. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 13 Provisional Measures

1. Each Party shall authorize its judicial authorities to order prompt and effective provisional measures:
 - A. to prevent an infringement of any intellectual property right, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly

infringing goods, including imported goods immediately after customs clearance;
and

- B. to preserve relevant evidence in regard to the alleged infringement.
2. Each Party shall authorize its judicial authorities to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:
- A. the applicant is the right holder;
 - B. the applicant's right is being infringed or such infringement is imminent; and
 - C. any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

Each Party shall authorize its judicial authorities to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall authorize its judicial authorities to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.
4. Each Party shall authorize its judicial authorities to order provisional measures on an *ex parte* basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.
5. Each Party shall authorize that where provisional measures are adopted by that Party's judicial authorities on an *ex parte* basis:
- A. a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;
 - B. a defendant shall, on request, have those measures reviewed by that Party's judicial authorities for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.
6. Without prejudice to paragraph 5, each Party shall provide that, on the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the

provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:

- A. within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or
 - B. in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.
7. Each Party shall authorize its judicial authorities to order, on request of the defendant, that the applicant provide compensation for injury caused by provisional measures:
- A. if the provisional measures are revoked or lapse because of any act or omission of the applicant, or
 - B. if the judicial authorities subsequently find there has been no infringement or threat of infringement of any intellectual property right.
8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

Article 14 Criminal Procedures and Penalties

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or infringement of copyrights or neighboring rights on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.
2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.
3. Each Party may provide that, in appropriate cases, its judicial authorities may impose criminal penalties for the infringement of intellectual property rights other than those in paragraph 1 of this Article, where they are committed wilfully and on a commercial scale.

Article 15
Enforcement of Intellectual Property Rights at the Border

1. Each Party shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or unauthorized copies of works protected by copyrights or neighboring rights may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.
2. Each Party shall require any applicant who initiates procedures under paragraph 1 to provide adequate evidence:
 - A. to satisfy that Party's competent authorities that, under its domestic laws, there is *prima facie* an infringement of its intellectual property right; and
 - B. to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration.

The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

3. Each Party shall authorize its competent authorities to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
4. A Party's customs administration, upon receiving an application pursuant to procedures adopted in accordance with this Article, may suspend the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority; provided, however, if the period set forth in paragraphs 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, such Party shall permit the owner, importer or consignee of such goods to receive such goods for entry into commerce on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder,

it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.

5. Each Party shall ensure that its customs administration will promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.
6. Each Party shall ensure that its customs administration will release goods from suspension if within a period not exceeding 10 working days after the applicant under paragraph 1 has been served notice of the suspension the customs administration has not been informed that:
 - A. a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or
 - B. a competent authority has taken provisional measures prolonging the suspension, provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.
7. Each Party shall ensure that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether the measures shall be modified, revoked or confirmed.
8. Notwithstanding paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, Article 13.6 of this Chapter shall apply.
9. Each Party shall ensure that its competent authorities have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraph 6.
10. Without prejudice to the protection of confidential information, each Party shall ensure that its competent authorities have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate its claims. Each Party shall also ensure that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.



11. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired *prima facie* evidence that an intellectual property right is being infringed:
 - A. The competent authorities may at any time seek from the right holder any information that might assist them to exercise these powers;
 - B. the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in paragraphs 6 through 8; and
 - C. the Party may exempt public authorities and officials from liability, except when the offending actions were not taken or intended in good faith.
12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 12.4 of this Chapter. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.
13. A Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a non-commercial nature contained in travelers' personal luggage or sent in small consignments that are not repetitive.

Article 16 Existing Subject Matter

To the extent this Agreement requires a Party to increase its level of protection and enforcement of intellectual property rights, it gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Party in question, and which is protected in that Party on the date the Agreement enters into force, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this Article, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971), which is applied with such modifications as may be necessary.

Article 17
Technical Cooperation

1. The Parties agree to enhance mutually beneficial cooperation in the field of intellectual property rights. To this end, the United States agrees to provide Vietnam with technical assistance to strengthen its regime for the protection and enforcement of intellectual property rights. Such technical assistance shall be provided on mutually agreed terms and is subject to the availability of appropriated funds. This assistance may be provided through, or in conjunction with, private industry or international organizations.
2. Cooperative activities under this Article may be undertaken in the fields of intellectual property described in Article 2.3 of this Chapter as well as the enforcement of intellectual property rights. Cooperative activities under this Article may include, but are not limited to, such activities as the exchange of experience and training of staff, and have the aim of strengthening the legislative and regulatory framework in the field of intellectual property law, strengthening the administration of intellectual property protection, and strengthening the implementation and effective enforcement of intellectual property laws in Vietnam.
3. To assist in further strengthening its regime for the protection and enforcement of intellectual property rights, Vietnam agrees to seek appropriate technical assistance from relevant international organizations or other interested countries, organizations or agencies.

Article 18
Transitional Provisions

1. Vietnam agrees to implement fully the obligations of this Chapter within the following time periods:
 - A. With respect to all obligations in Articles 6 and 7, twelve months from the date of entry into force of this Agreement.
 - B. With respect to all obligations in Article 4 except the obligation in Article 4.4, and with respect to all obligations in Article 9, eighteen months from the date of entry into force of this Agreement.
 - C. With respect to the obligations in Articles 1.3.A, 1.3.E, 4.4 and 5, thirty months from the date of entry into force of this Agreement.
 - D. With respect to all obligations not referenced in sub-paragraphs 1.A, 1.B or 1.C of this Article, twenty-four months from the date of entry into force of this Agreement.

2. The United States agrees to implement fully the obligations of this Chapter upon entry into force of this Agreement, with the exception of the obligations in Article 8 and Article 3.1 as regards the protection of layout designs (topographies) of integrated circuits, which shall be implemented twenty-four months from the date of entry into force of this Agreement.
3. Vietnam shall comply fully with the obligations of this Chapter which coincide with those of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) upon its accession to the WTO, if such accession occurs before the expiration of the time periods provided in paragraph 1 of this Article.
4. Each Party shall immediately comply with the obligations of this Chapter to the extent possible under its existing laws, and shall not take any measures during the time periods provided in paragraphs 1 and 2 that would result in a lesser degree of consistency with this Chapter.
5. In case of any conflict between the provisions of this Agreement and The Agreement between the Government of the United States of America and the Government of the Socialist Republic of Vietnam on the Establishment of Copyright Relations, signed in Hanoi on June 27, 1997, the provisions of this Agreement shall prevail to the extent of the conflict.

CHAPTER III**TRADE IN SERVICES****Article 1****Scope and Definition**

1. This Chapter applies to measures by the Parties affecting trade in services.
2. For the purposes of this Chapter, trade in services is defined as the supply of a service:
 - A. from the territory of one Party into the territory of the other Party;
 - B. in the territory of one Party to the service consumer of the other Party;
 - C. by a service supplier of one Party, through commercial presence in the territory of the other Party;
 - D. by a service supplier of one Party, through presence of natural persons of a Party in the territory of the other Party.
3. For the purposes of this Chapter:
 - A. "measures by a Party" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

 - B. "services" includes any service in any sector except services supplied in the exercise of governmental authority;
 - C. "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.



Article 2
Most-Favored-Nation Treatment

1. With respect to any measure covered by this Chapter, each Party shall accord immediately and unconditionally to services and service suppliers of the other Party treatment no less favorable than that it accords to like services and service suppliers of any other country.
2. A Party may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in Listing of Article 2 Exemptions in Annex G.
3. The provisions of this Chapter shall not be so construed as to prevent either Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article 3
Economic Integration

1. This Chapter shall not apply to advantages accorded by either Party by virtue of such Party's membership in, or having entered into, an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:
 - A. has substantial sectoral coverage,² and
 - B. provides for the absence or elimination of substantially all discrimination, in the sense of Article 7, between or among the parties, in the sectors covered under subparagraph (A), through:
 - i) elimination of existing discriminatory measures, and/or
 - ii) prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles 1, 2, and 3 of Chapter VII.
2. A service supplier of any Party that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

² This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

Article 4
Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2.
 - A. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
 - B. The provisions of subparagraph A shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.
4.
 - A. The Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
 - (i) does not comply with the following criteria:
 - (a) such requirements or standards shall be based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (b) such requirements or standards shall not be more burdensome than necessary to ensure the quality of the service;
 - (c) in the case of licensing procedures, they shall not in themselves be a restriction on the supply of the service.

- (ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.
 - B. In determining whether a Party is in conformity with the obligation under subparagraph 4.A, account shall be taken of international standards of relevant international organizations³ applied by that Party.
5. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

Article 5 Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 2 and specific commitments.
2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

³ The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

Article 6
Market Access

1. With respect to market access through the modes of supply identified in Article 1, each Party shall accord services and service suppliers of the other Party treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule in Annex G.⁴
2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
 - A. limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - B. limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - C. limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁵
 - D. limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
 - E. measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

⁴ If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(A) of Article 1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(C) of Article 1, it is thereby committed to allow related transfers of capital into its territory.

⁵ Subparagraph 2(C) does not cover measures of a Party which limit inputs for the supply of services.

- F. limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 7 National Treatment

1. In the sectors inscribed in its Schedule in Annex G, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.⁶
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of the Party compared to like services or service suppliers of the other Party.

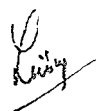
Article 8 Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 6 or 7, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 9 Schedules of Specific Commitments

1. Each Party shall set out in Annex G the specific commitments it undertakes under Articles 6 and 7 of this Chapter. With respect to sectors where such commitments are undertaken, such Annex shall specify:
 - A. terms, limitations and conditions on market access;

⁶ Specific commitments assumed under this Article shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service supplier.



- B. conditions and qualifications on national treatment;
 - C. undertakings relating to additional commitments;
 - D. where appropriate the time-frame for implementation of such commitments; and
 - E. the date of entry into force of such commitments.
- 2. Measures inconsistent with both Articles 6 and 7 shall be inscribed in the column relating to Article 6. In this case the inscription will be considered to provide a condition or qualification to Article 7 as well.
 - 3. Schedules of specific commitments shall be annexed to this Chapter and shall form an integral part thereof.

Article 10 Denial of Benefits

A Party may deny the benefits of this Chapter:

- 1. to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;
- 2. in the case of the supply of a maritime transport service, if applicable, if it establishes that the service is supplied:
 - A. by a vessel registered under the laws of a non-Party, and
 - B. by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party;
- 3. to a service supplier that is a juridical person, if it establishes that it is not a service supplier of the other Party.

Article 11 Definitions

For the purpose of this Chapter and Annex G:

- 1. "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

2. "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
3. "measures by a Party affecting trade in services" include measures in respect of
 - A. the purchase, payment or use of a service;
 - B. the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;
 - C. the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
4. "commercial presence" means any type of business or professional establishment, including through
 - A. the constitution, acquisition or maintenance of a juridical person, or
 - B. the creation or maintenance of a branch or a representative office,within the territory of a Party for the purpose of supplying a service;
5. "sector" of a service means,
 - A. with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,
 - B. otherwise, the whole of that service sector, including all of its subsectors;
6. "service of the other Party" means a service which is supplied,
 - A. from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - B. in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
7. "service supplier" means any person that supplies a service;⁷

⁷ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical



8. "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;
9. "service consumer" means any person that receives or uses a service;
10. "person" means either a natural person or a juridical person;
11. "natural person of the other Party" means a natural person who resides in the territory of that other Party, and who under the law of that other Party:
 - A. is a national of that other Party; or
 - B. has the right of permanent residence in that other Party, in the case of a Party which:
 - i) does not have nationals; or
 - ii) accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services;
12. "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
13. "juridical person of the other Party" means a juridical person which is either:
 - A. constituted or otherwise organized under the law of the other Party, and is engaged in substantive business operations in the territory of that Party; or
 - B. in the case of the supply of a service through commercial presence, owned or controlled by:
 - i) natural persons of that Party; or
 - ii) juridical persons of that other Party identified under subparagraph (i);

person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Chapter. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.



14. a juridical person is:
- A. "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
 - B. "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - C. "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
15. "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;
16. "enterprise" means a company.

ANNEX F

**ANNEX ON FINANCIAL SERVICES, ANNEX ON MOVEMENT
OF NATURAL PERSONS, ANNEX ON TELECOMMUNICATIONS,
AND TELECOMMUNICATIONS REFERENCE PAPER****Annex on Financial Services**

The Parties agree that the Annex on Financial Services to the WTO Agreement on Trade in Services (GATS) is hereby incorporated into this Agreement by reference, *mutatis mutandis*, as if its provisions were fully set forth herein, with the exceptions of Paragraph 3 and Paragraph 4 of such Annex which shall not be so incorporated.

For greater clarity, the Parties understand that:

1. References in the Annex on Financial Services to the GATS to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement; and
2. References in the Annex on Financial Services to the GATS to Article 1 of the GATS shall mean Article 1 of Chapter III of this Agreement.

Annex on Movement of Natural Persons

The Parties agree that the Annex on the Movement of Natural Persons to the WTO Agreement on Trade in Services (GATS) is hereby incorporated into this Agreement by reference, *mutatis mutandis*, as if its provisions were fully set forth herein.

For greater clarity, the Parties understand that:

1. References in the Annex on the Movement of Natural Persons to the GATS to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement;
2. References in the Annex on the Movement of Natural Persons to the GATS to the "Agreement" shall mean Chapter III of this Agreement; and
3. References in the Annex on the Movement of Natural Persons to the GATS to "Parts III and IV of the Agreement" shall mean Articles 5, 6, 7 and 8 of Chapter III of this Agreement.

Annex on Telecommunications

The Parties agree that the Annex on Telecommunications to the WTO Agreement on Trade in Services (GATS) is hereby incorporated into this Agreement by reference, *mutatis mutandis*, as if its provisions were fully set forth herein, with the exceptions of Paragraph 6 and Paragraph 7 of such Annex which shall not be so incorporated.

For greater clarity, the Parties understand that references in the Annex on Telecommunications to the GATS to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement.

Telecommunications Reference Paper

The Parties agree that the Telecommunications Reference Paper ("Reference Paper") to the WTO Agreement on Trade in Services (GATS), as contained in the attachment to WTO document GATS/SC/90/Suppl.2, is hereby incorporated into this Agreement by reference, *mutatis mutandis*, as if its provisions were fully set forth herein.

For greater clarity, the Parties understand that references in such Reference Paper to "Member" and "Members" shall mean "Party" and "Parties," respectively, in this Agreement.

ANNEX G**UNITED STATES****Listing of Article 2 Exemptions**

The United States' Listing of Article 2 Exemptions is the authentic List of Article II (MFN) Exemptions of the United States of America to the WTO General Agreement on Trade in Services ("GATS"), as amended from time to time.

Schedule of Specific Commitments of Trade in Services

1. Except as provided in paragraph 2, the Schedule of the United States is the authentic Schedule of Specific Commitments of the United States of America to the WTO General Agreement on Trade in Services ("GATS"), as amended from time to time.
2. With respect to the financial services described in subparagraphs (x) and (xi) of paragraph 5(a) of the GATS Annex on Financial Services, as incorporated into this Agreement by reference, the Schedule of the United States is the authentic Schedule of Specific Commitments of the United States of America to the WTO GATS, as amended from time to time, with the following modifications:
 - A. with respect to mode 1) (cross-border trade), the United States shall be unbound for the market access column;
 - B. with respect to mode 3) (commercial presence), only the establishment of representative offices shall be permitted.

ANNEX G
VIETNAM
Schedule of Specific Commitments of Trade in Services

Modes of supply:

(1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

I. HORIZONTAL COMMITMENTS		
Sector or sub-sector	Limitations on market access	Limitations on national treatment
APPLY TO ALL SECTORS AND SUB-SECTORS OF THIS ANNEX	(1) & (2) As indicated in each sector and subsector of part II. (3) Unless otherwise indicated in each specific sector or subsector of this Annex: Companies of the US are allowed to do business activities in Vietnam under the Law on Foreign Investment in Vietnam in the form of business cooperation contract, joint venture enterprise, enterprise with 100% foreign owned capital, BOT and BTO. For commercial presence established in Vietnam on the date of entry into force of this Agreement, Vietnam shall accord the treatment provided for in the commercial presence license on the date of entry into force of the Agreement or the treatment provided for in this Annex, whichever is better. The establishment of branches of companies of the U.S. has not been committed as relevant laws and regulations on branches of foreign companies are in the process of being drafted. Companies of the U.S. shall be permitted to establish their resident representative offices in Vietnam. These offices shall not engage in any profit-taking activities in Vietnam. The establishment and operation of service providers with U.S. directly-invested capital are subject to licensing, provided that the licensing is in conformity with Chapter 3, as well as commitments on market access and national treatment specified in sectors and subsectors of this Annex.	(1) & (2) As indicated in part II and each sector and sub-sector of part II. (3) As indicated in part II and each sector and sub-sector of part II and the chief of accountant shall be Vietnamese citizen. As to any matter concerning investment in services not specified in Annex G, the provisions of Annex H shall apply. However, in the event of a conflict between a provision set forth in Chapter IV, Annex H, or exchanged letters on Investment Licensing Regime, and a provision set forth in Annex G, the provision set forth in Annex G shall prevail to the extent of the inconsistency. Annex H and exchanged letters on Investment Licensing Regime shall not be construed or applied in a manner that would deprive a party of rights provided under Annex G.

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ANNEX G
VIETNAM
Schedule of Specific Commitments of Trade in Services

Modes of supply:

(1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

I. HORIZONTAL COMMITMENTS		
Sector or sub-sector	Limitations on market access	Limitations on national treatment
APPLY TO ALL SECTORS AND SUB-SECTORS OF THIS ANNEX	(1) & (2) As indicated in each sector and subsector of part II. (3) Unless otherwise indicated in each specific sector or subsector of this Annex: Companies of the US are allowed to do business activities in Vietnam under the Law on Foreign Investment in Vietnam in the form of business cooperation contract, joint venture enterprise, enterprise with 100% foreign owned capital, BOT and BTO. For commercial presence established in Vietnam on the date of entry into force of this Agreement, Vietnam shall accord the treatment provided for in the commercial presence license on the date of entry into force of the Agreement or the treatment provided for in this Annex, whichever is better. The establishment of branches of companies of the U.S. has not been committed as relevant laws and regulations on branches of foreign companies are in the process of being drafted. Companies of the U.S. shall be permitted to establish their resident representative offices in Vietnam. These offices shall not engage in any profit-taking activities in Vietnam. The establishment and operation of service providers with U.S. directly-invested capital are subject to licensing, provided that the licensing is in conformity with Chapter 3, as well as commitments on market access and national treatment specified in sectors and subsectors of this Annex.	(1) & (2) As indicated in part II and each sector and sub-sector of part II. (3) As indicated in part II and each sector and sub-sector of part II and the chief of accountant shall be Vietnamese citizen. As to any matter concerning investment in services not specified in Annex G, the provisions of Annex H shall apply. However, in the event of a conflict between a provision set forth in Chapter IV, Annex H, or exchanged letters on Investment Licensing Regime, and a provision set forth in Annex G, the provision set forth in Annex G shall prevail to the extent of the inconsistency. Annex H and exchanged letters on Investment Licensing Regime shall not be construed or applied in a manner that would deprive a party of rights provided under Annex G.

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	Enterprises with U.S. directly-invested capital shall be permitted by the Government or local authorities of Vietnam to lease the land. The time period to lease the land shall correspond to the time of operation of those enterprises, and shall be stipulated in their investment licenses. (4) Unbound except measures relating to entry and temporary stay of natural persons of the following groups: (a) Managers, executives and specialists who can not be substituted by Vietnamese of a company of the U.S. which has established a representative office, branch or subsidiary in the territory of Vietnam, temporarily moving as intracorporate transferees, shall be granted entry and a long term stay permit for an initial period of 3 years which may be extended subject to the term of operation of those entities in Vietnam; (b) Foreign managers, executives and specialists that participate in the operation of enterprises with U.S. directly-invested capital in Vietnam, and who can not be substituted by Vietnamese, shall be granted entry and a long term stay permit in conformity with the term of the related investment contract or for an initial period of 3 years whichever is shorter, which may be extended subject to the employment contract between them and those entities; (c) Service salespersons – persons not based in the territory of Vietnam and receiving no remuneration from a source located within Vietnam, and who are engaged in activities related to representing a service provider for the purpose of negotiating for the sale of the services of that provider where: (i) such sales are not directly made to the general public; and (ii) the salesperson is not directly engaged in supplying the service. The entry of these salespersons is limited to a ninety-day period.	(4) As indicated in the market access.



II. SECTOR-SPECIFIC COMMITMENTS		
Sector or sub-sector	Limitations on market access	Limitations on national treatment ¹
I. BUSINESS SERVICES A. Professional services (a) Legal services (PCPC 861, excluding Vietnamese law practice)	(1) None (2) None (3) Companies of the U.S. may supply services in the form of branches, company with 100% U.S. invested capital, and Vietnam-US joint ventures. Practicing lawyers of the U.S. are not permitted to participate in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Vietnam. The term of operation of a branch of a law firm of the U.S. is 5 years from the date when license is granted and may be extended every 5 years. Branches of U.S. law firms, law firms with 100% U.S. capital, joint venture law firms between Vietnamese law firms and U.S. law firms are permitted to make consultations on Vietnamese laws if the consulting lawyers have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese law practitioners.	(1) None (2) None (3) None




(b) Accounting, auditing and book keeping service (PCPC 862)	(4) Unbound except as indicated in Horizontal commitments. (1) None (2) None (3) None except branching is not permitted and: For the period of three years from the date of entry into force of the Agreement, licensing shall be made on a case by case basis. The number of the service providers shall be decided by the Ministry of Finance, based on the development of the market of Vietnam. For the license to be granted, the service supplying company must have at least 5 persons (foreigners or Vietnamese) having a CPA issued by the Ministry of Finance or by foreign professional institutions recognized by the Ministry of Finance, and have been practicing in Vietnam for more than 1 year. For the period of two years from the date of entry into force of the Agreement accounting firms with U.S. invested capital, after receiving the license, are only permitted to supply services to foreign invested enterprises and foreign funded projects in Vietnam. (4) Unbound except as indicated in Horizontal commitments.	(4) Unbound except as indicated in Horizontal Commitments. (1) None (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.




(c) Taxation services (PCPC 863)	(1) None (2) None (3) None except branching is not permitted and: For the period of 5 years from the date of entry into force of the Agreement, licensing shall be made on case by case basis and the number of the service providers shall be decided by the Ministry of Finance, based on the development of the market of Vietnam. For the period of 5 years from the date of entry into force of the Agreement, service supplying companies with U.S. invested capital are only permitted to supply services to foreign invested enterprises and foreign funded projects in Vietnam. (4) Unbound except as indicated in Horizontal commitments.	(1) None (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.
(d) Architectural service (PCPC 8671)	(1) None (2) None (3) None except branching is not permitted and: For the period of two years from the date of establishment and operation, enterprises with 100% U.S.-owned capital may only provide their services to enterprises with foreign directly-invested capital in Vietnam. Companies of the U.S. have been legally registered for operation in the U.S. (4) Unbound except as indicated in Horizontal commitments.	(1) None (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.




(e) Engineering services (PCPC 8672) (f) Integrated engineering services (PCPC 8673)	(1) None (2) None (3) None except branching is not permitted and: For the period of two years from the date of establishment and operations, enterprises with 100% U.S.-owned capital may only provide services to enterprises with foreign directly-invested capital in Vietnam. Companies of the U.S. have to be legally registered for operation in the U.S. Service supplying companies of the U.S. and service supplying companies with U.S. directly-invested capital are not permitted to carry out topographic, construction geological, metrology, geological and environment investigations unless otherwise authorized by the Government of Vietnam. Service supplying companies of the U.S. and service supplying companies with U.S. directly-invested capital are not permitted to carry out technical investigation for designing rural-urban construction plans, sector-construction plans unless otherwise authorized by the Government of Vietnam. (4) Unbound except as indicated in Horizontal commitments.	(1) None (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.
B. Computer and related services (PCPC 841-849)	(1) None (2) None (3) None except branching is not permitted and:	(1) None (2) None (3) None

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C. Other business services (a) Advertising services (PCPC 871 excluding advertising services for wines and cigarettes)	For the period of two years from the date of establishment companies with 100% U.S.-owned capital are permitted to provide services only to enterprises with foreign invested capital in Vietnam. (4) Unbound except as indicated in Horizontal commitments. (1) None (2) None (3) Only in the form of joint venture or business cooperation contract with Vietnamese partners who are legally authorized to do advertising services. The capital contribution of the U.S. side may not exceed 49% of the legal capital of the joint venture. 5 years from the date of entry into force of the Agreement this limitation shall be 51% and 7 years from the date of entry into force of the Agreement there shall be no limitation on capital contribution from the U.S. side in joint ventures. (4) Unbound except as indicated in Horizontal commitments.	(4) Unbound except as indicated in Horizontal commitments. (1) None (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.

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(b) Market research (PCPC 864 excluding 86402)	(1) Unbound (2) None (3) Only in the form of joint venture or business cooperation contract. The capital contribution of the U.S. side may not exceed 49% of the legal capital of the joint venture. 5 years from the date of entry into force of the Agreement this capital limitation shall be 51%. 7 years from the date of entry into force of the Agreement enterprise with 100% U.S. invested capital may be established. (4) Unbound except as indicated in Horizontal commitments.	(1) Unbound (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.
(c) Management consulting service (PCPC 865)	(1) None (2) None (3) Only in the form of joint venture or business cooperation contract, and 5 years after the date of entry into force of the Agreement enterprise with 100% US invested capital may be established. (4) Unbound except as indicated in Horizontal commitments.	(1) None (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.

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II. COMMUNICATION SERVICES A. Telecommunication services (PCPC 752) a. Value-added services: -Electronic mail (PCPC 7523**) -Voice mail (PCPC 7523**) - On-line information and data base retrieval (PCPC 7523**) - Electronic data interchange (EDI) (PCPC 7523**) - enhance/value-added facsimile services including store and forward, store and retrieve (PCPC 7523**) - code and protocol conversion - on-line information and data processing (PCPC 843**)	(1) Only through business contract with Vietnamese gateway operators. (2) None (3) Only in the form of a business cooperation contract with a Vietnamese partner who is authorized to provide telecommunication services. 2 years after entry into force of the Agreement (3 years after entry into force for Internet services) joint ventures with Vietnamese partners who are authorized to provide telecommunications services may be established, and the capital contribution of the U.S. side may not exceed 50% of the legal capital of the joint venture. Joint venture enterprises are not permitted to construct their own long-distance and international circuit but have to lease them from the Vietnamese operators. (4) Unbound except as indicated in Horizontal commitments.	(1) None (2) None (3) None
b. Basic telecommunication services: - Packet-switch data transmission services	(1) Only through business contract with Vietnamese gateway operators. (2) None	(4) Unbound except as indicated in Horizontal commitments. (1) None (2) None




7523**) - Circuit-switch data transmission services (PCPC 7523**) - Telex services (PCPC 7523**) - Telegraph service (PCPC 7523**) - Facsimile (PCPC 7521**) 7529**) - Private leased circuit services (PCPC 7522**) 7523**) - Radio based services (including cellular, mobile, satellite). c. Voice telephone services (PCPC 7521) including fix local, long distance and international	(3) Only in the form of a business cooperation contract with a Vietnamese partner who are authorized to provide telecommunication services. 4 years after entry into force of the Agreement, joint ventures with Vietnamese partners who are authorized to provide telecommunications services may be established, and the capital contribution of the U.S. side may not exceed 49% of the legal capital of the joint venture. Joint venture enterprises are not permitted to construct their own long-distance and international circuit but have to lease them from the Vietnamese operators. (4) Unbound except as indicated in Horizontal commitments. (1) Only through business contract with Vietnamese gateway operators. (2) None (3) Only in the form of a business cooperation contract with a Vietnamese partner who are authorized to provide telecommunication services. 6 years after entry into force of the Agreement, joint ventures with Vietnamese partners who are authorized to provide telecommunications services may be established and the capital contribution of the U.S. side can not exceed 49% of the legal capital of the joint venture.	(3) None (4) Unbound except as indicated in Horizontal commitments. (1) None (2) None (3) None

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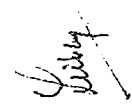
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B. Audio visual services - Film production and distribution services (PCPC 9611 excluding video tapes) - Motion picture projection services (PCPC 9612)	(4) Unbound except as indicated in Horizontal commitments. Vietnam shall consider increasing U.S. equity limitations in the telecommunications sector when the Agreement is reviewed in three years. (1) Unbound (2) Unbound (3) Only through business cooperation contract or joint venture with Vietnamese partners who are legally authorized to provide these services in Vietnam. The capital contribution of the U.S. side shall not exceed 49% of the legal capital of the joint venture. 5 years after the date of entry into force of the Agreement this capital limitation shall be 51%. (4) Unbound except as indicated in Horizontal commitments.	(4) Unbound except as indicated in Horizontal commitments. (1) Unbound (2) Unbound (3) None (4) Unbound except as indicated in Horizontal commitments.
III. CONSTRUCTION AND RELATED ENGINEERING SERVICES - General construction work for buildings (PCPC 512) - General construction work for civil engineering (PCPC 513) - Installation and assembly work (PCPC 514+516) - Building completion and	(1) Unbound (due to lack of technical feasibility) (2) None (3) None except branching is not permitted and: For the period of three years from the date of establishment and operation enterprises with 100% U.S. invested capital may only provide their services to enterprises with foreign directly-invested capital in Vietnam.	(1) Unbound (2) None (3) None

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finishing work (PCPC 517) -- Other (PCPC 511, 515, 518)	- Companies of the U.S. have been legally registered for operation in the U.S. (4) Unbound except as indicated in Horizontal commitments.	(4) Unbound except as indicated in Horizontal commitments.
IV. DISTRIBUTION SERVICES -- Wholesale and retail sales services -- Agent services excluding agent services for foreign legal persons; -- Franchising services (subject to the development of laws and regulation on franchising services) excluding oil and oil derivatives, gas, fertilizer, pesticide and insecticide, alcoholic drinks and spirits, cigarettes and cigars, medicine, precious metals and stones, explosives, rice and wheat flour	(1) Unbound (2) None (3) a. Subject to the limitations specified in annex D, 3 years after the date of entry into force of the Agreement joint ventures with Vietnamese partners may be established, and the capital contribution of the U.S. side may not exceed 49%. 6 years after the date of entry into force of the Agreement this limitation shall be abolished. b. Subject to the limitation specified in annex D, 7 years after the date of entry into force of the Agreement enterprise with 100% U.S. invested capital may be established. The establishment of outlets for retail services (beyond the first one) shall be considered on a case-by-case basis. (4) Unbound except as indicated in Horizontal commitments.	(1) Unbound (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.




V. EDUCATIONAL SERVICES (In technical, natural science and technology fields)	(1) Unbound (2) None (3) Only in the form of joint venture. 7 years after the date of entry into force of the Agreement, schools with 100% U.S. invested capital may be established. (4) Unbound except as indicated in Horizontal commitments.	(1) Unbound (2) None (3) Foreign teachers of education units with U.S. invested capital must have 5 years teaching experience and be recognized by the Ministry of Education. (4) Unbound except as indicated in Horizontal commitments.
VI. FINANCIAL SERVICES <u>A. Insurance Services</u> (a) Life, and accident insurance services (PCPC 8121 - excluding health insurance services) (b) Non life insurance services (PCPC 8129) (c) Re-insurance and	(1) None for - insurance services provided to enterprises with foreign invested capital, foreigners working in Vietnam; - reinsurance services; - insurance services in international transportation; - insurance brokering and reinsurance brokering services advisory, claim settlement and risk assessment services	(1) None




retrocession (PCPC 81299** (d) Services auxiliary to insurance (including broking and agency services) (PCPC 8140)	(2) None (3) None, except: The establishment of branches depends on the process of formulation of Insurance Business Law. 3 years after the date of entry into force of the Agreement joint ventures with Vietnamese partners who are authorized to provide insurance services may be established. The capital contribution from the U.S. side shall not exceed 50% of the legal capital of the joint venture. 5 years after the date of entry into force of the Agreement companies with 100% U.S. invested capital may be established. Services supplying companies with U.S. invested capital shall not be allowed to provide insurance agent services. Service applying companies with U.S. invested capital shall not be allowed to engage in statutory insurance business: motor vehicle third party liability, insurance in construction and installation, insurance for oil and gas projects, and insurance for projects and construction of high danger to public security and environment. This limitation shall be eliminated for joint ventures 3 years after the date of entry into force of the Agreement, and for companies with 100% U.S. invested capital 6 years after the date of entry into force of the Agreement. With respect to reinsurance, joint venture companies, companies with 100% U.S.-owned capital and branches of insurance companies of the U.S. shall reinsure with the Reinsurance Company of Vietnam with the minimum proportion of 20%, and 5 years after the entry into the force of the Agreement this limitation shall be abolished. (4) Unbound except as indicated in Horizontal commitments.	(2) None (3) None except for statutory insurance business. (4) Unbound except as indicated in Horizontal commitments.




B. Banking and Other Financial Services as listed below.	(1) Unbound, except for financial information services, B. (i) and (j).	(1) Unbound, except for financial information services, B. (i) and (j).
(a) Acceptance of deposits and other repayable funds from the public;	(2) None	(2) None
(b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;	(3) None, except the following:	(3) None, except the following:
(c) Financial leasing;	a) U.S. financial service suppliers are permitted to provide services in Vietnam through the following legal forms upon entry into force: branches of a U.S. bank, U.S.-Vietnam joint venture banks, 100% U.S. owned financial leasing companies, and U.S.-Vietnam joint venture financial leasing companies.	a) In order to establish and operate in Vietnam, branches of U.S. banks, US bank subsidiaries, and U.S.-Vietnam joint ventures shall have to apply for a license.
(d) All payment and money transmission services, including credit, charge and debit cards, travelers' cheques and bankers drafts; (PCP 81339)	b) For the period ending 3 years from the date of entry into force of this Agreement, the only legal form in which other U.S. financial services suppliers (besides banks and leasing companies) may provide financial services in Vietnam is through joint ventures with Vietnamese partners. Thereafter, this limitation is abolished.	b) The conditions for the establishment in Vietnam of the branch of a bank of the U.S. are: - Minimum capital of the branch granted by its parent bank of U.S. \$15 million. - Parent bank guarantees, in written form, to undertake all responsibilities and commitments of its branch in Vietnam.
(e) Guarantees and commitments	c) U.S. banks will be permitted to establish 100% subsidiary banks in Vietnam beginning on a date that is 9 years after the date of entry into force of this agreement. Until that time, U.S. banks may establish joint-venture banks in Vietnam in which the equity participation of the U.S. partner shall not be less than 30% but not exceed 49%.	c) The condition for the establishment of a U.S.-Vietnam joint venture bank or a 100%-owned subsidiary of a U.S. bank is: - Minimum legal capital of US\$10 million.
(f) Money broking	d) Vietnam may limit, on a national treatment basis, equity participation by U.S. banks in privatized Vietnamese state-owned banks to the same level as equity participation by Vietnamese banks.	d) Financial institutions with 100% U.S. invested capital are not allowed to take an initial mortgage interest in land use rights. Beginning on the date that is 3 years from the date of entry into force of this Agreement, financial institutions with 100% U.S. invested capital shall only be allowed to take an initial mortgage interest in land-use rights held by enterprises with foreign invested capital. In cases of default of such borrowers, financial institutions with 100% U.S. invested capital may acquire and use mortgages or land-use rights for purposes of liquidation.
(h) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;	e) During the first 8 years after entry into force, Vietnam may limit the right of a U.S. bank branch to accept deposits in dong from Vietnamese legal persons with which the	e) The conditions for the establishment in Vietnam of a 100% owned subsidiary of a U.S. financial leasing company or joint-venture

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(i) Provision and transfer of financial information, and financial data processing and related software by supplier of other financial services; (j) Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.	bank does not have a credit relationship to a ratio of the branch's paid-in capital according to the schedule below. Thereafter, such limitations will be abolished: Year 1: 50% of legal paid-in capital Year 2: 100% of legal paid-in capital Year 3: 250% of legal paid-in capital Year 4: 400% of legal paid-in capital Year 5: 600% of legal paid-in capital Year 6: 700% of legal paid-in capital Year 7: 900% of legal paid-in capital Year 8: Full national treatment During the first 10 years after entry into force, Vietnam may limit the right of a U.S. bank branch to accept deposits in dong from Vietnamese natural persons with which the bank does not have a credit relationship to a ratio of the branch's paid-in capital according to the schedule below. Thereafter, such limitations will be abolished: Year 1: 50% of legal paid-in capital Year 2: 100% of legal paid-in capital Year 3: 250% of legal paid-in capital Year 4: 350% of legal paid-in capital Year 5: 500% of legal paid-in capital Year 6: 650% of legal paid-in capital Year 7: 800% of legal paid-in capital Year 8: 900% of legal paid-in capital Year 9: 1000% of legal paid-in capital. Year 10: Full national treatment In no year during the phase-in period shall the combined ratio of Dong deposits to legal paid-in capital of a U.S. bank branch exceed full national treatment. f) Beginning on a date that is 8 years after the date of entry into force of the Agreement, financial institutions with U.S. invested capital are allowed to issue credit cards on a national treatment basis.	financial leasing company are: - Investors must have three consecutive profit making years; - Legal capital shall not be less than US\$5 million. g) Until the date ending 3 years from the date of entry into force of this Agreement, Vietnam is not obliged to provide full national treatment with regard to access to central bank rediscounting, swap, and forward facilities. 4) Unbound, except as indicated in Horizontal commitments.

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	g) Branches of U.S. banks are not allowed to place automatic teller machines at locations other than offices of such banks until such time as Vietnamese banks are permitted to do so. A branch of a U.S. bank shall not be allowed to open other transaction points. h) Unbound for the management of statutory social security or public retirement plans. (4) Unbound, except as indicated in Horizontal commitments.	
(k) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: i. money market instruments (including cheques, bills, certificates of deposits); ii. foreign exchange; iii. derivative products including, but not limited to, futures and options; iv. exchange rate and interest rate instruments, including products such as swaps, forward rate agreements; v. transferable securities; vi. other negotiable instruments and financial assets, including bullion; l) Participation in issues of	1) Unbound 2) None 3) A non-bank U.S. securities service supplier is permitted to establish only as a representative office in Vietnam. 4) Unbound except as provided in Horizontal commitments.	1) Unbound 2) None 3) None 4) Unbound except as provided in Horizontal commitments.

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all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;		
VII. HEALTH RELATED SERVICES - Hospital services (PCPC 9311) - Medical and dental services (PCPC 9312)	(1) None (2) None (3) Service supplying the companies of the U.S. are permitted to provide services through the establishment of hospitals with 100% U.S.-owned capital, joint ventures with Vietnamese partners or through business cooperation contracts. The minimum investment capital for a hospital is 20 million U.S. dollars, a polyclinic unit is 2 million U.S. dollars and a specialty unit is 1 million U.S. dollars. (4) Unbound except as indicated in Horizontal commitments.	(1) None (2) None (3) None (4) Unbound except as indicated in Horizontal commitments.
VIII. TOURISM AND TRAVEL RELATED SERVICES A. Hotel and restaurants including: - Lodging services (PCPC 64110) - Catering foods (PCPC 642) and drinks (PCPC 643) services	(1) None (2) None (3) Service supplying companies of the U.S., in parallel with the investment to build a hotel, are permitted to provide services under the forms of business cooperation contracts, joint ventures with Vietnamese partners or establishment or enterprises with 100% U.S. invested capital.	(1) None (2) None (3) None



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B. Travel agencies and tours operators services (PCPC 7471)	(4) Unbound except as indicated in Horizontal commitments. (1) None (2) None (3) Tourist guides in joint ventures shall be Vietnamese citizens. Service supplying companies with U.S. invested capital can only do inbound services.	(4) Unbound except as indicated in Horizontal commitments. (1) None (2) None (3) Service supplying companies of the U.S. are permitted to provide services in the form of joint venture with Vietnamese partners. The capital contributions of the U.S. side shall not exceed 49% of the legal capital of the joint venture. 3 years after the date of entry into force of the Agreement this limitation shall be 51%, and 5 years after entry into force, it shall be eliminated. (4) Unbound except as indicated in Horizontal commitments.	(4) Unbound except as indicated in Horizontal commitments.

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CHAPTER IV

DEVELOPMENT OF INVESTMENT RELATIONS

Article 1
Definitions

For the purpose of this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and, with respect to a covered investment, Articles 1 and 4 of Chapter VII:

1. "investment" means every kind of investment in the territory of a Party owned or controlled directly or indirectly by nationals or companies of the other Party, and includes investment consisting or taking the form of:
 - A. a company or enterprise;
 - B. shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;
 - C. contractual rights, such as under turnkey, construction or management contracts, production or revenue sharing contracts, concessions, or other similar contracts;
 - D. tangible property, including real property, and intangible property, including rights, such as leases, mortgages, liens and pledges;
 - E. intellectual property, including copyrights and related rights, trademarks, patents, layout designs (topographies) of integrated circuits, encrypted program-carrying satellite signals, confidential information (trade secrets), industrial designs and rights in plant varieties; and
 - F. rights conferred pursuant to law, such as licenses and permits;
2. "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;
3. "company of a Party" means a company constituted or organized under the laws of that Party;
4. "covered investment" means an investment of a national or company of a Party in the territory of the other Party;



5. "state enterprise" means a company owned, or controlled through ownership interests, by a Party;
6. "investment authorization" means an authorization granted by the foreign investment authority of a Party to a covered investment or a national or company of the other Party;
7. "investment agreement" means a written agreement between the national authorities of a Party and a covered investment or a national or company of the other Party that (i) grants rights with respect to natural resources or other assets controlled by the national authorities and (ii) the investment, national or company relies upon in establishing or acquiring a covered investment;
8. "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law;
9. "national" of a Party means a natural person who is a national of a Party under its applicable law;
10. an "investment dispute" is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and Articles 1 and 4 of Chapter VII with respect to a covered investment;
11. "non-discriminatory" treatment means treatment that is at least as favorable as the better of national treatment or most favored nation treatment;
12. "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965; and
13. "Centre" means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention.

Article 2

National Treatment and Most-Favored Nation Treatment

1. With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investments, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter "national treatment") or to investments in its territory of nationals or companies of a third country (hereinafter "most favored nation treatment"), whichever is most favorable (hereinafter "national and most favored nation treatment").

Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments, subject to the provisions of paragraph 4.3 of Annex H.

2. A. A Party may adopt or maintain exceptions to the obligations of paragraph 1 in the sectors or with respect to the matters specified in Annex H to this Agreement. In adopting such an exception, a Party may not require the divestment, in whole or in part, of covered investments existing at the time the exception becomes effective.
- B. The obligations of paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 3

General Standard of Treatment

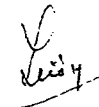
1. Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by applicable rules of customary international law.
2. Each Party shall in no way impair by unreasonable and discriminatory measures the management, conduct, operation and sale or other disposition of covered investments.

Article 4

Dispute Settlement

1. Each Party shall provide companies and nationals of the other Party with an effective means of asserting claims and enforcing rights with respect to covered investments.
2. In the event of an investment dispute, the parties to the dispute should attempt to resolve the dispute through consultation and negotiation, which may include the use of non-binding third-party procedures. Subject to paragraph 3 of this Article, if the dispute has not been resolved through consultation and negotiations, a national or company of one Party that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:
 - A. to the competent courts or administrative tribunals of the Party in the territory of which the covered investment has been made; or

- B. in accordance with any applicable, previously agreed dispute-settlement procedures; or
 - C. in accordance with the terms of paragraph 3.
3. A. Provided that the national or company concerned has not submitted the dispute for resolution under sub-paragraph 2.A or B, and that ninety days have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:
- (i) to the Centre, if both Parties are members of the ICSID Convention and the Centre is available; or
 - (ii) to the Additional Facility of the Centre, if the Additional Facility is available; or
 - (iii) in accordance with the UNCITRAL Arbitration Rules; or
 - (iv) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.
- B. A national or company, notwithstanding that it may have submitted a dispute to binding arbitration under sub-paragraph 3.A, may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of a Party, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of rights and interests.
4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice of the national or company under sub-paragraph 3.A(i), (ii), (iii) or the mutual agreement of both parties to the dispute under sub-paragraph 3.A(iv). This consent and the submission of the dispute by a national or company under sub-paragraph 3.A shall satisfy the requirement of:
- A. Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for an "agreement in writing;" and
 - B. Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to the dispute.
5. Any arbitration under sub-paragraph 3.A(ii), (iii) and (iv) shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.
6. Any arbitral award rendered pursuant to this Chapter shall be final and binding on the parties to the dispute. Each Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award. Each Party's



enforcement of an arbitral award issued in its territory shall be governed by its national law.

7. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off, or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.
8. For the purposes of this Article and of Article 25(2)(b) of the ICSID Convention with respect to a covered investment, a company of a Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of the other Party.

Article 5 Transparency

Each Party shall ensure that its laws, regulations and administrative procedures of general application that pertain to or affect investments, investment agreements, and investment authorizations are promptly published or otherwise made publicly available.

Article 6 Special Formalities

This Chapter shall not preclude a Party from prescribing special formalities in connection with covered investments, such as a requirement that such investments be legally constituted under the laws and regulations of that Party, or a requirement that transfers of currency or other monetary instruments be reported, provided that such formalities shall not impair the substance of any of the rights set forth in this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and, with respect to a covered investment, Articles 1 and 4 of Chapter VII.

Article 7 Technology Transfer

Neither Party shall mandate or enforce, as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment, any requirement (including any commitment or undertaking in connection with the receipt of a government permission or authorization) to transfer technology, a production process or other proprietary knowledge except:

1. when applying generally applicable environmental laws that are consistent with the

provisions of this Agreement; or

2. pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws.

Article 8

Entry, Sojourn and Employment of Aliens

1. Each Party shall permit nationals and companies of the other Party to transfer employees of any nationality, subject to the Party's laws relating to the entry and sojourn of aliens, to their operations in the territory of the Party in the event that those employees are executives or managers or possess specialized knowledge relating to those operations.
2. Each Party shall permit nationals and companies of the other Party to engage, within the territory of that Party, top managerial personnel of their choice, regardless of nationality, subject to the Party's laws relating to the entry and sojourn of aliens.
3. The foregoing paragraphs shall not preclude a Party from applying its labor laws, so long as they do not impair the substance of the rights granted under this Article.

Article 9

Preservation of Rights

This Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and, with respect to a covered investment, Articles 1 and 4 of Chapter VII, shall not derogate from any of the following that entitle covered investments in like situations to treatment more favorable than that accorded herein:

1. laws, regulations and administrative procedures, or administrative or adjudicatory decisions of a Party;
2. international legal obligations; or,
3. obligations assumed by a Party, including those contained in an investment agreement or investment authorization.

Article 10

Expropriations and Compensation for War Damages

1. Neither Party shall expropriate or nationalize investments either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article 3. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.
2. Each Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.
3. Each Party shall accord restitution, or pay compensation in accordance with paragraph 1, in the event that covered investments suffer from losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:
 - A. requisitioning of all or part of such investments by the Party's forces or authorities, or
 - B. destruction of all or part of such investments by the Party's forces or authorities that was not required by the necessity of the situation.

Article 11

Trade -Related Investment Measures

1. Subject to the provisions of paragraph 2, neither Party shall apply any trade-related investment measures (TRIMs) which are inconsistent with the Agreement on Trade-Related Investment Measures of the WTO. The illustrative list of TRIMs set forth in the WTO Agreement on TRIMs ("the List") is contained in Annex I of this Agreement. TRIMs contained on the List will be considered inconsistent with this Article regardless of whether they are imposed in laws, regulations, or as conditions for individual investment contracts or licenses.

2. The Parties agree to eliminate all TRIMs (including those contained in laws, regulations, contracts or licenses) which fall under sub-paragraphs 2(A) (trade balancing requirements) and 2(B) (foreign exchange controls on imports) of the List by the time this Agreement enters into force. Vietnam shall eliminate all other TRIMs no later than five years after the date of entry into force of the Agreement, or the date required under the terms and conditions of Vietnam's accession to the WTO, whichever occurs first.

Article 12 Application to State Enterprises

A Party's obligations shall apply to a state enterprise in the exercise of any regulatory, administrative or other governmental authority delegated to it by that Party.

Article 13 Future Negotiation of Bilateral Investment Treaty

The Parties will endeavor to negotiate a bilateral investment treaty in good faith within a reasonable period of time.

Article 14 Application to Covered Investments

The provisions of this Chapter, Annex H, the exchanged letters on Investment Licensing Regime, and Articles 1 and 4 of Chapter VII shall apply to covered investments existing at the time of entry into force as well as to those established or acquired thereafter.

Article 15 Denial of Benefits

Each Party reserves the right to deny to a company of the other Party the benefits of this Chapter and Chapter V of this Agreement if nationals of a third country own or control the company and

1. the denying Party does not maintain normal economic relations with the third country; or
2. the company has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

ANNEX H

VIETNAM

In accordance with the provisions in Article 2 of Chapter IV, the Government of the Socialist Republic of Vietnam reserves the right to adopt or maintain exceptions to national treatment in the following sectors and matters:

1. Vietnam may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

Broadcasting, television; production, publication and distribution of cultural products; investment in insurance; banking; brokerage, dealership in securities and currency values, and other related services; mineral exploration and exploitation; construction, installation, operation and maintenance of telecommunication facility; construction and operation of inland water, sea and air ports; cargo and passenger transportation by railway, airway, road, sea and inland water-way transportation; fishing and fish catching; real estate business.

2. Sectors in which Vietnam may require that an investment project be in conjunction with the development of local raw material sources:

Processing of paper, vegetable oil, milk, cane sugar, wood processing (except for projects using imported wood).

Such requirements for the development of local raw material sources in the above sectors may be maintained for up to 5 years from the entry into force of this Agreement.

3. Sectors in which Vietnam may require that an investment project export at least 80% of products:

Cement production; paints and construction paints; toiletry tiles and ceramics; PVC and other plastics; footwear; clothing; construction steel; detergent powder; tires and inner tubes for automobile and motor bikes; NPK fertilizer; alcoholic products; tobacco; papers (including printing, and writing paper, photocopy).

Such requirements for exporting at least 80% of products in the above sectors may be maintained for up to 7 years from the entry into force of this Agreement.

4. Except as otherwise provided in this Paragraph (including sub-paragraphs 4.1-4.6), the following exceptions to national treatment shall be applied to a covered investment of a national or company of the United States in all sectors, including but not limited to those sectors listed in paragraphs 1, 2 and 3 of this Annex:

4.1 Requirements on investment capital:

- (a) After the entry into force of this Agreement, nationals or companies of the United States shall be allowed to contribute, increase and reinvest capital in any currency, including Vietnamese currency originating from any lawful activity in Vietnam.
- (b) The following requirements may be maintained for up to 3 years from the entry into force of this Agreement:
 - (i) Nationals or companies of the United States must contribute at least 30% of the legal capital of a joint venture unless a lower contribution is approved by the investment licensing agencies;
 - (ii) The legal capital of a U.S.-owned enterprise shall not be less than 30% of investment capital unless a lower proportion is approved by the investment licensing agencies;
 - (iii) A national or company of the United States that is a party to a joint venture with a Vietnamese national or company shall give a right of first refusal to the Vietnamese party with respect to the transfer of an interest in the joint venture. An enterprise in Vietnam that is 100% owned by U.S. nationals or companies shall give a right of first refusal to Vietnamese nationals or companies with respect to the transfer of any interest in the enterprise. In any such case, the right of first refusal may be exercised only if the offer of the Vietnamese national or company is the same in all material terms with an offer received from any third party, including with respect to purchase price, timing and method of payment. Any such transfer shall require the approval of the investment licensing agencies; and
 - (iv) Nationals or companies of the United States are not yet allowed to establish a joint stock company. An enterprise in Vietnam that is invested or owned by U.S. nationals or companies may not issue bonds or shares to the public in Vietnam.
- (c) Nationals and companies of the United States shall not be permitted to acquire more than 30% of the shares of an equitized State enterprise.

4.2 Organization and management of joint ventures:

Vietnam may maintain the following requirements for up to 3 years from the entry into force of this Agreement:



- (a) The General Director or First Deputy General Director must be Vietnamese citizens; and
- (b) A limited number of the most important matters which relate to the organization and operation of the enterprise, comprising the appointment or dismissal of General Director, First Deputy General Director, Chief Accountant; amendments of and additions to the charter of the enterprise; approval of final annual financial statements and financial statement of capital construction; and loan for investment shall be decided on the basis of consensus.

4.3 Prices and fees of some goods and services under the State's control:

Vietnam is in the process of reforming its pricing system in order to develop a uniform set of fees and prices. With a view to creating a more attractive, non-discriminatory business environment, Vietnam shall:

- (a) upon the entry into force of this Agreement, (i) refrain from imposing new or more onerous discriminatory prices and fees; and (ii) eliminate, discriminatory prices and fees for the installation of telephones, telecommunications services (other than the subscription charge for local telephone service), water, and tourist services;
- (b) within two (2) years of the entry into force of this Agreement, eliminate, progressively, discriminatory prices and fees for registration of motor vehicles, international port charges, and for the subscription charge for local telephone service; and
- (c) within four (4) years of the entry into force of this Agreement, eliminate, progressively, discriminatory prices and fees for all other goods and services including, without limitation, electricity and air transport.

4.4 Government subsidies and supports:

Government subsidies and supports granted to domestic enterprises, which include land allocation for investment projects, preferential credits, research and development and education assistance programs and other forms of Government supports, may not be made available to nationals or companies of the United States.

4.5 Ownership, use of land and residences:

- (a) Nationals and companies of the United States are not allowed to own land and residences. U.S. investors are allowed only to lease land for investment purposes.

(b) U.S. enterprises are not yet allowed either to mortgage land use rights at foreign credit institutions operating in Vietnam or to transfer land use rights except for the case of transfers of invested assets associated with the land within the land lease period.

4.6 Notwithstanding the above reservations to national treatment for the ownership and use of land and residences, Vietnam shall create favorable conditions in exercising the mortgage and transfer of land use rights relating to covered investments including the elimination, within 3 years from the entry into force of this Agreement, of the restrictions on mortgage and transfer of land use rights mentioned in sub-paragraph 4.5(b).

ANNEX H

UNITED STATES

1. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national treatment⁸ to covered investments in the sectors or with respect to the matters specified below:

atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees and insurance; landing of submarine cables; and state and local measures as to which the United States may adopt or maintain exceptions to national treatment under any of its bilateral investment treaties signed between 1 January 1995, and the date of entry into force of this Agreement.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

2. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national and most favored nation treatment to covered investments in the sectors or with respect to the matters specified below:

fisheries; air and maritime transport, and related activities; banking, insurance, securities, and other financial services; leasing of minerals and pipeline rights-of-way on government lands; and one-way satellite transmissions of direct-to-home (DTH) and direct broadcast satellite (DBS) television services and of digital audio services.

⁸With respect to the treatment accorded by a State, Territory or Possession of the United States, national treatment means treatment no less favorable than the treatment accorded thereby, in like situations, to investments of nationals of the United States resident in, and companies legally constituted under the laws and regulations of other States, Territories or Possessions of the United States.

ANNEX I

TRIMs -- Illustrative List

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:
 - A. the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of local products, or in terms of a proportion of volume or value of its local production; or
 - B. that an enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports.
2. TRIMs that are inconsistent with the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which restrict:
 - A. the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;
 - B. the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or
 - C. the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

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CHAPTER V

BUSINESS FACILITATION

Article 1

1. To facilitate business activity, and subject to the provisions of Chapters I (including Annexes A, B, C, D and E), III (including Annexes F and G) and IV (including Annexes H and I) of this Agreement, each Party shall:
 - A. permit nationals and companies of the other Party to import and use, in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and facsimile machines in connection with the conduct of their activities in the territory of such Party;
 - B. subject to its laws and procedures governing immigration and foreign missions, permit, on a nondiscriminatory basis and at market prices, nationals and companies of the other Party access to and use of office space and living accommodations;
 - C. subject to its laws, regulations and procedures governing immigration and foreign missions, permit nationals and companies of the other Party to engage agents, consultants and distributors of either Party, on prices and terms mutually agreed between the parties, for their production and covered investments;
 - D. permit nationals and companies of the other Party to advertise their products and services (i) through direct agreement with the advertising media, including television, radio, print and billboard, and (ii) by direct mail, including the use of enclosed envelopes and cards pre-addressed to that national or company;
 - E. encourage direct contact, and permit direct sales, between nationals and companies of the other Party and end-users and other customers of their goods and services, and encourage direct contacts with agencies and organizations whose decisions will affect potential sales;
 - F. permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory;
 - G. permit nationals and companies of the other Party to stock an adequate supply of samples and replacement parts for after-sales service for covered investment products; and
 - H. provide non-discriminatory access to governmentally-provided products and



services, including public utilities, to nationals and companies of the other Party at fair and equitable prices (and in no event at prices greater than those charged to any nationals or companies of third countries where such prices are set or controlled by the government in connection with the operation of their commercial representations).

Article 2

For purposes of this Chapter, the term "nondiscriminatory" means treatment that is at least as favorable as the better of national treatment or most favored nation treatment.

Article 3

In case of conflict between any provision of this Chapter and any provision of Chapters I (including Annexes A, B, C, D and E), III (including Annexes F and G) and IV (including Annexes H and I), the provision of the Chapters I, III and IV shall control to the extent of the conflict.

CHAPTER VI**TRANSPARENCY-RELATED PROVISIONS AND RIGHT TO APPEAL****Article 1**

Each Party shall publish on a regular and prompt basis all laws, regulations and administrative procedures of general application pertaining to any matter covered by this Agreement. Publication of such information and measures will be in a manner which enables governmental agencies, enterprises and persons engaged in commercial activity to become acquainted with them before they come into effect and to apply them in accordance with their terms. Each such publication shall include the effective date of the measure, the products (by tariff line) or services affected by the measure, and all authorities that must approve or be consulted in the implementation of the measure, and provide a contact point within each authority from which relevant information can be obtained.

Article 2

Each Party shall provide nationals and companies of the other Party with access to data on the national economy and individual sectors, including information on foreign trade. The provisions of this paragraph and the preceding paragraph do not require disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises, public or private. For the purposes of this Agreement, confidential information that would prejudice the legitimate commercial interests of particular enterprises means specific information concerning the importation of a product that would have a significant adverse effect on the price or quantity available of such product, but shall not include information required to be disclosed under the agreements administered by the WTO.

Article 3

Each Party shall allow, to the extent possible, the other Party and its nationals the opportunity to comment on the formulation of laws, regulations and administrative procedures of general application that may affect the conduct of business activities covered by this Agreement.

Article 4

All laws, regulations and administrative procedures of general application referred to in paragraph 1 of this Article that are not published and readily available to other governments and persons engaged in commercial activities as of the date of signature of this Agreement will be made public and readily and quickly available. Only laws, regulations and administrative procedures of general application that are published and readily available to



other governments and persons engaged in commercial activity will be enforced and enforceable.

Article 5

The Parties shall have or designate an official journal or journals and all measures of general application shall be published in such journals. The Parties will publish such journals on a regular basis and make copies of them readily available to the public.

Article 6

The Parties shall administer, in a uniform, impartial and reasonable manner all their respective laws, regulations and administrative procedures of general application of all the types described in paragraph 1 of this Article.

Article 7

The Parties will maintain administrative and judicial tribunals and procedures for the purpose, *inter alia*, of the prompt review and correction (upon the request of an affected person) of administrative action relating to matters covered by this Agreement. These procedures shall include the opportunity for appeal, without penalty, by persons affected by the relevant decision. If the initial right of appeal is to an administrative body, there shall also be the opportunity for appeal of the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of the right to any further appeal.

Article 8

The Parties shall ensure that all import licensing procedures, both automatic and non-automatic, are implemented in a transparent and predictable manner, and in accordance with the standards of the WTO Agreement on Import Licensing Procedures.

CHAPTER VII**GENERAL ARTICLES****Article 1****Cross-Border Transactions and Transfers**

1. Unless otherwise agreed between the parties to such transactions, all cross-border commercial transactions, and all transfers of currencies relating to a covered investment, shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.
2. In connection with trade in products and services, each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:
 - A. opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited in financial institutions located in the territory of the Party;
 - B. payments, remittances and transfers of currencies convertible into freely usable currency at a market rate of exchange or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;
 - C. rates of exchange and related matters, including access to freely usable currencies.
3. Each Party shall grant to covered investments of the other Party the better of national or most favored nation treatment with respect to all transfers into and out of each Party's territory. Such transfers include:
 - A. contributions to capital;
 - B. profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
 - C. interest, royalty payments, management fees, and technical assistance and other fees;
 - D. payments made under contract, including a loan agreement;
 - E. compensation pursuant to Article 10 of Chapter IV and payments arising out of an investment dispute.

4. In all cases, treatment of cross-border transactions and transfers will be consistent with each Party's obligations to the International Monetary Fund.
5. Each Party shall permit returns in kind to be made as authorized or specified in an investment authorization, investment agreement, or other written agreement between the Party and a covered investment or a national or company of the other Party.
6. Notwithstanding paragraphs 1 through 5, a Party may prevent a transfer through the equitable, non-discriminatory and good faith applications (including the seeking of preliminary relief, such as judicial injunctions and temporary restraining orders) of its law relating to:
 - A. bankruptcy, insolvency or the protection of the rights of creditors;
 - B. issuing, trading or dealing in securities, futures, options, or derivatives;
 - C. reports or records of transfers;
 - D. criminal or penal offenses; or
 - E. ensuring compliance with orders or judgments in judicial or administrative proceedings.
1. The provisions of this Article relating to financial transfers shall not preclude:
 - A. a requirement that a national or company (or its covered investment) comply with customary banking procedures and regulations, provided that they do not impair the substance of the rights granted under this Article;
 - B. prudential measures in order to protect the interests of creditors and to ensure the stability and integrity of the national financial system.

Article 2 National Security

This Agreement shall not preclude a Party from applying measures that it considers to be necessary for the protection of its own essential security interests. Nothing in this Agreement shall be construed to require either Party to furnish any information, the disclosure of which it considers contrary to its essential security interests.

Article 3
General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by either Party of measures:
 - A. with respect to Chapter I, Trade in Goods, necessary to secure compliance with laws or regulations not inconsistent with the provisions of this Agreement, including measures related to the protection of intellectual property rights and the prevention of deceptive practices;
 - B. with respect to Chapter I, Trade in Goods, referred to in Article XX of the GATT 1994; or
 - C. with respect to Chapter III, Trade in Services, referred to in Article XIV of the GATS.
2. Nothing in this Agreement shall preclude a Party from applying its laws in respect of foreign missions as set forth in applicable legislation.
3. Nothing in this Agreement limits the application of any existing or future agreements between the Parties on trade in textiles and textile products.

Article 4
Taxation

1. No provision of this Agreement shall impose obligations with respect to tax matters, except that:
 - A. Chapter I, other than Article 2.1 of such Chapter, shall apply only to taxes other than direct taxes as defined in paragraph 3 of this Article.
 - B. Within Chapter IV,
 - i) Articles 4 and 10.1 will apply with respect to expropriation; and
 - ii) Article 4 will apply with respect to an investment agreement or an investment authorization.

2. With respect to the application of Chapter IV, Article 10.1, an investor that asserts that a tax measure involves an expropriation may submit that dispute to arbitration pursuant to Chapter IV, Article 4.3, provided that the investor concerned has first referred to the competent tax authorities of both Parties the issue of whether that tax measure involves an expropriation. However, the investor cannot submit the dispute to arbitration if, within nine months after the date of referral, the competent tax authorities of both Parties determine that the tax measure does not involve an expropriation.
3. "Direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article 5 Consultations

1. The Parties agree to consult periodically to review the operation of this Agreement.
2. The Parties agree to consult promptly as arranged through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement and other relevant aspects of the relations between the Parties.
3. The Parties agree to establish a Joint Committee ("Committee") on Development of Economic and Trade Relations between Vietnam and the United States of America. The Committee's responsibilities shall include the following:
 - A. monitoring and securing the implementation of this Agreement and making recommendations to achieve the objectives of this Agreement;
 - B. ensuring that a satisfactory balance of concessions is maintained during the life of this Agreement;
 - C. serving as the appropriate channel through which the Parties shall consult at the request of either Party to discuss and resolve matters arising from interpretation or implementation of this Agreement; and
 - D. seeking and making proposals on the enhancement and diversification of economic and trade relations between the two countries.
4. The Committee shall be co-chaired by representatives of the Parties at the ministerial level, and have members who are representatives from the relevant agencies concerned with the implementation of this Agreement. The Committee shall meet annually or at the request of

either Party. The location of the meetings shall alternate between Hanoi and Washington D.C., unless the Parties agree otherwise. The organization and the terms of reference of the Committee shall be adopted by the Committee at its first session.

Article 6

Relationship between Chapter IV, Annex H, Exchanged Letters, and Annex G

As to any matter concerning investment in services not specified in Annex G, the provisions of Annex H shall apply. However, in the event of a conflict between a provision set forth in Chapter IV, Annex H, or exchanged letters on Investment Licensing Regime, and a provision set forth in Annex G, the provision set forth in Annex G shall prevail to the extent of the conflict. Annex H and exchanged letters on Investment Licensing Regime shall not be construed or applied in a manner that would deprive a Party of rights provided under Annex G.

Article 7

Annexes, Schedules and Exchanged Letters

The Annexes, Schedules, and the exchanged letters on Investment Licensing Regime to this Agreement constitute an integral part of this Agreement.

Article 8

Final Provisions, Entry into Force, Duration, Suspension and Termination

1. This Agreement shall enter into force on the day on which the Parties have exchanged notifications that each has completed the legal procedures necessary for this purpose, and shall remain in force for three years.
2. This Agreement shall be extended for successive terms of three years if neither Party notifies the other Party of its intent to terminate this Agreement at least 30 days before the end of a term.
3. If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend application of this Agreement, or, with agreement of the other Party, any part of this Agreement, including MFN treatment. In that event, the Parties will seek, to the fullest extent practicable under domestic law, to minimize unfavorable effects on existing trade relations between the Parties.

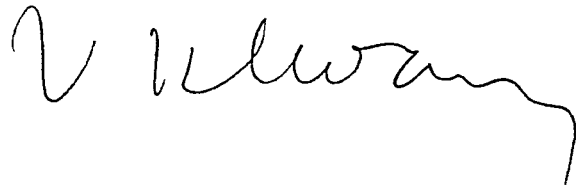
IN WITNESS THEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington D.C., in duplicate, this thirteenth day of July 2000, in the English and Vietnamese languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF VIETNAM:



EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

July 13, 2000

The Honorable Vu Khoan
Minister
Ministry of Trade
Hanoi, Vietnam

Dear Minister Khoan:

I have the honor to confirm receipt of your letter dated July 13, 2000, regarding investment licensing, which reads as follows:

"I have the honor to refer to the Agreement between the Socialist Republic of Vietnam and the United States of America on Trade Relations, signed on July 13, 2000. In this regard, I confirm the agreement between the Parties on investment licensing regimes as follows:

1. Vietnam may maintain the evaluation regime for investment licensing in the following sectors:
 - (a) Broadcasting and television; production, publishing and distribution of cultural products; construction and operation of sea port, river port, airport, cultural complex and tourist resorts; cargo and passenger transportation by road, air, rail, sea, inland-waterway; fishing and fish catching; banking; insurance; construction, installation and maintenance of telecommunication facility; brokerage, dealership in securities and currency values, and other related services; real estates business; infrastructure development projects for industrial parks, export processing zones and high tech zones;
 - (b) Projects in power, mineral exploitation and processing, metallurgy, cement, chemicals, agriculture sector with investment capital of over USD \$40 million. Vietnam shall consider raising this threshold amount as these sectors develop; and
 - (c) Projects using rice-growing land, urban land of 5 ha upward or other kinds of land of 50 ha upward, whether or not listed in this Paragraph.
2. Vietnam shall implement a registration regime for investment licensing, in place of the regime identified in paragraph 1, in the following sectors:



The Honorable Vu Khoan

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- (a) within 2 years of entry into force of this Agreement, apply a registration regime for investment licensing in respect of projects investing in industrial zones and export-processing zones; projects with export rate of at least 50% of products; projects having investment capital of up to USD 5 million.
- (b) within 6 years of the entry into force of this Agreement, apply a registration regime for investment licensing in respect of projects in manufacturing with investment capital of up to USD 20 million.
- (c) within 9 years of the entry into force of this Agreement, apply a registration regime for investment licensing in respect to other projects, except those provided for in paragraph 1.

In cases in which nationals or companies of the United States apply for an investment license ("license") for a covered investment, including in the sectors set forth in paragraph 1, the following provisions shall be applied:

- (c) Nationals and companies of the United States shall be accorded most-favored nation treatment in respect of any requirements for, and in the administration of, licenses.
- (b) The criteria for the granting or denial of a license, and for the imposition of any conditions for such license, shall be published, readily understandable, and no more burdensome than necessary to serve a legitimate regulatory interest.
- (c) The decision to grant or deny a license shall be made in conformity with all of the provisions of this Agreement, including those relating to the maintenance and elimination of TRIMs and the provisions of Annex H and this letter.
- (d) A decision denying an investment license to nationals or companies of the United States shall be in writing and set forth the reason for the denial. A national or company of the United States, if denied a license, shall have the right to seek reconsideration of such decision with the investment licensing agencies of Vietnam which shall issue a decision within thirty (30) days.



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- (e) Except as otherwise provided in paragraph 1(a) of this letter, a license shall not be denied or subjected to conditions for the purpose of (a) compelling a national or company of the United States to select a particular local partner or to locate production or other facilities in a particular location; or (b) discouraging or prohibiting investment in any particular sector.
- 4. Within 6 years of the entry into force of the Agreement, the licensing requirements and procedures for investment in the sectors not set forth in paragraph 1 and which are not yet subject to the registration regime, shall:
 - (a) be applied on the basis of treatment no less favorable than that accorded to nationals and companies of Vietnam; and
 - (b) in any case be consistent with the provisions of the paragraph 3.
- 5. The registration regime for investment licensing in the sectors set forth in paragraph 2 shall be provided for as follows:
 - (b) The registration procedure shall require only the provision of basic information concerning the investor and proposed investment.
 - (c) Such registration shall be promptly approved and issued without the attachment of any conditions except as otherwise provided in Annex H and this letter.
 - (c) The national or company of the United States shall, except as otherwise provided in Annex H and this letter, be allowed to choose its local partner (if any), the location of its investment, the form of investment, the apportionment of their investment and to decide all matters relating to the operation of such investment, consistent with generally applicable Vietnamese laws and regulations.
 - (d) In no case shall the registration regime be applied on a basis less favorable than that accorded to nationals and companies of Vietnam or of any third country.



The Honorable Vu Khoan
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6. The above provisions shall not preclude Vietnam from:
- (a) prescribing special formalities which require a covered investment to be legally constituted and operated in compliance with the Vietnamese laws and regulations, provided that such formalities shall not impair the substance of any of the rights set forth in this Agreement, Annex H or this letter; or
 - (b) maintaining requirements on a covered investment in accordance with Annex H, this letter, and Article 11 of Chapter IV on TRIMs.

I have the honor to confirm that this letter shall form an integral part of the Agreement.”

I have the honor to confirm this agreement between the Parties regarding investment licensing, and that the letter and this reply shall form an integral part of the Agreement.

Sincerely,


Charlene Barshefsky





Rules and Regulations

Federal Register

Vol. 66, No. 113

Tuesday, June 12, 2001

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-CE-23-AD; Amendment 39-12256; AD 2001-12-01]

RIN 2120-AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA-46-310P, PA-46-350P, and PA-46-500TP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain The New Piper Aircraft, Inc. (Piper) Models PA-46-310P, PA-46-350P, and PA-46-500TP airplanes. This AD requires you to inspect the left and right inboard flap drive bellcrank assemblies to ensure that the welding is complete and adequate and replace any assembly that has incomplete or inadequate welding. This AD is the result of reports of several instances where the bellcrank in the flap control system failed. The actions specified by this AD are intended to prevent failure of the flap drive bellcrank assemblies caused by incorrect or inadequate welding. Such failure could cause the inability to control the flaps and lead to reduced or loss of control of the airplane.

DATES: This AD becomes effective on June 29, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of June 29, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 27, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE-23-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE-23-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gunnar Berg, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6074; facsimile: (770) 703-6097; e-mail address: "Gunnar.Berg@faa.gov".

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received reports of several instances where the bellcrank in the flap control system failed on Piper Models PA-46-310P, PA-46-350P, and PA-46-500TP airplanes. Investigation of these instances reveals that the inboard flap drive bellcrank assemblies could have incomplete or inadequate welding. Specifically, the welding may not completely encompass the circumference of the tube-to-arm joint of the assemblies.

These flap drive bellcrank assemblies incorporate Piper part number (P/N) 82905-2 and P/N 82905-3.

What are the consequences if the condition is not corrected? Failure of the flap drive bellcrank assemblies, if not detected and corrected, could cause the inability to control the flaps and lead to reduced or loss of control of the airplane.

Is there service information that applies to this subject? Piper has issued Service Bulletin No. 1062, dated May 11, 2001. This service bulletin includes procedures for inspecting the left and right inboard flap drive bellcrank assemblies to ensure that the welding is complete and adequate.

This service bulletin also specifies replacing any assembly that has

incomplete or inadequate welding in accordance with the instructions in the applicable maintenance manual.

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

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

- The unsafe condition referenced in this document exists or could develop on other Piper Models PA-46-310P, PA-46-350P, and PA-46-500TP airplanes of the same type design;
- the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD requires you to inspect the left and right inboard flap drive bellcrank assemblies to ensure that the welding is complete and adequate and replace any assembly that has incomplete or inadequate welding.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in the inability to control the flaps and lead to reduced or loss of control of the airplane, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

need to take additional rulemaking action.

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

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

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-

addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001-CE-23-AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

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

Does this AD involve a significant rule or regulatory action? The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared

and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001-12-01 The New Piper Aircraft, Inc.:
Amendment 39-12256; Docket No. 2001-CE-23-AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers, that are certificated in any category:

Model	Serial Nos.
PA-46-310P	46-8408001 through 46-8408087, 46-8508001 through 46-8508109, 46-8608001 through 46-8608067, and 4608001 through 4608140.
PA-46-350P	4622001 through 4622200 and 4636001 through 4636313.
PA-46-500TP	4697001 through 4697020, 4697023, 4697024, 4697025, 4697027 through 4697037, 4697040 through 4697052, 4697054, 4697055, 4697058, and 4697059.

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

(c) *What problem does this AD address?*
The actions specified by this AD are intended to prevent failure of the flap drive bellcrank assemblies caused by incorrect or inadequate welding. Such failure could cause the

inability to control the flaps and lead to reduced or loss of control of the airplane.

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

Action	Compliance time	Procedures
Inspect in left and right inboard flap drive bellcrank assemblies, Piper part number (P/N) 82905-2 and P/N 82905-3, to ensure that the welding is complete and adequate. Replace any assembly that has incomplete or inadequate welding.	Inspect within the next 10 hours time-in-service (TIS) after June 29, 2001 (the effective date of this AD). Replace as necessary prior to further flight after the inspection where incomplete or inadequate welding is found.	Inspect in accordance with Piper Service Bulletin No. 1062, dated May 11, 2001. Replace in accordance with the applicable maintenance manual, as referenced in the service bulletin.
(2) Do not install any inboard flap drive bellcrank assembly, Piper P/N 82905-2 or P/N 82905-3, unless you have ensured that the welding is complete and adequate.	As of June 29, 2001 (the effective date of this AD).	Ensure that the welding is complete and adequate in accordance with Piper Service Bulletin No. 1062, dated May 11, 2001.

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

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

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

Manager, Atlanta Aircraft Certification Office.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified,

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mr. Gunnar Berg, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703-6074; facsimile: (770) 703-6097; e-mail address: "Gunnar.Berg@faa.gov".

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Piper Service Bulletin No. 1062, dated May 11, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on June 29, 2001.

Issued in Kansas City, Missouri, on June 1, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-14450 Filed 6-11-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-118-AD; Amendment 39-12260; AD 2001-12-05]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100, 747-200, 747-300, and 747SR Series Airplanes Powered by General Electric CF6-45/50 and Pratt & Whitney JT9D-70 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-100, 747-200, 747-300, and 747SR series airplanes powered by General Electric CF6-45/50 and Pratt & Whitney JT9D-70 series engines. This action requires a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections or corrective actions, if necessary. This action also provides an optional terminating action for the requirements of this AD. This action is necessary to detect and correct heat damage to the diagonal brace, which could cause cracking or fracture of the diagonal brace, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane.

DATES: Effective June 27, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 2001.

Comments for inclusion in the Rules Docket must be received on or before August 13, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-118-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-118-AD" in the subject line and need not be submitted

in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2771; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports from two operators who found heat damage to the forward end of the diagonal brace on the outboard struts of two Model 747 series airplanes powered by General Electric CF6-50 series engines. Both airplanes had previously accomplished the strut/wing modification required by AD 95-13-07, amendment 39-9287 (60 FR 33336, June 28, 1995), which requires the accomplishment of Boeing Alert Service Bulletin 747-54A2158.

One operator reported that the sealant backup plates were not reinstalled during the accomplishment of Boeing Alert Service Bulletin 747-54A2158. In that case, the airplane had accumulated approximately 371 flight cycles and 1,781 flight hours since the accomplishment of the service bulletin. Another operator reported using BMS 5-95 sealant to seal the area, instead of using the higher heat-resistant BMS 5-63 sealant. In that case, the airplane had accumulated approximately 591 flight cycles and 2,653 flight hours since accomplishment of the service bulletin. Further investigation revealed that the use of BMS 5-95 sealant was specified by Boeing Alert Service Bulletin 747-54A2158, whereas BMS 5-63 sealant was specified by Boeing Service Bulletin 747-54A2117.

The manufacturer reports that operating temperatures at the firewall openings exceed the maximum service temperature of BMS 5-95, which causes that sealant to harden and disintegrate at those operating temperatures. Heat damage to the diagonal brace, if not corrected, could result in cracking or fracture of the diagonal brace, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane.

The nacelle struts for General Electric CF6-45 and Pratt & Whitney JT9D-70 series engines are similar in design to the nacelle struts for General Electric CF6-50 series engines. Therefore, the FAA has determined that airplanes with any of these engines may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-54A2208, dated March 29, 2001, which describes procedures for a detailed visual inspection of the outboard diagonal brace for heat damage and cracking; and follow-on repetitive inspections or corrective actions, if necessary. The inspection for signs of heat damage includes looking for discoloration or changes in primer color, and using the primer color at the aft end of the diagonal brace as a reference point. Corrective actions include replacing the diagonal brace, installing the backup plates, and replacing the existing sealant with heat-resistant BMS 5-63 sealant. Accomplishment of certain inspections of the backup plate and diagonal brace and corrective actions if necessary, and replacement of the sealant with heat-resistant sealant would constitute terminating action for the repetitive inspections.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Model 747-100, 747-200, 747-300, and 747SR series airplanes powered by General Electric CF6-45/50 and Pratt & Whitney JT9D-70 series engines of the same type design, this AD is being issued to detect and correct heat damage to the diagonal brace, which could cause cracking or fracture of the diagonal brace, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane. This AD also provides an optional terminating action for the requirements of this AD. This AD requires the accomplishment of the actions specified in this AD in accordance with Boeing Alert Service Bulletin 747-54A2208, as described previously, except as discussed below.

Differences Between the Service Information and This AD

Operators should note that, although Model 747-100 series airplanes are not listed in the effectivity of the previously referenced service bulletin, that model airplane is included in the applicability

of this AD. The nacelle struts of General Electric CF6-45/50 and Pratt & Whitney JT9D-70 series engines on Model 747-100 series airplanes are similar in design to the nacelle struts on Model 747-200, 747-300, and 747SR series airplanes. Therefore, Model 747-100 series airplanes may be subject to the same unsafe condition revealed on Model 747-200, 747-300, and 747SR series airplanes.

Operators also should note that the previously referenced service bulletin specifies that the manufacturer may be contacted for disposition of certain replacement instructions. However, this AD requires the accomplishment of such action per a method approved by the FAA, or in accordance with data meeting the type certificate basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

The FAA is considering further rulemaking action to supersede this AD to require removal of the existing sealant and replacement with heat-resistant sealant, which would constitute terminating action for the repetitive inspections required by this AD action. However, the planned compliance time for these actions is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-118-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001-12-05 Boeing: Amendment 39-12260. Docket 2001-NM-118-AD.

Applicability: Model 747-100, 747-200, 747-300, and 747SR series airplanes, certificated in any category, powered by General Electric CF6-45/50 series engines, or Pratt & Whitney JT9D-70 series engines.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct heat damage to the diagonal brace, which could cause cracking or fracture of the diagonal brace, and possible loss of the diagonal brace load path and consequent separation of the strut and engine from the airplane, accomplish the following:

Verification

(a) Within 90 days after the effective date of this AD, do the actions required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) If an operator's maintenance records verify that, during the accomplishment of AD 95-13-07, amendment 39-9287, the seal backup plates were restored and BMS 5-63 high-temperature sealant was used in that restoration, no further action is required by this AD.

(2) If an operator's maintenance records do not verify that the actions specified in paragraph (a)(1) were accomplished, do the actions required by paragraph (b) of this AD.

Inspections and Corrective Actions

(b) Within 90 days after the effective date of this AD, do the inspections and applicable corrective actions specified by paragraphs (b)(1) and (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin 747-54A2208, dated March 29, 2001. Thereafter, repeat the inspections at intervals not to exceed 6 months, except as provided by paragraph (c) of this AD.

Outboard Strut Diagonal Brace

(1) Do a detailed visual inspection of the forward 20 inches of the outboard strut diagonal brace, including all areas of the forward clevis lugs and brace body, for signs of heat damage or cracks, per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no sign of heat damage or cracking is found, repeat the detailed visual inspection at intervals not to exceed 6 months per the service bulletin, until accomplishment of paragraph (c) of this AD.

(ii) If any primer discoloration is found, before further flight, do a non-destructive test (NDT) inspection of the area to determine if the diagonal brace has heat damage per Part 1 of the Accomplishment Instructions of the service bulletin.

(A) If no heat damage is found during the NDT inspection, and no cracking is found during the detailed visual inspection, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(B) If any heat damage is found during the NDT inspection, or any cracking is found during the detailed visual inspection, before further flight, do the action specified in paragraph (c)(2) of this AD. Thereafter, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

Firewall Openings of the Strut Aft Bulkhead

(2) Do a detailed visual inspection of the firewall openings of the strut aft bulkhead to verify installation of seal backup plates and condition of the sealant application per Part 1 of the Accomplishment Instructions of the service bulletin.

(i) If no discrepancy (including damaged or missing seal backup plates, or damaged or missing sealant) is found, repeat the detailed visual inspection specified by paragraph (b)(1) of this AD at intervals not to exceed 6 months.

(ii) If the seal backup plates are not installed, before further flight, install the seal backup plates and apply heat-resistant sealant, BMS 5-63, per Part 2 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

(iii) If the seal backup plates are installed, but the sealant application is damaged or missing, before further flight, remove any existing sealant and apply heat-resistant sealant, BMS 5-63, per Part 3 of the Accomplishment Instructions of the service bulletin. Accomplishment of this action terminates the repetitive inspections required by this AD.

Note 2: Because it is difficult to distinguish between BMS 5-95 and BMS 5-63 sealants,

removal and replacement of the existing sealant is required to ensure that the correct heat-resistant sealant, BMS 5-63, is used.

Optional Terminating Action

(c) Accomplishment of the inspections required by paragraphs (b)(1) and (b)(2) of this AD and the actions specified by paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, constitutes terminating action for the requirements of this AD.

(1) Before further flight following the inspections required by paragraphs (b)(1) and (b)(2) of this AD, if no cracking or heat damage is found and the seal backup plates are installed, remove any existing sealant and apply heat-resistant sealant, BMS 5-63, per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-54A2208, dated March 29, 2001.

(2) If any sign of heat damage or cracking is found during the inspections required by paragraph (b) of this AD, before further flight, do the actions specified by either paragraph (c)(2)(i) or (c)(2)(ii) of this AD.

(i) Replace the diagonal brace per Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-54A2208, dated March 29, 2001; or

(ii) Repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(3) If the seal back-up plates are missing, before further flight, do the actions required by paragraph (b)(2)(ii) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c)(2)(ii) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747-54A2208, dated March 29, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)

and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on June 27, 2001.

Issued in Renton, Washington, on June 4, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-14533 Filed 6-11-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT-020-FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed revisions to, and additions of statutes about, the notice requirements for alternate reclamation plans; the use of introduced species on lands mined, disturbed, or redisturbed after May 2, 1978, and reseeded prior to January 1, 1984; subsidence; a definition of operator for uranium mining; and other editorial revisions. Montana revised its program to be consistent with SMCRA, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: June 12, 2001.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261-6550, Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Submission of the Proposed Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Proposed Amendment

By letters dated July 20 and August 17, 2000, Montana sent us an amendment to its program (Administrative Record No. MT-17-01) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment in response to a June 5, 1996, letter (Administrative Record No. MT-17-03) that we sent to Montana in accordance with 30 CFR 732.17(c) and to present changes made at its own initiative by the 1997 State legislature. The full text of this program amendment is available for you to read at the locations listed above under **ADDRESSES**.

In this amendment, Montana unnecessarily included revisions from the 1995 State legislature which OSM approved in the January 22, 1999, **Federal Register** (64FR3604; Administrative Record No. 14-13.) Those revisions are not rediscussed in this rule notice.

The provisions of the Montana Code Annotated (MCA) that Montana proposed to revise, or add, are: 82-4-203(1) and (2)(d), MCA (Definitions); 82-4-232(1), (7) and (8), MCA (Area mining required-bond-alternative plan); 82-4-233(1) and (4), MCA (Planting of vegetation following grading of disturbed area); 82-4-243, MCA (Subsidence); 82-4-253(1), (2) and (3), MCA (Suit for damage to water supply); and 82-4-254(1), (2), (3), (4) and (9), MCA (Violation-Penalty-Waiver).

We announced receipt of the proposed amendment in the September 25, 2000, **Federal Register** (65 FR 57583). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. MT-17-05). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 25, 2000.

During our review of the amendment, we identified one concern about lack of a definition of "permittee" in the Montana program. We notified Montana

of this concern by letter dated December 4, 2000 (Administrative Record No. MT-17-06). Montana responded in a letter dated December 18, 2000 (Administrative Record No. MT-17-07), that it would not submit a revision to the amendment at this time. In the letter, Montana stated that it would write a definition of "permittee" for the State program and submit it to OSM.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

1. Minor Revisions to Montana's Statutes

Montana proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved statutes. The corresponding Federal regulations or SMCRA provisions are listed in parentheses.

- 82-4-203, MCA, subsection (1), (30 CFR 842.11(e)), Definitions;
- 82-4-232, MCA, subsections (1), (7) and (8), (SMCRA Sections 507(b)(6) and 515(b)(3)), Area mining require—bond—alternative plan;
- 82-4-253, MCA, subsections (1), (2) and (3), (SMCRA Section 717(a)), Suit for damage to water supply; and
- 82-4-254, MCA, (1), (2), (3) and (9), (SMCRA Sec. 518), Violation—penalty—waiver.

Because these changes are minor, we find that they will not make Montana's statutes less stringent than SMCRA.

2. MCA 82-4-203(2)(d), Definition of "Operator"

Montana proposed to expand the definition of "operator" to include a person engaged in "uranium mining" using in situ methods. Montana currently applies its coal mining regulations in the Administrative Rules of Montana (ARM) 26.4, Subchapter 9, to the uranium industry. However, there is no definition of what constitutes a uranium mining "operator" in ARM. By adding this definition, Montana is adding clarity and consistency to the State program.

There is no Federal equivalent statute or rule to the definition of a uranium mining operator, as OSM's regulations apply to coal mining exclusively. Therefore, OSM finds that Montana's revised definition of "operator" is not inconsistent with the requirements of SMCRA, the Federal regulations, and Montana's currently approved program.

The Director approves MCA 82-4-203(21)(d).

3. MCA 82-4-233(1) and (4), Planting of Vegetation Following Grading of Disturbed Area

At MCA 82-4-233(1) and (4), Montana proposed to allow certain lands (those mined, disturbed, or redisturbed after May 2, 1978, and seeded prior to January 1, 1984, with a seed mix that was approved by the department, lands on which the reclaimed vegetation meets Montana's requirements and applicable State and Federal seed and vegetation laws and rules) to have introduced species composing a major or dominant component of the reclaimed vegetation, as introduced species were, at that time, considered to be desirable and necessary to achieve the postmining land use.

Montana's currently approved program in the Administrative Rules of Montana (ARM) at 26.4.728 and MCA 82-4-233 and 82-4-235 contain revegetation requirements which are no less effective than the Federal requirements at 30 CFR 816.111 and no less stringent than the Federal requirements at SMCRA Sec. 515(b)(19). Concerning the establishment of native species on reclaimed lands, Montana's approved program at ARM 26.4.728 is more stringent than the Federal requirements as Montana requires that the revegetated area must be composed of "at least 51% native species." Montana is requesting the proposed exemption at MCA 82-4-233(1) and (4) from its approved program to cover lands disturbed by mining after May 2, 1978 and seeded prior to January 1, 1984, when seed mixes recommended by the State of Montana contained highly competitive introduced species which took over less-competitive native species in the seed mix recommended at that time.

In support of the statutory revision to provide an exception to ARM 26.4.728, Montana states that:

Much of the land disturbed by mining after May 2, 1978 and seeded prior to January 1, 1984 was reclaimed and seeded with an approved seed mix containing competitive introduced species. The competitive nature of several introduced species combined with the reduced success of native species resulted in the vegetation of many reclaimed fields being dominated by introduced species. With the advancement of reclamation techniques and the revision of seed mixtures, better reclamation and revegetation with predominantly native species have resulted.

In order to appropriately address the preponderance of introduced species in many of the earlier reclaimed stands, the

Department requested the Montana Legislature to amend The Montana Strip and Underground Mine Reclamation Act to include the use of introduced species to achieve the postmine lands use, which under certain conditions, may be necessary and can provide superior wildlife habitat and/or livestock grazing. This provision addresses those fields that were disturbed after May 12, 1978 and seeded prior to January 1, 1984. The proposed change only addresses the use of introduced species, all other vegetation standard remain unchanged. Additionally, Montana requires that all fields seeded after January 1, 1984 must also meet the standard of at least 51% native species at the time of bond release.

While a reduction in the number of native species may be realized in selected special use pastures, vegetative production and cover standards will be achieved prior to bond release. These standards plus the structural diversity apparent in these fields will ensure the approved postmine land use (livestock grazing and wildlife habitat) is appropriately supported prior to final bond release. A minor revision may be necessary to approve those changes.

SMCRA allows the use of introduced species in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. On lands disturbed by mining after May 2, 1978 and seeded prior to January 1, 1984, Montana's approval of the seed mixes indicates that Montana determined that the introduced species were desirable and necessary to achieve the postmining land use, and allowed the inclusion of these species in the approved seed mix during the early 1980s. Although the introduced species used during the specified time period were unexpectedly competitive, as compared with the recommended native species in the same seed mix, vegetation resulting from the seed mix still provided wildlife habitat and/or livestock grazing.

Neither SMCRA nor the Federal regulations specify what percentage of vegetative cover for reclaimed grazing land or fish and wildlife should be comprised of native species, but rather SMCRA allows the use of introduced species where desirable and necessary to achieve the postmining land use. Montana is documenting its decision prior to January 1984 (and changed at that time) that the use of introduced species would provide the postmining land uses of wildlife habitat and livestock grazing, as provided in SMCRA. Therefore, the Director finds the Montana statute revisions at MCA 82-4-233(1) and (4) to be no less stringent than SMCRA Sec. 515(19)(b) and no less effective than 30 CFR 816.111 and is approving the revision.

4. MCA 82-4-243, Subsidence

In response to a Part 732 letter dated June 5, 1996, concerning the Energy Policy Act of 1992, Montana proposed a new statute at MCA 82-4-243 which provides that the permittee of an underground coal mining operation shall promptly repair or compensate for subsidence-caused material damage to any noncommercial building or occupied residential dwelling and related structures. Repair of damage shall include rehabilitation, restoration, or replacement. Compensation must be provided to the owner of the damaged property in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy. The statute also requires the prompt replacement of drinking, domestic, or residential water supply from a well or spring, pre-existing to the permit application, which have been contaminated, diminished, or interrupted by underground coal mining operations. Nothing in the statute may prohibit or interrupt underground coal mining operations. In addition, the Montana statute provides that no remedy granted under another statute provision or law would be abrogated, impaired, or diminished by MCA 82-4-243.

The Federal equivalent at SMCRA Sec. 720(a) provides that underground coal mining operations shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or non-commercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto or non-commercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy. The statute also requires prompt replacement of any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit affected by contamination, diminution or interruption resulting from underground coal mining

operations. Nothing in the statute shall be construed to prohibit or interrupt underground coal mining operations. The Federal statute went into effect on October 24, 1992.

The language of the Montana statute is very similar to the Federal counterpart and, therefore, is no less stringent than SMCRA. OSM notes that whereas the Federal statute refers to "underground coal mining operations," the Montana statute refers to "the permittee of an underground coal mining operation." Montana does not have a definition of "permittee" in the approved program. By letter dated December 18, 2000, Montana stated that it would write a definition of "permittee" for the State program and submit it to OSM. Existing MCA 82-4-221 clarifies that an operator may not engage in strip or underground mining without first having obtained from the department a permit. MCA 82-4-221, as well as other statutes in Montana's currently approved program, use the term "permittee" for the holder of the required permit. OSM believes that Montana's use of the term "permittee" and its meaning in proposed MCA 82-4-243 is clear, even though the program lacks a definition of "permittee" at this time. Therefore, OSM finds that Montana's proposed MCA 82-4-243 is no less stringent than Section 720(a) of SMCRA and approves the new statute.

5. MCA 82-4-254(4), Violation—Penalty—Waiver

The only revision proposed by Montana to this subsection concerns the deletion of "commissioner" and the substitution of "director of environmental quality." This revision reflects the State of Montana reorganization in 1995 which, among other things, revised the environmental and natural resource functions of the State government. Montana made related revisions relating to the State reorganization and title changes in the January 22, 1999, **Federal Register** notice at Finding No. 2 (Administrative Record No. MT-14-11; 64 FR 3604), but this subsection was overlooked. Therefore, with reference to Finding No. 2 in the aforementioned January 22, 1999, **Federal Register** notice, the Director approves this revision to MCA 82-4-254(4) as it implements the same State reorganization.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. MT-17-02), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT-17-02).

MSHA responded by letter dated October 5, 2000, that the proposed amendment was not in conflict with MSHA regulations (Administrative Record No. MT-17-04).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Administrative Record No. MT-17-02). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 12, 2000, we requested comments on Montana's amendment (Administrative Record No. MT-17-02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment sent to us by Montana. We approve, as discussed in: Finding No. 1, MCA 82-4-203(1), concerning the definition of "abandoned;" MCA 82-4-232(1), (7) and (8), concerning area mining required—bond—alternate plan; MCA 82-4-253(1), (2) and (3), concerning suit for damage to water supply; and MCA 82-4-254(1), (2), (3) and (9), concerning violation—penalty—waiver; Finding No. 2, MCA 82-4-203(21)(d), concerning the definition of "operator" for uranium mining; Finding No. 3, MCA 82-4-233(1) and (4), concerning the use of introduced species on lands mined, disturbed, or redisturbed after May 2, 1978, and reseeded prior to January 1, 1984; Finding No. 4, MCA 82-4-243, concerning subsidence; and

Finding No. 5, MCA 82-4-254(4), concerning violation—penalty—waiver.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 926, which codify decisions concerning the Montana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage States to make their programs conform with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that Section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory

programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was

prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of \$100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation was not considered a major rule.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 10, 2001.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 926 is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
July 20 and August 17, 2000	6/12/01	MCA 82-4-203(1) and (21)(d), 82-4-232(1), (7) and (8), 82-4-233(1) and 4, 82-4-243, 82-4-253(1), (2) and (3) and 82-4-254(1), (2), (3), (4) and (9).

[FR Doc. 01-14712 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AH85

Subsistence Management Regulations for Public Lands in Alaska

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: This rule amends the operating regulations of the Federal Subsistence Management Program in Alaska by expanding the authority that the Board may delegate to agency field officials and clarifying the procedures for enacting emergency or temporary restrictions, closures, or openings.

DATES: This rule is effective May 1, 2001. Comments on this rule must be received by August 13, 2001.

ADDRESSES: Submit written comments to Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503. Submit electronic comments to Bill_Knauer@fws.gov. Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Thomas H. Boyd, (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271-2540.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska

enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114-27170). On January 8, 1999, (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska v. Babbitt*. Consistent with Subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this rule and agree with its substance.

Federal Subsistence Regional Advisory Councils

Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal

knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent geographical, cultural, and user diversity within each region.

Summary of Changes

Based on our analysis of public and agency concerns expressed over the last year, including the need for clarification in some sections, we have made the following revisions:

Section _____.6(a)(1)—Clarified that you must be an Alaska resident (but do not need a State license) to take fish or shellfish under the Federal Subsistence Management regulations;

Section _____.10(d)(6)—Expanded the authority that the Board may delegate to field officials to include possession limits, methods or means of harvest, and permit requirements;

Section _____.19—Reorganized this section and clarified what circumstances warrant a request for a Special Action; and,

Section _____.20—Clarified what circumstances warrant a Request for Reconsideration.

Nothing in this rule is intended to change the underlying rural priority that is set out in Title VIII of ANILCA or otherwise amend the statutory basis of the Federal Subsistence Management Program. Although most sections of these regulations are not being amended, for the purpose of clarity and ease of understanding, the entire text of subparts A and B, and portions of C is being printed. The unpublished sections (portions of subpart C and Sections _____.25, _____.26, _____.27, and _____.28) relate to wildlife, fish, and shellfish regulations that are revised annually. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text is incorporated into 36 CFR Part 242 and 50 CFR Part 100.

The primary purpose of this rulemaking action is to delegate additional authority from the Board to local officials to make conservation decisions. We are publishing an interim rule because there is inadequate time to engage in notice-and-comment rulemaking prior to the start of the spring/summer salmon runs. Many of these runs, particularly on the Yukon and Kuskokwim Rivers, were the lowest in history last year and are expected to be very low again this season. As such, the ability to make immediate (often within hours) decisions relative to a specific run or pulse of fish is critical in

protecting the health of the population while, if at all possible, providing a subsistence opportunity for the rural residents. The changes that are included in this rule have previously been discussed and supported in the public forum of Regional Council meetings around the State. Without this local regulatory authority, the continued viability of fishery populations could be seriously impacted, as well as future subsistence opportunities for rural Alaskans. This situation would generally fail to serve the overall public interest.

The Board, therefore, finds good cause under 5 U.S.C. 553(b)(3)(B) and (d)(3) (the Administrative Procedure Act) to promulgate this rule without prior notice and public procedure and to make this rule effective May 1, 2001.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment has been prepared on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION**

CONTACT. The Secretary of the Interior with the concurrence of the Secretary of Agriculture has determined that the expansion of Federal jurisdiction does not constitute a major Federal action, significantly effecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the Final Rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. It applies to the use of public lands in Alaska. The information collection has been approved by OMB, Control Number 1018–0075, which expires July 31, 2003.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an

applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (1 hour or less). This information is accessed via computer data base. The current overall annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the existing rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

The collection of information under this rule will be achieved through the use of a Federal Subsistence Registration Permit Application, which would be the same form as currently approved and used for the hunting program. This information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish populations. The annual burden of reporting and recordkeeping is estimated to average 0.50 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 10,000, yielding a total annual reporting and recordkeeping burden of 5,000 hours or less.

You may direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Additional information collection

requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § _____.24 Customary and traditional determinations.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Economic Effects

This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound for salmon and \$0.58 per pound for other fish, would equate to about \$34 million in food value statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any state or local entities or tribal governments.

The Secretaries have determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence

management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Drafting Information

These regulations were drafted by William Knauer, Bob Gerhard, and Victor Starostka under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Taylor Brelsford, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; Greg Bos, Fish and Wildlife Service; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Revise subparts A and B of 36 CFR part 242 and 50 CFR part 100 to read as follows:

Subpart A—General Provisions

Sec.

- ____.1 Purpose.
- ____.2 Authority.
- ____.3 Applicability and scope.
- ____.4 Definitions.
- ____.5 Eligibility for subsistence use.
- ____.6 Licenses, permits, harvest tickets, tags, and reports.
- ____.7 Restriction on use.
- ____.8 Penalties.
- ____.9 Information collection requirements.

Subpart B—Program Structure

- ____.10 Federal Subsistence Board.
- ____.11 Regional advisory councils.
- ____.12 Local advisory committees.
- ____.13 Board/agency relationships.

- ____.14 Relationship to State procedures and regulations.
- ____.15 Rural determination process.
- ____.16 Customary and traditional use determination process.
- ____.17 Determining priorities for subsistence uses among rural Alaska residents.
- ____.18 Regulation adoption process.
- ____.19 Special actions.
- ____.20 Request for reconsideration.
- ____.21 [Reserved].

Subpart A—General Provisions

§ _____ .1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ _____ .2 Authority.

The Secretary of the Interior and Secretary of Agriculture issue the regulations in this part pursuant to authority vested in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101–3126.

§ _____ .3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency-specific regulations.

(b) The regulations contained in this part apply on all public lands including all non-navigable waters located on these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

- (1) Alaska Maritime National Wildlife Refuge;
- (2) Alaska Peninsula National Wildlife Refuge;
- (3) Aniakchak National Monument and Preserve;
- (4) Arctic National Wildlife Refuge;
- (5) Becharof National Wildlife Refuge;
- (6) Bering Land Bridge National Preserve;
- (7) Cape Krusenstern National Monument;
- (8) Chugach National Forest, excluding marine waters;
- (9) Denali National Preserve and the 1980 additions to Denali National Park;
- (10) Gates of the Arctic National Park and Preserve;

(11) Glacier Bay National Preserve;
 (12) Innoko National Wildlife Refuge;
 (13) Izembek National Wildlife Refuge;
 (14) Katmai National Preserve;
 (15) Kanuti National Wildlife Refuge;
 (16) Kenai National Wildlife Refuge;
 (17) Kobuk Valley National Park;
 (18) Kodiak National Wildlife Refuge;
 (19) Koyukuk National Wildlife Refuge;
 (20) Lake Clark National Park and Preserve;
 (21) National Petroleum Reserve in Alaska;
 (22) Noatak National Preserve;
 (23) Nowitna National Wildlife Refuge;
 (24) Selawik National Wildlife Refuge;
 (25) Steese National Conservation Area;
 (26) Tetlin National Wildlife Refuge;
 (27) Togiak National Wildlife Refuge;
 (28) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument, and excluding marine waters;
 (29) White Mountain National Recreation Area;
 (30) Wrangell-St. Elias National Park and Preserve;
 (31) Yukon-Charley Rivers National Preserve;
 (32) Yukon Delta National Wildlife Refuge;
 (33) Yukon Flats National Wildlife Refuge;
 (34) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves, or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

§ _____.4 Definitions.

The following definitions apply to all regulations contained in this part:

Agency means a subunit of a cabinet-level Department of the Federal Government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

ANILCA means the Alaska National Interest Lands Conservation Act, Public Law 96-487, 94 Stat. 2371, (codified, as

amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

Area, District, Subdistrict, and Section mean one of the geographical areas defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § _____.10.

Commissions means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Customary trade means cash sale of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

FACA means the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (codified as amended, at 5 U.S.C. Appendix II, 1-15).

Family means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis.

Federal Advisory Committees or Federal Advisory Committee means the Federal Local Advisory Committees as described in § _____.12

Federal lands means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

Game Management Unit or GMU means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

Inland Waters means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

Marine Waters means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust, or society.

Public lands or public land means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1)(i) through (iii) of this definition, until conveyed or interim

conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

Regional Councils or Regional Council means the Regional Advisory Councils as described in § _____.11.

Regulatory year means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

Reserved water right(s) means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

Resident means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented, or leased; location of stored household goods; residence of spouse, minor children, or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Rural means any community or area of Alaska determined by the Board to qualify as such under the process described in § _____.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Take or taking as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ _____.5 Eligibility for subsistence use.

(a) You may take fish and wildlife on public lands for subsistence uses only if you are an Alaska resident of a rural area or rural community. The regulations in this part may further limit your qualifications to harvest fish or wildlife resources for subsistence uses. If you are not an Alaska resident or are a resident of a non-rural area or community listed in § _____.23, you may not take fish or wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § _____.24, only those Alaskans who are residents of rural areas or communities designated by the Board are eligible for subsistence taking of that population or stock on public lands for subsistence uses under the regulations in this part. If you do not live in one of those areas or communities, you may not take fish or wildlife from that population or stock, on public lands under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g. "no determination"), all Alaskans who are residents of rural areas or communities may harvest for subsistence from that stock or population under the regulations in this part.

(d) The National Park Service may regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR part 13.

§ _____.6 Licenses, permits, harvest tickets, tags, and reports.

(a) If you wish to take fish and wildlife on public lands for subsistence uses, you must be a rural Alaska resident and:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish or shellfish, but you must be an Alaska resident) unless Federal licenses are

required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal permits (Federal Subsistence Registration Permit or Federal Designated Harvester Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.

(b) If you have been awarded a permit to take fish and wildlife, you must have that permit in your possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Upon the request of a State or Federal law enforcement agent, you must also produce any licenses, permits, harvest tickets, tags, or other documents required by this section. If you are engaged in taking fish and wildlife under the regulations in this part, you must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in your possession.

(c) You must validate the harvest tickets, tags, permits, or other required documents before removing your kill from the harvest site. You must also comply with all reporting provisions as set forth in subpart D of this part.

(d) If you take fish and wildlife under a community harvest system, you must report the harvest activity in accordance with regulations specified for that community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of the regulations in this part. Community harvests are reviewed annually under the regulations in subpart D of this part.

(e) You may not make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report.

§ _____.7 Restriction on use.

(a) You may not trade or sell fish and wildlife, taken pursuant to the regulations in this part, except as

provided for in §§ _____.25, _____.26, _____.27, and _____.28.

(b) You may not use, sell, or trade fish and wildlife, taken pursuant to the regulations in this part, in any significant commercial enterprise.

§ _____.8 Penalties.

If you are convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242, you may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

§ _____.9 Information collection requirements.

(a) The rules in this part contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section _____.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § _____.6 (Federal Subsistence Registration Permit or Federal Designated Hunter Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine if you are eligible for a permit and a report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § _____.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(2) Section _____.20, Request for reconsideration. The information collection requirements contained in § _____.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final review by the Board. We estimate that a request for reconsideration will take 4 hours to prepare and submit.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State

regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible and information gained from these reports are systematically available to Federal managers by routine computer access requiring less than 1 hour.

(b) You may direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 222 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork, Reduction Project (Subsistence), Washington, DC 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§ _____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign them responsibility for, administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) Membership. (1) The voting members of the Board are: a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved].

(c) Liaisons to the Board are: a State liaison, and the Chairman of each Regional Council. The State liaison and

the Chairman of each Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) Powers and duties. (1) The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum consists of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Issue regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans,

policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make a recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Harvester Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner

consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee for analytical and administrative assistance composed of members from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service. A U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) Relationship to Regional Councils.

(1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

§ 11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The

Regional Councils shall provide for public participation in the Federal regulatory process.

(b) Establishment of Regional Councils; membership. (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and recommend to the Secretaries that representatives on the Regional Councils be appointed from those nominated by subsistence users. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3-year terms and may be reappointed. Initial members shall be appointed with staggered terms up to 3 years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a 1-year term and may be reelected.

(c) Powers and duties. (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under the regulations in this part within the region;

(iv) Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission within their region in accordance with the requirements of section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to § _____.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under the regulations in this part, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

§ _____.12 Local advisory committees.

(a) The Board shall establish such local Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § _____.11.

(b) Local Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

§ _____.13 Board/agency relationships.

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall issue regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subpart C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

§ _____.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by the regulations in this part.

(b) The Board may close public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife despite any State authorization for taking fish and wildlife on public lands. The Board may review and adopt State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, DC 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

§ _____.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2500 but not more than 7000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;

(iv) Transportation; and

(v) Educational institutions.

(6) Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a ten year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of five years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § _____.23.

§ _____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § _____.24.

§ _____.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

§ _____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D of this part shall be accepted by the Board according to a published schedule. The Board may establish a rotating schedule for accepting proposals on various parts of subpart D regulations over a period of years. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § _____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart D of this part in the **Federal Register**.

(b) Proposals for changes to subpart C of this part shall be accepted by the Board according to a published schedule. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Public and governmental proposals shall be made available for a thirty (30) day review by the regional councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted within the time period as specified by the Board or as a part of the Regional Council's annual report described in § _____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the

reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart C of this part in the **Federal Register**. A Board decision to change a community's or area's status from rural to non-rural will not become effective until five years after the decision has been made.

(c) [Reserved]

(d) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.

§ _____.19 Special actions.

(a) The Board may restrict, close, or reopen the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of a particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) The Board may open, close, or restrict subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(c) The Board will accept a request for a change in seasons, methods and means, and/or harvest limits under this § _____.19 only if there are extenuating circumstances necessitating a regulatory change before the next annual subpart D proposal cycle. Extenuating circumstances include unusual and significant changes in resource abundance or unusual conditions affecting harvest opportunities that could not reasonably have been anticipated and that potentially could have significant adverse effects on the health of fish and wildlife populations or subsistence uses. Requests for Special Action that do not meet these conditions will be deferred to the next annual regulatory proposal cycle. In general, changes to Customary and Traditional Use Determinations will only be considered through the annual subpart C proposal cycle.

(d) In an emergency situation, the Board may immediately open, close, liberalize, or restrict subsistence uses of fish and wildlife on public lands, or close or restrict non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. Prior to implementing an emergency action, the Board shall consult with the

State. The emergency action shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and public hearing, that such action should be extended. The Board shall, in a timely manner, provide notice via radio announcement or personal contact of the emergency action and shall publish notice and reasons justifying the emergency action in newspapers of any area affected, and in the **Federal Register** thereafter.

(e) After consultation with the State, the appropriate Regional Advisory Council(s), and adequate notice and public hearing, the Board may make or direct a temporary change to close, open, or adjust the seasons, to modify the harvest limits, or to modify the methods and means of harvest for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons, harvest limits, or methods or means of harvest. In addition, a temporary change may be made only after the Board determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on non-subsistence users. The decision of the Board shall be the final administrative action. The temporary change shall be effective when directed by the Board following notice in the affected area(s). This notice may include publication in newspapers or announcement on local radio stations. The Board shall publish notice and reasons justifying the temporary action in the **Federal Register** thereafter. The length of any temporary change shall be confined to the minimum time period or harvest limit determined by the Board to be necessary to satisfy subsistence uses. A temporary opening or closure will not extend beyond the regulatory year for which it is promulgated.

(f) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by the regulations in this part, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(g) You may not take fish and wildlife in violation of a restriction, closure, opening, or temporary change authorized by the Board.

§ _____.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the **Federal Register** are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. You must include the following information in your request for reconsideration:

- (1) Your name, and mailing address;
- (2) The action which you request be reconsidered and the date of **Federal Register** publication of that action;
- (3) A detailed statement of how you are adversely affected by the action;
- (4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;
- (5) A statement of how you would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council for review and recommendation. The Board shall consider any Regional Council recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

§ _____.21 [Reserved]

Subpart C—Board Determinations

3. Amend subpart C of 36 CFR part 242 and 50 CFR part 100 by revising §§ _____.22 and _____.23 to read as follows:

§ _____.22 Subsistence resource regions.

(a) The Board hereby designates the following areas as subsistence resource regions:

- (1) Southeast Region;
- (2) Southcentral Region;
- (3) Kodiak/Aleutians Region;
- (4) Bristol Bay Region;
- (5) Yukon-Kuskokwim Delta Region;
- (6) Western Interior Region;
- (7) Seward Peninsula Region;
- (8) Northwest Arctic Region;
- (9) Eastern Interior Region;
- (10) North Slope Region.

(b) You may obtain maps delineating the boundaries of subsistence resources regions from the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

§ _____.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § _____.15 except the following:

Adak;
Fairbanks North Star Borough;
Juneau area—including Juneau, West Juneau and Douglas;
Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island;
Municipality of Anchorage;
Valdez; and
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenbergt Butte. You may obtain maps delineating the boundaries of non-rural areas from the U.S. Fish and Wildlife Service.

(b) [Reserved].

4. Amend § _____.24 by revising paragraph (a) introductory text to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish & Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species

in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

* * * * *

Dated: June 4, 2001.

Gale Norton,

Secretary of the Interior.

James A. Caplan,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 01-14717 Filed 6-11-01; 8:45 am]

BILLING CODE 3410-11-P; 4310-55-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ43-219; FRL-6990-4]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has found that the State of New Jersey has implemented the enhanced Inspection and Maintenance (I/M) program. EPA, therefore, is terminating all sanctions clocks related to the implementation of the New Jersey enhanced I/M program upon the effective date of this document. This action also reinstates the interim approval granted under Section 348 of the National Highway Systems Designation Act of the enhanced I/M program. The interim approval became effective on December 13, 1999.

EFFECTIVE DATE: This rule will be effective July 12, 2001.

ADDRESSES: Copies of the documents relevant to this action are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866; New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625; and Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Judy-Ann Mitchell, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637-4249.

SUPPLEMENTARY INFORMATION:

I. What Is EPA Taking Action On?

On November 19, 1999, New Jersey notified EPA by letter that the mandatory enhanced I/M program would be implemented on December 13, 1999. EPA had been working closely with the State during the phase-in period of the enhanced I/M program and agreed that the State would have the program implemented on December 13, 1999. Therefore, on December 17, 1999 (64 FR 70659), EPA proposed to find that the State of New Jersey had implemented its enhanced I/M program by December 13, 1999. EPA also proposed to reinstate the interim approval under Section 348 of the NHSDA of the enhanced I/M program effective on December 13, 1999.

Also in the December 17, 1999 **Federal Register**, EPA published an interim final rule (64 FR 70593), which stayed the application of the offset sanction and deferred the highway sanction as of December 13, 1999. Although the State of New Jersey had numerous start-up problems, the program was implemented and is currently operational. A description of EPA's rationale for our proposed action was presented in the proposal and will not be restated here. No public comments were received on the proposal.

II. Final Action

Upon the effective date of today's action, all sanctions clocks related to the implementation of New Jersey's enhanced I/M program are terminated. In addition, the interim approval of New Jersey's enhanced I/M program is reinstated. Since approximately six months of the interim period had passed by December 12, 1997, the State had the remaining 12 months of the interim approval period to demonstrate their I/M program's test and repair network effectiveness. On December 13, 2000, New Jersey submitted their I/M program's test and repair network effectiveness demonstration.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This final 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 final 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). This final rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the

takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 12, 2001.

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 August 13, 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, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: May 9, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01-13779 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN68-01a; FRL-6991-7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota Sulfur Dioxide (SO₂) State Implementation Plan (SIP) for Koch Petroleum Group, LP (Koch). The Minnesota Pollution Control Agency (MPCA) submitted the SIP revision request on December 20, 2000. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this document.

DATES: This direct final rule will be effective August 13, 2001, unless EPA receives adverse comment by July 12, 2001. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353-8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

- I. General Information
 1. What action is EPA taking today?
 2. Why is EPA taking this action?
 3. What is the background for this action?
- II. Review of state implementation plan revision
 1. Why did the state submit this SIP revision?
 2. What Information did Minnesota

submit, and what were its requests?

3. How Does the SIP Revision Show Attainment of the SO₂ Standards?

III. Final Rulemaking Action

IV. Administrative Requirements

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO₂ SIP a site-specific revision for Koch, located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving into the (SO₂) SIP Amendment No. 4 to the Administrative Order (Order) for Koch.

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's submittal for Koch is fully approvable. The SIP revision provides for attainment and maintenance of the SO₂ National Ambient Air Quality Standards (NAAQS) and satisfies the applicable SO₂ requirements of the Act. A more detailed explanation of how the state's submittal meets these requirements is in EPA's March 2, 2000 Technical Support Document (TSD).

3. What Is the Background for This Action?

EPA designated Air Quality Control Region (AQCR) 131, which contains Dakota County, as a primary SO₂ nonattainment area on March 3, 1978 (43 FR 8962) based on monitored violations of the primary SO₂ NAAQS from 1975 through 1977. In response to the Part D requirements of the Act, MPCA submitted a final SO₂ plan for AQCR 131 on August 4, 1980. EPA approved the Minnesota Part D SO₂ SIP for AQCR 131 on April 8, 1981 (46 FR 20996). Based on monitored violations recorded in 1982, EPA declared the Dakota County SO₂ SIP inadequate and issued a call for revisions to the Minnesota SO₂ SIP on December 5, 1984 (49 FR 47488). The SIP call required that MPCA submit a SIP revision demonstrating attainment of the SO₂ NAAQS in the Pine Bend Area by September 1985.

The promulgation of a good engineering practice stack height rule, along with difficulties negotiating a control strategy with Koch, and the selection of an appropriate computer model, delayed the submittal. On September 10, 1987, MPCA submitted revisions to the operating permits for five sources and requested redesignation to attainment for all of AQCR 131 except the Pine Bend and St. Paul Park areas.

As a result of numerous EPA comments, MPCA withdrew the Pine Bend SO₂ SIP while passage of the 1990

Amendments to the Act delayed action on the rest of the SO₂ revisions for AQCR 131. On July 29, 1992, MPCA submitted to EPA a revision to the SO₂ SIP for the Dakota County/Pine Bend SO₂ nonattainment area demonstrating attainment of the SO₂ NAAQS. As part of the attainment demonstration for the SIP, Koch was modeled for ambient air impacts and MPCA issued an Order based on that modeling. To allow some flexibility in adding new sources at the facility without compromising the attainment status, the Order allows Koch to make changes at the refinery of 2.28 lb/hour SO₂ while burning refinery fuel gas without revising the Order. An amendment to the original Order for Koch, dated February 11, 1993, revised the completion dates for construction and operation of a new stack and control equipment.

EPA identified specific issues regarding the July 29, 1992 submittal in a June 4, 1993 letter to MPCA. On January 28, 1994 (59 FR 4016), EPA proposed to disapprove Minnesota's SO₂ SIP revision for the Dakota County/Pine Bend area of AQCR 131. However, EPA stated that if its comments were adequately addressed by the State by the end of the 30-day comment period, and if no other substantive, adverse public comments were received, EPA would proceed with a final rulemaking approving the SIP revision. The State satisfactorily addressed the issues and submitted revised Orders for Koch to EPA on February 25, 1994. EPA did not receive any public comments on the January 28, 1994 proposed action. Therefore, EPA took final action on September 9, 1994 (59 FR 46553), to approve Minnesota's SO₂ SIP revision submittals for the Dakota County/Pine Bend area of AQCR 131.

On September 7, 1994, MPCA submitted a request to redesignate the Pine Bend area of AQCR 131 to attainment. EPA approved the state's request in a direct final rule document published on May 31, 1995 (60 FR 28339) redesignating the Pine Bend area to attainment of the SO₂ NAAQS.

II. Review of State Implementation Plan Revision

1. Why Did the State Submit This SIP Revision?

Koch initiated a project at its #2 Crude Unit to reduce emissions of nitrogen oxides (NO_x) and SO₂ as part of a Consent Decree lodged in the United States District Court for the District of Minnesota on December 22, 2000 (*United States v. Koch Petroleum Group, L.P.*, Civil Action No. 00-2756-PAM-SRN), relating to negotiations

conducted between Koch, EPA and MPCA to develop a settlement covering a broad range of actions to reduce emissions of air pollutants from petroleum refineries owned and operated by Koch.

Koch will install a new heater (11H-6) with low-NO_x burners which will operate on refinery fuel gas. The SO₂ emissions from this new heater will be offset by a simultaneous SO₂ emissions decrease resulting from the removal of three existing heaters (11H-3, 11H-4 and 11H-5). Two of the three heaters to be removed (11H-3 and 11H-5) are currently allowed to burn fuel oil. Replacing these existing heaters with a new heater will significantly reduce Koch's capacity to generate both NO_x and SO₂ emissions. As part of this project, Koch also proposes to increase the capacity of heater 16H-1, which it converted to burn only fuel gas in 1995. Prior to that, it could burn fuel oil as well as fuel gas.

2. What Information Did Minnesota Submit, and What Were Its Requests?

The December 20, 2000 SIP revision submitted by MPCA consists of emission increases and the compensating emission reductions. Amendment 4 to the Order for Koch requires permanent emission reductions from the removal of heaters 11H-3, 11H-4 and 11H-5. The modeling retains some ambient impact from 11H-3 and 11H-5 (but not decoking), for PSD/NSR credit purposes. The revised Order limits 11H-6 to burning refinery fuel gas only with allowable SO₂ emissions of 6.0 lb/hr on an annual basis and 9.3 lb/hr on a 3-hour average. Decoking at 11H-6 is limited to 90 hours per year, which equates to three 30-hour events per year. Emissions of SO₂ from 11H-6 and the associated steam-air decoking total 26.5 tons/year. The State requested that EPA approve the following changes to Koch's Order:

"New Project" Language. Koch plans to remove three existing heaters, increase the capacity of an existing heater, and construct a new heater. Total SO₂ emissions at the facility will substantially decrease after implementation of these changes.

Name Change. The name of the owner and operator of the refinery in Rosemount, Minnesota has changed to Koch Petroleum Group, L.P. from Koch Refining Company.

Incorporation of Changes from Amendment No. 3. Amendment No. 3 used underlining to identify where new language was added and striking out to identify where language was removed. Amendment No. 4 removes the underlining and strike out markings and

eliminates the language marked for removal in Amendment No. 3.

Updating of Some Information. In cases where it was needed for clarity, the language was modified to reflect regulatory changes that have occurred since Amendment No. 3 went into effect.

Correction of Typographical Errors and Changes for Clarification and Consistency. MPCA corrected typographical errors and changed language which appeared unclear or inconsistent with other portions of the document.

3. How Does the SIP Revision Show Attainment of the SO₂ Standards?

The MPCA submitted air quality modeling in support of Koch's SO₂ SIP revision. MPCA's modeling demonstrates that the SO₂ emissions from the #2 Crude Unit modification project do not threaten attainment of the SO₂ NAAQS when factored into the 1992 attainment demonstration modeling. A more detailed discussion is in EPA's March 2, 2001 TSD.

Net baseline emissions are the allowable emission rates used in the approved 1992 SIP attainment demonstration for the Pine Bend Area. The SO₂ emissions for the four heaters and the steam—air decoking associated with each heater totaled 1,560 tons/year in the 1992 SIP. Total SO₂ emissions associated with the #2 Crude Unit modification project are 170 tons/year. The difference in SO₂ emissions from the 1992 SIP for the affected sources and the current project is a decrease of nearly 1,400 tons/year.

III. Final Rulemaking Action

EPA is approving the site-specific SIP revision for Koch Petroleum Group, LP, located in the Pine Bend area of Rosemount, Dakota County, Minnesota. Specifically, EPA is incorporating Amendment No. 4 to Koch's Administrative Order into the Minnesota SO₂ SIP. The State submitted this SIP revision on December 20, 2000 as a result of negotiations to a consent decree between EPA, MPCA and Koch, in which Koch proposed to modify the #2 Crude Unit at the Pine Bend refinery. This modification project consists primarily of the removal of three existing heaters and the installation of a new heater, thereby substantially decreasing SO₂ emissions at the facility. As described above, this project provides for attainment and maintenance of the SO₂ NAAQS in the Pine Bend area and is therefore fully approvable.

The EPA is publishing this action 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, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective August 13, 2001 without further notice unless we receive relevant adverse comments by July 12, 2001. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective August 13, 2001.

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

IV. 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 preexisting 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). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is

not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

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 August 13, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: May 8, 2001.

Norman Niedergang,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, 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.*

2. Section 52.1220 is amended by adding paragraph (c)(57) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(57) On December 20, 2000, the State of Minnesota submitted a site-specific State Implementation Plan (SIP) revision for the control of emissions of sulfur dioxide (SO₂) for Koch Petroleum Group, L.P., located in the Pine Bend Area of Rosemount, Dakota County, Minnesota. Specifically, EPA is approving into the SO₂ SIP Amendment No. 4 to the Administrative Order previously approved in paragraph (c)(35) of this section.

(i) Incorporation by reference.

(A) An administrative order identified as Amendment Four to Findings and Order by Stipulation, for Koch Petroleum Group, L.P., dated and

effective December 19, 2000, submitted December 20, 2000.

[FR Doc. 01-14614 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT-001-0034a, MT-001-0035a; FRL-6991-1]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Emergency Episode Avoidance Plan and Cascade County Open Burning Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on February 9, 2001. This submittal revises the State's Emergency Episode Avoidance Plan and Cascade County's Local Regulation Chapter 7, Open Burning. In addition, Billings and Great Falls Carbon Monoxide Limited Maintenance Plans were submitted on February 9, 2001. EPA will act on the Billings and Great Falls Plans at a later date. This action is being taken under section 110 of the Clean Air Act, 42 U.S.C. section 7410.

DATES: This rule is effective on August 13, 2001 without further notice, unless EPA receives adverse comment by July 12, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management

Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312-6437.

SUPPLEMENTARY INFORMATION: For the purpose of this document, we are giving meaning to certain words as follows: (a) The words "EPA," "we," "us" or "our" mean or refer to the United States Environmental Protection Agency. (b) The words State or Montana mean the State of Montana unless the context indicates otherwise. (c) The initials MDEQ mean the Montana Department of Environmental Quality.

I. Summary of SIP Revision

On February 9, 2001, the State of Montana submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of updates to the Montana Emergency Episode Avoidance Plan (EEAP) and Cascade County's Local Regulation Chapter 7, Open Burning. Other revisions to the SIP were also submitted on February 9, 2001 but will be acted on at a later date.

Montana's Emergency Episode Avoidance Plan

The February 9, 2001 submittal revises Montana's Emergency Episode Avoidance Plan (EEAP). The submittal revises the priority classification of two of the Air Quality Control Regions (AQCR) based on more current ambient data; replaces the references to the National Weather Service with references to the MDEQ meteorological staff; and makes grammatical corrections.

We last approved revisions to Montana's EEAP on December 6, 1999 (64 FR 68034). We are approving the 2001 revisions to Montana's EEAP and updating 40 CFR 52.1371 to indicate the current emergency episode priority classifications for the AQCRs.

Cascade County Air Pollution Control Program Regulation Chapter 7, Open Burning

In addition, the February 9, 2001 submittal revises the Cascade County Air Pollution Control Program. The submittal consists solely of Regulation Chapter 7, Open Burning. The Cascade County open burning regulations only apply to minor open burning sources. Major open burning sources are subject to the State's open burning regulations. We believe it is appropriate to incorporate local air pollution control programs in the SIP if the program is needed for attainment and maintenance of any National Ambient Air Quality Standard (NAAQS). The State's Group II PM-10 SIP relies on many rules,

including the State's open burning rules, to assure maintenance of the PM-10 NAAQS. We approved the Group II PM-10 SIP on January 20, 1994 (59 FR 2988). By approving the Cascade County Regulation Chapter 7, the State has given Cascade County the responsibility to ensure that State open burning rules are met for minor open burning sources. Since the County is implementing measures that the State is relying upon to assure that the PM-10 SIP NAAQS are maintained, we believe it is appropriate to incorporate the County's open burning rules in the SIP. In addition, including the County's open burning rules in the SIP will make the County open burning program federally enforceable, further assuring the effectiveness of the PM-10 plan. We are approving the Cascade County Air Pollution Control Program Regulation Chapter 7, Open Burning, into the SIP.

On May 22, 1995 the Governor of Montana submitted a SIP revision regarding the Cascade County Air Pollution Control Program. The May 22, 1995 submittal was later superseded by another SIP revision for Cascade County Air Pollution Control Program submitted by the Governor on September 4, 1997. To date we have not acted on the May 22, 1995 or September 4, 1997 submittals. The February 9, 2001 letter from the Governor of Montana indicates that the recent modifications to the Cascade County Air Pollution Control Program now supercede the 1997 submittal and, therefore, rescinds the September 4, 1997 submittal. We are not acting on the September 4, 1997 submittal, nor the May 22, 1995 submittal.

II. Final Action

We are approving the revisions to the Montana Emergency Episode Avoidance Plan into the SIP and updating 40 CFR 52.1371 to indicate the current emergency episode priority classifications for the AQCRs. In addition, we are approving the Cascade County Air Pollution Control Program Regulation Chapter 7, Open Burning, into the SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, 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 August 13, 2001 without further notice unless the Agency receives adverse comments by July 12, 2001. If the EPA receives

adverse comments, 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. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. 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). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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. 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 August 13, 2001 unless EPA receives adverse written comments by July 12, 2001.

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 August 13, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 22, 2001.

Patricia D. Hull,

Acting Regional Administrator, Region 8.

40 CFR part 52, subpart BB of chapter I, title 40 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 BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(50) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(50) On February 9, 2001, the Governor of Montana submitted revisions to Montana's Emergency Episode Avoidance Plan and Cascade County Air Pollution Control Program Regulation Chapter 7, Open Burning.

(i) Incorporation by reference.

(A) Board Order issued on October 16, 2000, by the Montana Board of Environmental Review approving the Cascade County Air Pollution Control Program.

(B) Cascade County Air Pollution Control Program, Regulation Chapter 7,

Open Burning, effective October 16, 2000.

(C) March 16, 2001 letter from Debra Wolfe, Montana Department of Environmental Quality, to Laurie Ostrand, EPA Region 8, explaining the effective date of the Cascade County Air Pollution Control Program Regulation Chapter 7, Open Burning.

3. Section 52.1371 is amended by revising the introductory text and revising the entries "Helena Intrastate AQCR 142" and "Missoula Intrastate AQCR144" in the table to read as follows:

§ 52.1371 Classification of regions.

The Montana Emergency Episode Avoidance Plan was revised with a February 9, 2001 submittal by the Governor. The February 9, 2001 Emergency Episode Avoidance Plan classified the Air Quality Control Regions (AQCR) as follows:

Air quality control regions (AQCR)	Pollutant				
	Particulate matter	Sulfur oxide	Nitrogen dioxide	Carbon monoxide	Ozone
Helena Intrastate AQCR 142	II	III	III	III	III
Missoula Intrastate AQCR 144	II	III	III	III	III

[FR Doc. 01-14612 Filed 6-11-01; 8:45 am]
BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN133-1a; FRL-6990-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the particulate matter (PM) regulations for Rolls-Royce Allison (Rolls-Royce), formerly Allison Engine Company. This facility is located in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulation on August 31, 2000 as a requested amendment to its State Implementation Plan (SIP). The revisions consist of a name change for the company and the addition of an alternate fuel. These requested SIP

revisions do not change Rolls-Royce's emissions limits.

DATES: This rule is effective on August 13, 2001, unless the EPA receives relevant adverse written comments by July 12, 2001. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone

Number: (312) 886-6524, E-Mail Address: rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

Table of Contents

- I. What is the EPA approving?
- II. What are the changes from the current rules?
- III. What supporting materials did Indiana provide?
- IV. What are the environmental effects of these actions?
- V. EPA rulemaking actions
- VI. Administrative requirements

I. What Is the EPA Approving?

The EPA is approving revisions to Indiana's SIP for particulate matter regulations for Rolls-Royce Allison in Marion County, Indiana. IDEM submitted the revised regulation on August 31, 2000 as an amendment to rule 326 IAC 6-1-12.

The revisions consist of a name change for the company and the addition of landfill gas as an alternate fuel. Rolls-Royce Allison was formerly the Allison Engine Company. There is no change to the PM emissions limits.

II. What Are the Changes From the Current Rules?

The company has changed its name from Allison Engine Company to Rolls-Royce Allison.

Indiana has approved the addition of landfill gas as an alternate fuel. Landfill gas can fuel boilers 1 through 4 of plant 5 in place of coal, #2 fuel oil, #4 fuel oil, or natural gas. For boilers 3, 4, and 7 through 10 of plant 8, landfill gas can substitute for #6 fuel oil, #4 fuel oil, #2 fuel oil, and natural gas. Each cubic foot of landfill gas burned reduces the allowed amount of #4 fuel oil (37,142,800 gallons) by 0.00116 gallons.

III. What Supporting Materials Did Indiana Provide?

Indiana provided public hearing testimony from a Rolls-Royce official. According to this testimony, the landfill gas project will reduce nitrogen oxides emissions by 12.6 tons per year (TPY) from the Rolls-Royce facility and 17 TPY from the nearby Southside Landfill. The landfill gas is being flared on-site. The particulate matter emissions will not increase. Landfill gas use will reduce the burning of fossil fuels.

Rolls-Royce Allison found the heating value of the landfill gas is approximately 512 British Thermal Units per cubic foot (BTU/ft³). Using an emissions factor of 0.014 pounds per million British Thermal Units (lb/MMBTU), the maximum particulate emissions from burning landfill gas, measured as total suspended particulate (TSP), is about 115 TPY. This is below the current particulate matter emissions limit of 130 TPY of TSP.

IV. What Are the Environmental Effects of These Actions?

This SIP revision will result in no increase of particulate matter emissions from Rolls-Royce Allison. The use of landfill gas may even decrease PM emissions. Burning landfill gas instead of fossil fuels also creates a reduction in emissions of nitrogen oxides. Nitrogen oxides are precursor pollutants to ground-level ozone and fine particulate formation. Also, the use of landfill gas in place of coal or fuel oil should reduce sulfur oxide emissions. Sulfur oxides emissions lead to acid rain and fine particulate matter. Emissions of methane, a known greenhouse gas, to the atmosphere from the landfill will be reduced by approving these actions.

V. EPA Rulemaking Actions

The EPA is approving, through direct final rulemaking, revisions to the particulate matter emissions regulations for Rolls-Royce Allison in Marion County, Indiana. These revisions change

the name of the Allison Engine Company to Rolls-Royce Allison. These revisions also include the addition of landfill gas as alternate fuel. Landfill gas can fuel boilers 1 through 4 of plant 5 in place of coal, #2 fuel oil, #4 fuel oil, or natural gas. For boilers 3, 4, and 7 through 10 of plant 8, landfill gas can substitute for #6 fuel oil, #4 fuel oil, #2 fuel oil, and natural gas. Each cubic foot of landfill gas burned reduces the allowed amount of #4 fuel oil (37,142,800 gallons) by 0.00116 gallons. Boilers 5 and 6 of plant 8 may not operate.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are 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 August 13, 2001 without further notice unless we receive relevant adverse written comment by July 12, 2001. If the EPA receives adverse comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

VI. 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). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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 August 13, 2001 unless EPA receives adverse written comments by July 12, 2001.

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 August 13, 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, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: May 9, 2001.

Norman Neidergang,
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 P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(140) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(140) On August 31, 2000, Indiana submitted revised particulate matter emissions regulations for Rolls-Royce Allison in Marion County, Indiana. The submittal amends 326 IAC 6–1–12(a). It includes a name change for the company from the Allison Engine Company to Rolls-Royce Allison and the addition of an alternate fuel, landfill gas. Landfill gas can be used in boilers 1 through 4 of plant 5 and boilers 3, 4, and 7 through 10 of plant 8. These state implementation plan revisions do not

change the particulate matter emissions limits.

(i) *Incorporated by reference.*

Amendments to Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Non-attainment Area Limitations, Section 12: Marion County, subsection (a). Filed with the Secretary of State on May 26, 2000 and effective on June 25, 2000. Published in 23 *Indiana Register* 2419 on July 1, 2000.

[FR Doc. 01–14610 Filed 6–11–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH140–1a; FRL–6991–9]

Approval and Promulgation of Implementation Plans; OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to sulfur dioxide (SO₂) emissions regulations for the Lubrizol Corporation (Lubrizol). This facility is located in Lake County, Ohio. The Ohio Environmental Protection Agency (Ohio EPA) submitted Director's Final Findings and Orders (Orders) for the Lubrizol facility on November 9, 2000. These Orders are revisions to the Ohio State Implementation Plan (SIP). The revisions are the adjustment of six short-term emissions limits, the addition of an annual emissions limit, and the addition of a continuous emission rate monitoring system (CERMS) requirement for the Lubrizol facility. Three short-term emissions limits are relaxed and three short-term are tightened. There is no increase in the total potential short-term SO₂ emissions. **DATES:** This rule is effective on August 13, 2001, unless the EPA receives relevant adverse written comments by July 12, 2001. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Ohio's submittal at: Regulation Development Section, Air Programs Branch (AR–18J),

U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886–6524, E-Mail Address: rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

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- I. What is the EPA approving?
- II. Limit changes from the current rules.
- III. Analysis of supporting materials provided by Ohio.
- IV. What are the environmental effects of these actions?
- V. EPA rulemaking actions.
- VI. Administrative requirements.

I. What Is the EPA Approving?

The EPA is approving revisions to the sulfur dioxide emissions regulations for the Lubrizol facility in Lake County, Ohio. Ohio EPA submitted the revised regulation on November 9, 2000, as an amendment to its SIP.

The revisions include the relaxation of three short-term SO₂ emissions limits and the tightening of three short-term limits. There is no increase in the total potential short-term SO₂ emissions. An annual SO₂ emissions limit is established. Also, a continuous emission rate monitoring system is required.

II. Limit Changes From the Current Rules

Ohio has revised six short-term emissions limits at Lubrizol's Painesville facility. The limit change for source L (Source ID P011) is from 12.6 to 2.4 pounds of sulfur dioxide per hour (lb/hr). Source M (P012) changes from 15.0 to 160.0 lb/hr, source N (P013) changes from 23.5 to 25.0 lb/hr, source O changes from 14.5 to 10.0 lb/hr, source W (P022) changes from 163.5 to 20.0 lb/hr, and the limit for source AC (P030) changes from 18.4 to 30.0 lb/hr. The total emissions limit of the six sources remains at approximately 247.4 lb/hr. All six sources vent through incinerators to a common stack.

An annual sulfur dioxide emissions limit of 100 tons per year (TPY) is established. Previously, the facility's potential to emit sulfur dioxide was 1084 TPY. A continuous emission rate monitoring system (CERMS) is required at the facility. The CERMS measures

SO₂ in the common stack. Lubrizol will keep records of the CERMS data including the instantaneous (one-minute), hourly, and rolling three-hour average SO₂ concentration.

III. Analysis of Supporting Materials Provided by Ohio

The general criteria used by the EPA to evaluate such intra-facility emissions trades, or "bubbles," under the Clean Air Act and applicable regulations are set out in the EPA's, December 4, 1986 Emissions Trading Policy Statement (ETPS) (see 51 FR 43814). The short-term emissions trade at Lubrizol's Painesville facility qualifies as a Level I trade. This trade meets the six criteria in the ETPS. All six processes involved in this trade of short-term limits vent through a common stack. The maximum SO₂ emissions limit from the common stack remains at approximately 247.4 lb/hr. Following the Level I trade guidance, it is assumed that this emissions trade will produce "ambient equivalence", which is an equal effect on area air quality.

The Ohio EPA Orders also add an annual SO₂ limit of 100 TPY for the facility and require a continuous emission rate monitoring system. Without an annual limit, Lubrizol has the potential to emit 1084 TPY of sulfur dioxide. These requirements provide additional protection of human health and the environment.

IV. What Are the Environmental Effects of These Actions?

Sulfur dioxide causes breathing difficulties and aggravation of existing cardiovascular disease. It is also a precursor of acid rain and fine particulate matter formation. Sulfur dioxide causes the loss of chloroform leading to vegetation damage. These SIP revisions should not result in an increase in short-term SO₂ emissions from the Lubrizol facility. The addition of an annual limit enhances air quality protection.

V. EPA Rulemaking Actions

The EPA is approving, though direct final rulemaking, revisions to the SO₂ emissions regulations for the Lubrizol Corporation facility in Lake County, Ohio.

The SIP revisions include the relaxation of three short-term SO₂ emissions limits and the tightening of three short-term limits. There is no increase in the total potential short-term SO₂ emissions. It remains at approximately 247.4 lb/hr. An annual SO₂ emissions limit of 100 TPY is established. Also, a continuous emission rate monitoring system is

required. The CERMS records the instantaneous (one-minute), hourly, and rolling three-hour average SO₂ concentration. Lubrizol will keep its records for five years.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, we are 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 August 13, 2001, without further notice unless we receive relevant adverse written comment by July 12, 2001. If the EPA receives adverse comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

VI. 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). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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 August 13, 2001

unless EPA receives adverse written comments by July 12, 2001.

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 August 13, 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, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: May 18, 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 KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(124) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(124) On November 9, 2000, Ohio submitted Director's Final Findings and Orders revising sulfur dioxide emissions regulations for the Lubrizol Corporation facility in Lake County, Ohio. The

revisions include the adjustment of six short-term emissions limits, the addition of an annual emissions limit, and the addition of a continuous emissions monitoring system (CEMS). These state implementation plan revisions do not increase allowable sulfur dioxide emissions.

(i) Incorporated by reference.

Emissions limits for the Lubrizol Corporation facility in Lake County contained in Director's Final Findings and Orders. The orders were effective on November 2, 2000 and entered in the *Director's Journal* on November 9, 2000.

[FR Doc. 01-14608 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242-0280a; FRL-6990-9]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the control of emissions from Oxides of Nitrogen (NO_x) and sulfur compounds. We are approving a local rule that regulates these emissions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 13, 2001 without further notice, unless EPA receives adverse comments by July 12, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Monterey Bay Unified Air Pollution Control District, Rule Development, 24580 Silver Cloud Ct., Monterey, CA 93940-6536.

FOR FURTHER INFORMATION CONTACT:

Christine Vineyard, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1197.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule	Rule title	Adopted	Submitted
MBUAPCD	404	Sulfur Compounds and Nitrogen Oxides	03/22/00	05/26/00

On October 6, 2000, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of this Rule?

We approved a version of Rule 404 into the SIP on August 11, 1998.

C. What Is the Purpose of the Submitted Rule Revision?

MBUAPCD submitted Rule 404, Sulfur Compounds and Nitrogen Oxides, includes the following administrative changes from the current SIP-approved rule:

- Clarification of existing exemption for electric power boilers.
- Incorporation of existing exemptions for certain types of open burning and agricultural operations from District Rule 405, Exceptions.
- Update of the reference section to incorporate related District Rules.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules for SO₂ and NO₂ must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). MBUAPCD is listed as being attainment for the national ambient air quality standards (see 40 CFR 81) for SO₂ and NO₂. Therefore, for purposes of controlling SO₂ and NO₂, Rule 404 needs only comply with the general provisions of Section 110 of the Act.

Guidance and policy documents that we used to define specific enforceability requirements include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "SO₂ Guideline Document," EPA-452/R-94-008.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by July 12, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the

comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 13, 2001. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Sulfur dioxide is formed by the combustion of fuels containing sulfur compounds and causes harm to human health and the environment. This rule is designed to reduce SO₂ and NO₂ emissions.

IV. 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). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR

19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 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).

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 August 13, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 8, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

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 F—California

2. Section 52.220 is amended by adding paragraph (c)(279)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(279) * * *
(i) * * *

(B) Monterey Bay Unified Air Pollution Control District.

(1) Rule 404, Monterey Bay Unified APCD, adopted on March 22, 2000.

* * * * *

[FR Doc. 01-14606 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-60-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 99-231; FCC 01-158]

Spread Spectrum Devices; and Wi-LAN, Inc. Application

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies Wi-LAN's Application for Review and grants a waiver request for equipment certification for Wi-LAN's Wideband Orthogonal Frequency Division Multiplexing (W-OFDM) system and similar systems that operate in the 2.4-2.483 GHz band if they meeting the

existing rules for direct sequence spread spectrum systems. We take this action to serve the public interest.

DATES: Effective June 12, 2001.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418-2408, TTY (202) 418-2989, e-mail: nmcneil@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making and Order*, ET Docket 99-231, FCC 01-158, adopted May 10, 2001 and released May 11, 2001. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of Order

1. Wi-LAN Application for Review. On February 17, 2000, Wi-LAN filed an application for equipment certification for its Wideband Orthogonal Frequency Division Multiplexing (W-OFDM) transmitter under the rules for direct sequence spread spectrum systems. The Commission's Office of Engineering and Technology ("OET") denied that application on the basis that Wi-LAN's W-OFDM device did not meet the definition of a direct sequence spread spectrum system as set forth in § 2.1 of the rules. Subsequently, OET denied Wi-LAN's Petition for Reconsideration of that decision for the same reasons. Wi-LAN filed an Application for Review of the staff action. In this filing, Wi-LAN argues that its device meets all the technical requirements explicitly stated in the rules for direct sequence spread spectrum systems and should be granted certification. We find that OET acted properly in denying Wi-LAN's application for certification. In this regard, we agree with OET that Wi-LAN's W-OFDM device does not meet the definition of a direct sequence spread spectrum system as set forth in § 2.1 of the rules. The Wi-LAN system does however, resemble a spread spectrum system in its spectrum characteristics. Notwithstanding our finding that Wi-LAN's W-OFDM system is not a spread spectrum system as defined in our rules, we find that it will serve the public interest to allow grant of equipment certification now for this system and similar systems that operate in the 2.4-2.483 GHz band if they meet the existing rules for direct sequence spread spectrum systems in 47 CFR

15.247(a), (b), (c), and (d), conditioned on their compliance with any final rules that may be adopted in this proceeding. Accordingly, the Commission will waive, on an interim basis, the restriction of 47 CFR 15.247(a) that limits operation pursuant to the remaining portions of 47 CFR 15.247 to frequency hopping and direct sequence spread spectrum systems. We find that there is good cause to waive the cited rule during the pendency of this proceeding because such devices have generally the same emission mask as currently authorized devices and thus will not undermine the existing rules. Digital modulation systems closely resemble spread spectrum systems in terms of their spectrum occupancy characteristics, and therefore are not likely to pose any increased risk of interference over that posed by spread spectrum systems. We believe that compliance with the rules, which address spectrum occupancy, power, out-of-band emissions, and antennas, will ensure that digital modulation systems operating in the 2.4 GHz band will operate with the same spectrum occupancy characteristics as spread spectrum systems. We also observe that such systems appear to offer capabilities in terms of broadband data transmission capacity that are likely to make them more desirable than traditional spread spectrum systems for many users. Allowing authorization of digital modulation systems now will avoid the delays otherwise imposed by our rulemaking process and thereby substantially speed the process for implementation of these new system designs. In this regard, our decision to waive the restrictions which prevent authorization of such systems reflects our view that it is appropriate and desirable to take steps wherever possible to facilitate the timely and efficient introduction of new technologies and equipment, and particularly those that will support the development and deployment of broadband infrastructure without threat to incumbent operations and devices. For the reasons indicated in this *Further Notice of Proposed Rule Making and Order* (FNPRM and Order) that the Commission released on May 11, 2001, we believe that authorization of Wi-LAN's device and other digital modulation systems prior to our adoption of final rules will not result in harm to other radio operations. Consistent with Wi-LAN's application for equipment certification, we will require that any devices granted prior to the adoption of new rules pursuant to the provisions of paragraph 26 of the

FNPRM and Order comply with a maximum peak output power limit of 100 mW. In addition, any devices so conditionally authorized will have to comply with whatever rules we ultimately adopt for digital modulation systems in the 2.4 MHz band.

Accordingly, we are instructing the Commission's Office of Engineering and Technology ("OET") to re-examine the Wi-LAN application for certification of its W-OFDM system for its compliance with the above listed portions of 47 CFR 15.247 of the rules and the power limits indicated. OET shall also accept applications for equipment certification under 47 CFR 15.247 for other devices using digital modulation techniques if the equipment complies with the provisions stated in the *FNPRM and Order*. Such applications submitted pursuant to the provisions of the *FNPRM and Order* need not be accompanied by a formal waiver request, but should state that they fall within the terms of the *FNPRM and Order* as to the waiver. Any such applications will be subjected to the conditions set forth in the *FNPRM and Order*, including that operation is conditioned on compliance with any final rules that may be adopted in this proceeding.

2. Pursuant to sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r), the Application for Review filed by Wi-LAN, Inc., on September 20, 2000 is hereby DENIED.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-14525 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00-203; FCC 01-177]

Blanket Licensing for Small Aperture Terminals in the C-Band and Routine Licensing of 3.7 Meter Transmit and Receive Stations at C-Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules that are designed to provide wider access to electronic commerce in

underserved rural areas of America by facilitating the deployment of small antenna terminals in C-band satellite networks under a single authorization, with prior frequency coordination.

DATES: Effective July 12, 2001.

FOR FURTHER INFORMATION CONTACT:

Edward R. Jacobs, Planning and Negotiations Division, International Bureau, (202) 418-0624 or via electronic mail: ejacobs@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in IB Docket No. 00-203, FCC 01-177, adopted May 23, 2001 and released May 25, 2001. The Notice of Proposed Rulemaking (NPRM) in IB Docket No. 00-203, FCC 00-369, was adopted October 13, 2000 and released October 24, 2000. 65 FR 70541, November 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) 445 12th Street, SW., Washington, DC and may also be purchased from the Commission copy contractor, International Transcription Services (ITS), Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of the First Report and Order

In the First Report and Order in this proceeding, the Commission amends part 25 of its rules to give operators the option of obtaining licenses for a limited class of small aperture terminal earth station networks in the C-band (CSAT), under a single authorization. This option is available only to those seeking licensing of CSAT networks that use no more than 40 MHz of C-band spectrum for each of no more than three satellite locations within the visible geostationary satellite arc. That is, this option provides for streamline licensing of a system that uses no more than 20 MHz of uplink and 20 MHz of downlink spectrum for each of a maximum of 3 satellites. The 20 MHz of uplink and 20 MHz of downlink spectrum may be different for each of the 3 satellites. Among other things, these procedures require CSAT applicants to complete frequency coordination for each individual earth station before bringing it into use. The Commission finds that these changes will promote more efficient and equitable use of C-band spectrum shared by the fixed service (FS) and fixed-satellite service (FSS). In those cases where these streamlined procedures can be used, it will also alleviate concerns that individual licensing of earth stations in a network of small aperture terminal earth stations could result in longer overall license

processing times, increased consumer costs, and additional administrative burdens. In addition, where CSAT earth stations have been coordinated, the streamlined rules allow providers to operate on a conditional basis until final approval, facilitating deployment of systems and service to the public.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the *FWCC/Onsat/Hughes NPRM*. 65 FR 70541, November 24, 2000. The Commission sought written public comments on the proposals in the *FWCC/Onsat/Hughes NPRM* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

In this *First Report and Order*, the Commission provides for a streamlined licensing procedure that will allow the licensing of large networks of small earth station terminals in the 4 and 6 GHz bands. These streamlined procedures will better enable the rapid delivery of earth station services, including broadband access, to rural Americans.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted in direct response to the IRFA.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

D. International Services

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is one with \$11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications service providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million. The Census report does not provide more precise data.

1. *Fixed Satellite Transmit/Receive Earth Stations.* Currently there are over 2000 operational fixed satellite transmit/receive earth stations authorized for use in the C-band. We do not request or collect annual revenue information, and thus are unable to estimate the number of earth stations that would constitute a small business under the SBA definition.

2. *Mobile Satellite Earth Station Feeder Links.* There are currently no licenses for MSS earth station feeder links in the frequency bands addressed in this First Report and Order.

3. *Space Stations (Geostationary).* Commission records reveal that there are 6 space station licensees at C-band. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

4. *Space Stations (Non-Geostationary).* There are currently no Non-Geostationary Space Station licensees at C-band.

5. *Direct Broadcast Satellites.* There are currently no DBS licensees at C-band.

6. *Auxiliary, Special Broadcast and other program distribution services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). At the frequencies under consideration in this proceeding there are no transmissions of this type directly to the public. The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the

definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833). These definitions provide, respectively, that a small entity is one with either \$5.0 million or less in annual receipts or \$10.5 million in annual receipts. 13 CFR 121.201, SIC CODES 4832 and 4833. The numbers of these stations are very small. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.

7. *Microwave Services.* Microwave services includes common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are over 8500 common carrier licensees, and approximately 1800 private operational fixed and broadcast auxiliary radio licensees in the microwave services at C-band. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons. 13 CFR 121.201, SIC CODE 4812. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission's existing rules in part 25 on FSS operations contain reporting requirements for FSS systems, and we modify these reporting requirements to eliminate duplicative costs of filing multiple applications. In addition, we add an annual reporting requirement to indicate the number of satellite earth stations actually brought

into service, those deactivated during the year, and a report of any changes in satellite location applicable to the CSAT network. The proposed streamlined licensing procedures do not affect small entities disproportionately and it is likely no additional outside professional skills are required to complete the annual report indicating the number of small antenna earth stations actually brought into service.

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

The *FWCC/Onsat/Hughes NPRM* solicited comment on several alternatives for streamlined licensing of CSATs at C-band. This *First Report and Order* considered comments offering alternatives, and has acted in response to stated concerns and suggestions, particularly those representing significant agreement or consensus by commenters. The decisions of this *First Report and Order* should positively impact both large and small businesses by providing a faster, more efficient, and less economically burdensome licensing procedure. The streamlined licensing service rules provide for consolidation of licensing for small antenna earth stations and a continued coordination requirement designed to ensure that these new satellite services will not cause harmful interference to existing terrestrial services. These rules substitute a single requirement to annually report the number of satellite earth stations brought into service in the last year, for the current requirement to individually license these earth stations. As Previously noted, this change should minimize the impact on small entities.

G. Report to Congress

The Commission will send a copy of this *First Report and Order* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *First Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *First Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

Pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this

First Report and Order is hereby Adopted.

Part 25 of the Commission's rules *Is Amended* as set forth, effective thirty days after publication in the **Federal Register**.

The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *First Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief, Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Communications common carriers, Communications, Radio, Satellites, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.115 is amended by redesignating paragraph (c) as (c)(1) and by adding a new paragraph (c)(2) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(c)(2) Large Networks of Small Antennas operating in the 4/6 GHz frequency bands with U.S.-licensed or non-U.S. licensed satellites for domestic services (CSATs). Applications to license small antenna network systems operating in the standard C-Band, 3700–4200 MHz and 5925–6425 MHz frequency band shall be filed electronically on FCC Form 312, Main Form and Schedule B.

(i) An initial lead application providing a detailed overview of the complete network shall be filed. Such lead applications shall fully identify the scope and nature of the service to be provided, as well as the complete technical details of each representative type of small antenna (less than 4.5 meters) that will operate within the network. Such lead applications for a single CSAT system must identify:

(A) No more than three discrete geostationary satellites to be accessed;

(B) The amount of frequency bandwidth sought, up to a maximum of 20 MHz of spectrum in each direction at each of the satellites (The same 20 MHz of uplink and 20 MHz of downlink spectrum at each satellite would be accessible by all CSAT earth stations in the system. The 20 MHz of uplink and 20 MHz of downlink spectrum need not be the same at each satellite location);

(C) The maximum number of earth station sites;

(ii) Following the issuance of a license for the lead application, the licensee shall notify the Commission of the complete technical parameters of each individual earth station site before that site is bought into operation under the lead authorization. Full frequency coordination of each individual site (e.g., for each satellite and the spectrum associated therewith) shall be completed prior to filing Commission notification. The coordination must be conducted in accordance with § 25.203. Such notification shall be done by electronic filing and shall be consistent with the technical parameters of Schedule B of FCC Form 312.

(iii) Following successful coordination of such an earth station, if the earth station operator does not file a lead application or a Schedule B within six months after it successfully completes coordination, it will be assumed that such frequency use is no longer desired, unless a second notification has been received within ten days prior to the end of the six month period. Such renewal notifications must be sent to all parties concerned. If the lead application or Schedule B, or renewal notification, is not timely received, the coordination will lapse and the licensee must re-coordinate the relevant earth stations if it still wishes to bring them into operation.

(iv) Operation of each individual site may commence immediately after the public notice is released that identifies the notification sent to the Commission and if the requirements of paragraph (c)(2)(vi) of this section are met. Continuance of operation of each station for the duration of the lead license term shall be dependent upon successful completion of the normal public notice process. If any objections are received to the new station prior to the end of the 30 day comment period of the Public Notice, the licensee shall immediately cease operation of those particular stations until the coordination dispute is resolved and the CSAT licensee informs the Commission of the resolution. If the requirements of

paragraph (c)(2)(vi) of this section are not met, operation may not commence until the Commission issues the public notice acting on the CSAT terminal authorization.

(v) Each CSAT licensee shall annually provide the Commission an updated list of all operational earth stations in its system. The annual list shall also include a list of all earth stations deactivated during the year and identification of the satellites providing service to the network as of the date of the report.

(vi) Conditional authorization. (A) An applicant for a new CSAT radio station or modification of an existing CSAT station authorized under paragraph (c)(2)(i) of this section in the 3700–4200; or 5925–6425 MHz bands may operate the proposed station during the pendency of its application after the release of the public notice accepting the notification for filing that complies with paragraph (c)(2)(ii) of this section. The applicant, however, must first certify that the following conditions are satisfied:

(1) The frequency coordination procedures of § 25.203 have been successfully completed;

(2) The antenna structure has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by subpart B of part 17 of this chapter; or the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied by the Federal Aviation Administration and cleared by the FCC;

(3) The grant of the application(s) does not require a waiver of the Commission's rules (with the exception of a request for waiver pertaining to fees);

(4) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of this chapter;

(5) The station site does not lie within 56.3 kilometers of any international border or within a radio "Quiet Zone" identified in § 1.924 of this chapter; and

(6) The filed application is consistent with the proposal that was coordinated pursuant to § 25.251.

(B) Conditional authorization ceases immediately if the Schedule B is returned by the Commission because it is not accepted for filing.

(C) A conditional authorization pursuant to paragraphs (c)(2)(vi)(A) and (c)(2)(vi)(B) of this section is evidenced by retaining a copy of the Schedule B notification with the station records.

Conditional authorization does not prejudice any action the Commission may take on the subject application(s) or the Schedule B notifications.

(D) Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its application(s).

(E) The copy of the Schedule B notification form must be posted at each station operating pursuant to this section.

(vii) Period of construction. Construction of each earth station must be completed and the station must be brought into regular operation within twelve months from the date that action is taken to authorize that station to operate under the lead authorization, except as may be otherwise determined by the Commission for any particular application.

* * * * *

3. Section 25.134 is amended by revising the subject heading, by redesignating paragraph (a) as (a)(1) and adding a heading to newly designated paragraph (a)(1), by adding a new paragraph (a)(2), and by adding a heading to paragraph (b) to read as follows:

§ 25.134 Licensing provisions of Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks.

(a)(1) *VSAT networks operating in the 12/14 GHz bands.* * * *

(a)(2) *Large Networks of Small Antennas operating in the 4/6 GHz frequency bands.* All applications for digital and/or analog operations will be routinely processed provided the network employs antennas that are 4.5 meter or larger in diameter, that are consistent with § 25.209, the power levels are consistent with §§ 25.211(d) and 25.212(d), and frequency coordination has been satisfactorily completed. The use of smaller antennas or non-consistent power levels require the filing of an initial lead application (§ 25.115(c)(2)) that includes all technical analyses required to demonstrate that unacceptable interference will not be caused to any and all affected adjacent satellite operators by the operation of the non-conforming earth station.

(b) *VSAT networks operating in the 12/14 GHz bands.* * * *

* * * * *

[FR Doc. 01-14803 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-1323, MM Docket No. 99-297, RM-9726]

Digital Television Broadcast Service; Oklahoma City, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hearst-Argyle Television, Inc., permittee station KOCO-TV, substitutes DTV channel 7 for DTV channel 16 at Oklahoma City, Oklahoma. See 64 FR 54268, October 6, 1999. DTV channel 7 can be allotted to Oklahoma City in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (35-33-45 N. and 97-29-24 W.) with a power of 42.0, HAAT of 446 meters and with a DTV service population of 1248 thousand. With this action, this proceeding is terminated.

DATES: Effective July 23, 2001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-297, adopted June 1, 2001, and released June 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma, is amended by removing DTV channel 16 and adding DTV channel 7 at Oklahoma City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01-14742 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-1322, MM Docket No. 00-114, RM-9744]

Digital Television Broadcast Service; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KFBB Corporation, L.L.C., licensee of station KFBB-TV, substitutes DTV channel 8 for DTV channel 39 at Great Falls, Montana. See 66 FR 41036, July 3, 2000. DTV channel 8 can be allotted to Great Falls in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (47-32-08 N. and 111-17-02 W.) with a power of 28.0, HAAT of 180 meters and with a DTV service population of 89 thousand. Since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective July 23, 2001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00-114, adopted June 1, 2001, and released June 6, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 39 and adding DTV channel 8 at Great Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01-14743 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 01-1321, MM Docket No. 01-57, RM-10031]

Digital Television Broadcast Service; Panama City, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WJHG-TV Licensee Corporation, licensee of station WJHG-TV, substitutes DTV channel 8 for DTV channel 42 at Panama City, Florida. *See* 66 FR 12752, February 28, 2001. DTV channel 8 can be allotted to Panama City in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates (30-26-00 N. and 85-24-51 W.) with a power of 27.0, HAAT of 265 meters and with a DTV service population of 334 thousand.

With is action, this proceeding is terminated.

DATES: Effective July 23, 2001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01-57, adopted June 1, 2001, and released June 6, 2001. The full text of this Commission decision is available for inspection and copying during normal

business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

Part 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida, is amended by removing DTV channel 42 and adding DTV channel 8 at Panama City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01-14744 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 01-1291; MM Docket No. 01-38; RM-10064]

Radio Broadcasting Services; Macon, MS.

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: At the request of Radio South, Inc., this document removes Channel 263A from Macon, Mississippi. This will enable Station WLXY, Northport, Alabama, to upgrade to a Class C1 allotment. *See* 66 FR 14513, published March 13, 2001.

DATES: Effective July 10, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418-2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 01-38, adopted May 16, 2001, and released May 25, 2001. The full text of this decision is available for inspection and copying during normal business hours

in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Macon, Channel 263A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-14805 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-U

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 010511123-1123-01; I.D. 042001D]

RIN 0648-AP24

Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagics Fisheries; Hawaii-based Pelagic Longline Restrictions and Seasonal Area Closure, and Sea Turtle and Sea Bird Mitigation Measures

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

ACTION: Emergency interim rule; notification of restrictions; request for comments.

SUMMARY: NMFS issues an emergency interim rule, effective for 180 days, applicable to vessels registered for use under a Hawaii longline limited access permit (Hawaii longline vessel). This rule: Prohibits the targeting of swordfish north of the equator by Hawaii longline

vessels; prohibits longline fishing by Hawaii longline vessels in waters south of the Hawaiian Islands (from 15° N. lat. to the equator, and from 145° W. long. to 180° long.) during the months of April and May; allows re-registration of vessels to Hawaii longline limited access permits only in October; imposes additional sea turtle handling and resuscitation measures; and requires all Hawaii longline vessel operators to attend an annual protected species workshop. This rule implements an Order issued on March 30, 2001, by the United States District Court for the District of Hawaii (Court). This Order superseded the Court's Order of August 4, 2000, and this rule supersedes the emergency rules published on August 25, 2000; November 3, 2000; February 22, 2001; and March 19, 2001. Other parts of this emergency interim rule implement the terms and conditions contained in a November 28, 2000, Biological Opinion (BO) issued by the U.S. Fish and Wildlife Service (FWS) on the effects of the Hawaii-based longline fishery (Hawaii longline fishery) on the endangered short-tailed albatross.

DATES: This emergency interim rule is effective June 12, 2001, through December 10, 2001. Comments must be received no later than 5 p.m., Hawaiian standard time, on July 27, 2001.

ADDRESSES: Written comments on this action must be mailed to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814-4700; or faxed to 808-973-2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the final Environmental Impact Statement (FEIS) and Regulatory Impact Reviews (RIRs) prepared for this action, and the BO may be obtained from Dr. Charles Karnella, PIAO. See also <http://swr.nmfs.noaa.gov> to view the EIS.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808-973-2937.

SUPPLEMENTARY INFORMATION: On August 4, 2000, the Court issued an Order in *Center for Marine Conservation (CMC) v. NMFS*, directing NMFS to complete a FEIS that assesses the environmental impacts of fishing activities conducted under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) by April 1, 2001. On March 30, 2001, NMFS filed that FEIS with the U.S. Environmental Protection Agency. That FEIS provides a comprehensive assessment of these fisheries and their impacts on the human environment. The FEIS contains a description and analysis of the preferred alternative which includes,

among other things, a series of actions to protect and conserve sea turtles. These measures conform with a BO that NMFS issued on March 29, 2001, which analyzes the effects of the Hawaii longline fishing fleet on sea turtles under the Endangered Species Act (ESA). After receiving the FEIS, on March 30, 2001, the Court issued an Order Modifying Injunction (March 30 Order) that superseded the Court's Order of August 4, 2000. Background information on actions to implement the August 4, 2000, Order and earlier Orders in *CMC v. NMFS* is not repeated here; this information was published in numerous previous **Federal Register** documents (64 FR 72290, December 27, 1999; 65 FR 16346, March 28, 2000; 65 FR 37917, June 19, 2000; 65 FR 51992, August 25, 2000; 65 FR 66186, November 3, 2000; 66 FR 1110, February 22, 2001; and 66 FR 15358, March 19, 2001).

The March 30, 2001, Order made effective immediately those aspects of the preferred alternative in the FEIS that are intended to mitigate the Hawaii longline fishery interactions with sea turtles. This emergency interim rule codifies that Order in 50 CFR part 660 under the authority of section 305 (c) of the Magnuson-Stevenson Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855 (c).

In summary, the turtle mitigation components of this rule: (a) Prohibit Hawaii longline vessels from using longline gear to target swordfish north of the equator; (b) require Hawaii longline vessels to deploy longline gear such that the "sag" (deepest point) between any two floats is at least 100 m (328.1 ft) beneath the sea surface and the float line suspending the main longline beneath a float is at least 20 m (65.6 ft or 10.9 fm) long, with a minimum of 15 branch lines deployed between any 2 floats; (c) prohibit possession of light sticks on board a Hawaii longline vessel; (d) prohibit Hawaii longline vessels from fishing with longline gear during the months of May and April, (significant only if this rule were extended for an additional 180-day period) in the area bounded on the south by the equator, on the west by 180° long., on the east by 145° W. long., and on the north by 15° N. lat.; (e) allow the re-registration of a Hawaii longline vessel that has been de-registered from a Hawaii longline limited access permit after March 29, 2001, only during the month of October; (f) require Hawaii longline vessel operators to annually attend a protected species workshop conducted by NMFS; (g) require Hawaii longline vessel operators to cease gear

retrieval if a sea turtle is discovered hooked or entangled on a longline until the turtle has been removed from the gear or brought onto the vessel's deck; (h) require that hooks be removed from sea turtles as quickly and carefully as possible; however, if a hook cannot be removed, that the line be cut as close to the hook as possible; (i) require that wire or bolt cutters capable of cutting through a longline hook be on board the vessel to facilitate cutting of hooks imbedded in sea turtles; and (j) require the vessel operator to bring comatose sea turtles on board the vessel and to perform resuscitation on such turtles as prescribed in 50 CFR 223.206 (d)(1).

In order to ensure that longline vessels deploy gear relatively deeply (the ordinary method of fishing for tuna), the emergency rule published by NMFS on November 3, 2000, required the deepest point (sag) between any two floats to be at least 100 m beneath the ocean surface. Although the sag depth itself is not easily monitored by enforcement officials, NMFS is continuing that requirement in this emergency interim rule because it is required by explicit wording of the March 30, 2001, Order. Additionally, to help with enforcement, this emergency interim rule, at 50 CFR §§ 660.34 (b) and 660.34(g), also requires that each float line suspending the main longline beneath a float be at least 20 m long. This restriction is intended to better ensure that the longlines are deployed relatively deeply in the water column. If the float lines are at least 20 m long, then the sag between any two floats should remain at least 100 m beneath the ocean surface. In addition, this rule requires a minimum of 15 branch lines to be set between any 2 floats. This is consistent with the ordinary method of fishing for tuna, which entails using far more branch lines, at greater depths, than the ordinary method of fishing for swordfish. This requirement can also be monitored by at-sea enforcement officials. NMFS anticipates that by regulating the length of the float lines, as well as the number of branch lines deployed per float, it will be easier for both fishermen to control, and enforcement officials to monitor, the depth of the main longline, and the species that are being targeted.

The March 30, 2001, Order, directs NMFS to require Hawaii longline vessel operators to record, in writing, each swordfish caught, and to submit this report to NMFS within 5 days of returning to port (see paragraph 1 of the Order). This directive does not require further regulation since an existing regulation requires vessel operators to submit to NMFS, within 3 days of

landing, written reports (logbooks) of any swordfish incidentally caught in the fishery (50 CFR 660.14). The March 30, 2001, Order also included two non-regulatory requirements: (1) That NMFS maintain an annual average of at least 20-percent observer coverage in this fishery; and (2) that NMFS train those observers in sea turtle biology and resuscitation techniques.

The second aspect of this emergency interim rule implements the terms and conditions of the BO issued by the FWS on November 28, 2000. The terms and conditions in the BO are based on a suite of seabird mitigation measures developed by the Western Pacific Fishery Management Council. As a part of the review process for these measures, NMFS entered into formal consultation with the FWS under section 7 of the ESA. Under the terms and conditions of the BO, operators and crew of Hawaii longline vessels operating with longline gear north of 23° N. must: (1) Use thawed blue-dyed bait and strategic offal discards in a manner approved by NMFS to distract birds during the setting and hauling of longline gear; and (2) when making tuna target sets (the only type of set allowed under this rule north of the equator), employ a line setting machine with weights (minimum weight = 45 g) attached to each branch line within 1 m of the hook. In addition, the crew on a Hawaii longline vessel operating anywhere at sea must follow certain handling techniques to increase the likelihood that short-tailed albatrosses that are incidentally taken are brought aboard alive and handled in a manner that ensures their long-term survival. If a short-tailed albatross is brought aboard a vessel, the vessel operator must determine if it exhibits the following traits: Head is held erect and the bird responds to noise and motion stimuli; bird breathes without noise; both wings can flap and retract to normal folded position on back; and the bird can stand on both feet with toes pointed forward. If a short-tailed albatross fails to exhibit even one of these traits, the vessel operator must contact NMFS immediately. In addition, any short-tailed albatross recovered dead must be frozen immediately and surrendered as soon as possible to NMFS. The BO also requires all Hawaii longline vessel operators to attend annually a protected species workshop. The BO also contains seabird take mitigation measures for longline fishing targeting swordfish north of 23° N. lat.; however, these become moot because under this emergency interim rule, targeting

swordfish north of 23° N. lat. is prohibited.

Criteria for Issuing an Emergency Interim Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency interim rules (64 FR 44421, August 21, 1997). Also, it realizes benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The March 30, 2001, Order included discussion of regulatory implementation of the measures to reduce adverse impacts on sea turtles. NMFS is publishing this emergency interim rule in order to temporarily protect sea turtles while permanent measures can be imposed through the normal notice and comment rulemaking process. Emergency action is also required to comply with the terms and conditions of the BO issued on November 28, 2000, by the FWS.

Immediate Benefits

Although there are many variables that make it difficult to predict the effects of this fishery upon different sea turtle and seabird populations, NMFS anticipates this rule will benefit these species by reducing overall fishing effort, restricting the use of gear shown to have higher interaction rates with sea turtles and seabirds, and mitigating the effects of hooking or entanglements of animals that encounter longline fishing gear.

Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that this emergency interim rule is necessary to comply with an Order of the U.S. District Court for the District of Hawaii, and the mandatory terms and conditions of a BO issued under section 7 of the ESA. The AA has also determined that this emergency rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an EIS for the FMP that describes the impact on the human environment of fishing under this rule. NMFS also prepared two RIRs, covering different parts of this action, which assess the net national benefits of protecting both sea turtles and seabirds. This emergency interim rule is of limited duration and is expected to result in a reduction in sea turtle and

seabird interactions and mortalities caused by the Hawaii longline fishery. The Hawaii longline fishery averaged annual ex-vessel gross revenues of \$40.7 million between 1994–1998. Under the assumption that fishing effort that is displaced as a result of the area and gear restrictions is transferred into allowable effort in open areas, the anticipated annual loss of ex-vessel gross fishery revenues is estimated to be 11 percent (\$4.3 million). At the other end of the extreme is a scenario in which all displaced effort is totally removed from the fishery, resulting in an estimated annual decline of 42 percent (\$17.2 million) in ex-vessel revenues. Economic impacts of these measures, which are of limited duration, cannot be precisely estimated due to a lack of data but are expected to be less than the higher end of the above range. Copies of the EIS and RIRs are available (see ADDRESSES).

The AA finds that this emergency interim rule, which is being implemented under section 305 (c) of the Magnuson-Stevens Act, is needed to respond to an Order of the Court and to implement in a timely manner the terms and conditions of the BO on short-tailed albatross. Under section 305 (c) of the Magnuson-Stevens Act, this emergency interim rule may remain in effect for not more than 180 days after the date this rule is published, unless extended for one additional period of not more than 180 days. If the rule is extended for 180 days, it would close all longline fishing to Hawaii longline vessels for April and most of May 2002 in waters bounded on the south by the equator, on the west by 180° long., on the east by 145° W. long., and on the north by 15° N. lat.

The AA finds for good cause that providing prior notice and opportunity for public comment is unnecessary because this action implements a Court Order and mandatory terms and conditions of a BO, authorized under the ESA, thus precluding implementation of any alternative. Similarly, the AA finds, for good cause, under 5 U.S.C. 553 (d)(3), that delaying the effectiveness of this rule for 30 days is impracticable given the explicit directive from the Court and the mandatory requirements of the FWS's BO. Accordingly, the AA is making this emergency interim rule effective upon publication in the **Federal Register**.

Because this emergency interim rule is not required to be published with notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act do not apply.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 6, 2001.

William T. Hogarth,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.21, new paragraph (l) is added to read as follows:

§ 660.21 Permits.

* * * * *

(l) Except during October, NMFS will not register with a Hawaii longline limited access permit any vessel that is de-registered from a Hawaii longline limited access permit after March 29, 2001.

3. In § 660.22, paragraphs (ee) through (ll) are suspended and new paragraphs (mm) through (tt) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(mm) Direct fishing effort toward the harvest of swordfish (*Xiphias gladius*) using longline gear deployed by a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.34(a).

(nn) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.34 (b), (c), (g), or (h).

(oo) Use a receiving vessel registered for use under a receiving vessel permit to receive from another vessel Pacific pelagic management unit species harvested with longline gear in violation of § 660.34 (d).

(pp) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management unit species that were harvested with longline gear in violation of § 660.34 (e).

(qq) Possess a light stick on board a vessel registered for use under a Hawaii

longline limited access permit in violation of § 660.34 (f).

(rr) Fail to comply with seabird take mitigation or handling techniques required under § 660.35 (a) and (b).

(ss) Fish for Pacific pelagic management unit species with a vessel registered for use under a Hawaii longline limited access permit without being certified by NMFS for completion of an annual protected species workshop as required under § 660.36.

(tt) Fail to comply with sea turtle handling and resuscitation requirements specified in § 660.32 (e) when operating a vessel registered for use under a Hawaii longline limited access permit.

§ 660.23 [Amended]

4. In § 660.23, the suspension of paragraph (a) is lifted and paragraph (c) is suspended.

§ 660.28 [Amended]

5. In § 660.28, the suspension of paragraph (c) is lifted.

6. In § 660.32, new paragraphs (a) (3), (b) (4), (b) (5), and (e) are added to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) * * *

(3) Each vessel must have on board a wire or bolt cutter capable of cutting through a longline hook to facilitate hook removal from a sea turtle.

(b) * * *

(4) If a sea turtle is observed to be hooked or entangled by longline gear during hauling operations, the vessel operator must immediately cease hauling operations until the turtle has been removed from the longline gear or brought on board the vessel.

(5) Hooks must be removed from sea turtles as quickly and carefully as possible. If a hook cannot be removed from a turtle, the line must be cut as close to the hook as possible.

* * * * *

(e) In addition to the requirements in paragraphs (b) and (c) of this section, a vessel operator shall perform sea turtle handling and resuscitation techniques consistent with § 223.206 (d)(1) of this title, as appropriate.

§ 660.33 [Amended]

7. Section 660.33 is suspended.

8. New § 660.34 is added to subpart C to read as follows:

§ 660.34 Hawaii emergency longline fishing restrictions.

(a) A vessel registered for use under a Hawaii longline access permit may not

use longline gear to fish for or target swordfish (*Xiphias gladius*) north of the equator (0° lat.).

(b) The length of each float line used to suspend the main longline beneath a float must be longer than 20 m (65.6 ft or 10.9 fm) if deployed by, or possessed on, a vessel registered for use under a Hawaii longline access permit, fishing for Pacific pelagic management unit species.

(c) From April 1 through May 31, a vessel registered for use under a Hawaii longline limited access permit may not use longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 3 to this section).

(d) From April 1 through May 31, a vessel registered for use under a receiving vessel permit may not receive from another vessel Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0° lat., on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 3 to this section).

(e) From April 1 through May 31, a vessel registered for use under a Hawaii longline limited access permit or receiving vessel permit, may not land or transship Pacific pelagic management unit species that were harvested by longline gear in waters bounded on the south by 0° latitude, on the north by 15° N. lat., on the east by 145° W. long., and on the west by 180° long. (see Figure 3 to this section).

(f) During a fishing trip, no light stick may be possessed on board a vessel registered for use under a Hawaii longline limited access permit.

(g) When a longline is deployed in the water by a vessel registered for use under a Hawaii longline limited access permit, no fewer than 15 branch lines may be set between any two floats.

(h) Longline gear deployed by a vessel registered for use under a Hawaii longline limited access permit must be deployed such that the deepest point of the main longline between any two floats, i.e., the deepest point in each sag of the main line, is at a depth greater than 100 m (328.1 ft or 54.6 fm) below the sea surface.

9. Figure 3 to § 660.34 is added to read as follows:

Figure 3 to § 660.34—Hawaii Emergency Longline Restrictions & Seabird Take Mitigation Measures

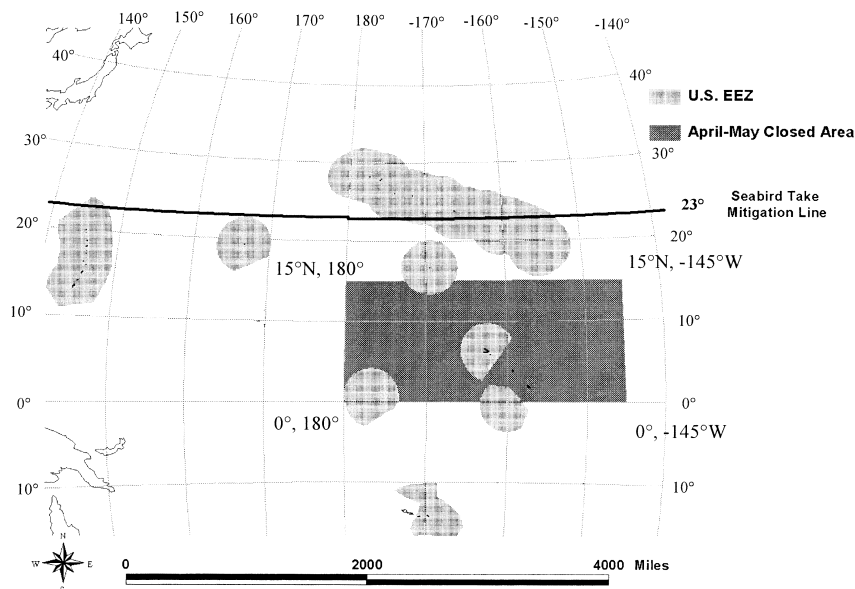


Figure 3 to § 660.34 -- Hawaii Emergency Longline Restrictions & Seabird Take Mitigation Measures

10. New § 660.35 is added to subpart C to read as follows:

§ 660.35 Seabird take mitigation measures.

(a) *Mitigation techniques.* While on a trip using longline gear to fish for Pacific pelagic management unit species north of 23° N. lat., a vessel registered for use under a Hawaii longline limited access permit must:

(1) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel during a fishing trip;

(2) Use completely thawed bait to fish for Pacific pelagic management unit species;

(3) Use only bait that is dyed blue of an intensity level specified by a color quality control card issued by NMFS;

(4) Retain sufficient quantities of offal, between the setting of longline gear for the purpose of discharging the offal strategically in a manner described in paragraph (a) (6) of this section;

(5) Remove all hooks from offal prior to discharging the offal in a manner described in paragraph (a) (6) of this section;

(6) Discharge fish, fish parts (i.e., offal), or spent bait while setting or hauling longline gear on the opposite side of the vessel from where the longline is being set or hauled;

(7) Use a line-setting machine or line-shooter to set the main longline;

(8) Attach a weight of at least 45 g to each branch line within 1 m of the hook; and

(9) Remove the bill and liver of any swordfish that is incidentally caught, sever its head from the trunk and cut it in half vertically; and periodically discharge the butchered heads and livers overboard on the opposite side of the vessel from which the longline is being set or hauled.

(b) *Seabird handling techniques.* If a short-tailed albatross (*Phoebastria albatrus*) is incidentally taken anywhere at-sea by a vessel registered for use under a Hawaii longline limited access permit:

(1) The hooked or entangled bird must be brought on board the vessel.

(2) The vessel operator must observe whether the bird is:

(i) Holding its head erect and responding to noise and motion stimuli;

(ii) Breathing without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back; and

(iv) Standing on both feet with toes pointed forward.

(3) If the short-tailed albatross exhibits all of the traits described in paragraph (b) (2) of this section, the vessel operator must release the bird after it is dry.

(4) If the short-tailed albatross fails to exhibit all of the traits described in paragraph (b) (2) of this section, the vessel operator must contact NMFS immediately.

(5) A short-tailed albatross that is brought on board the vessel dead must be frozen immediately, with

identification tags attached directly to the specimen, and a duplicate identification tag attached to the bag or container holding the specimen. Leg bands, if attached, must not be removed from the specimen, and the specimen must be submitted to NMFS within 72 hours following completion of the fishing trip.

11. New § 660.36 is added to subpart C to read as follows:

§ 660.36 Protected species workshop.

(a) Each year the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques of turtles and seabirds and other protected species.

(b) A protected species workshop certificate or other proof of completion of a protected species workshop will be issued by NMFS annually to a vessel operator who has completed the workshop.

(c) An operator of a vessel registered for use under Hawaii longline limited access permit must have on board the vessel while engaged in longline fishing a valid protected species workshop certificate or copy issued by NMFS.

[FR Doc. 01-14625 Filed 6-7-01; 2:14 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 66, No. 113

Tuesday, June 12, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NE-32-AD]

RIN 2120-AA64

Airworthiness Directives; Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), T5313B, T5317 Series, and T53 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc., and Textron Lycoming) T5313B series, T5317 series, and former military T53 series, turboshaft engines having certain serial number centrifugal compressor impellers, installed. This proposal would require for T5313B series and T5317 series engines, initial and repetitive inspections of those compressor impellers, if installed. This proposal would also require for T53 series engines, a revised operating cycle count (prorate) for those compressor impellers if installed, and initial and repetitive inspections, with eventual compressor impeller replacement. In addition, this proposal would require the marking of those compressor impellers. This proposal is prompted by a report from the supplier that four centrifugal compressor impellers may have been inadvertently misidentified. The actions specified by the proposed AD are intended to prevent premature failure of the impellers from being operated beyond their design service life, which could result in an uncontained engine failure, in-flight shutdown, or damage to the helicopter.

DATES: Comments must be received by August 13, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-32-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: 9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in this proposed rule may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), Attn: Data Distribution, M/S 64-3/2101-201, P.O. Box 29003, Phoenix, AZ 85038-9003, telephone: (602) 365-2493; fax: (602) 365-5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; telephone: (562) 627-5245; fax: (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NE-32-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-32-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The manufacturer recently notified the FAA of four centrifugal compressor impellers, serial numbers 83317, 83327, 83328, and 83330, that may have been inadvertently misidentified. These impellers are installed in Honeywell International, Inc. (formerly AlliedSignal, Inc., and Textron Lycoming) T5313B series, T5317 series, and T53 series turboshaft engines. This misidentification allows these impellers to be operated beyond their design service life. This proposal would require for T5313B series and T5317 series engines, initial and repetitive inspections of those compressor impellers, if installed. This proposal would also require for T53 series engines, a revised operating cycle count (prorate) for those four centrifugal compressor impellers if installed, and initial and repetitive inspections, with replacement within 300 operating hours or six calendar months, whichever occurs first, after the effective date of this AD. In addition, this proposal would require the marking of those four compressor impellers. The actions specified in this AD are intended to prevent premature failure of the impellers from being operated beyond their design service life, which could result in an uncontained engine failure, in-flight shutdown, or damage to the helicopter.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell International, Inc. Service Bulletins (SB's) T5313B/17-0020, Revision 5, dated March 31, 2001, T53-L-13B-0020, Revision 2, dated April 25, 2001, T53-L-13B/D-0020, Revision 1, dated April 25, 2001, and T53-L-703-0020, Revision 1, dated April 25, 2001, that describe procedures for conducting a revised centrifugal compressor impeller operating cycle count (prorate). The FAA has also reviewed and approved the technical contents of Textron Lycoming SB T5313B/17-0052, Revision 2, dated December 16, 1993, AlliedSignal, Inc. SB's T53-L-13B-0108, Revision 1, dated November 22, 1999, T53-L-13B/D-0108, Revision 1, dated November 22, 1999, and T53-L-703-0108, Revision 1, dated November 22, 1999, that describe procedures for visual and fluorescent penetrant inspections of centrifugal compressor impellers.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD is being issued to prevent premature failure of the impellers from being operated beyond their design service life, which could result in an uncontained engine failure, in-flight shutdown, or damage to the helicopter. The actions would be required to be accomplished in accordance with compliance requirements contained in this proposed rule.

Economic Impact

The FAA estimates there are approximately four Honeywell International, Inc., (formerly AlliedSignal, Inc., and Textron Lycoming) T5313B series, T5317 series, and former military T53 series turboshaft engines having the misidentified centrifugal compressor impellers, that are installed on helicopters of U.S. registry. The FAA also estimates that it would take approximately eight work hours per engine to accomplish the inspection, and that the average labor rate is \$60 per work hour. No additional work hour cost would be incurred if the centrifugal compressor impeller is replaced during normal engine disassembly. The prorated cost of a replacement compressor impeller is estimated to be \$20,000. Based on these figures, the total labor cost impact of the proposed

AD on U.S. operators is estimated to be \$21,920.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International, Inc. Docket 2000-NE-32-AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc., and Textron Lycoming) T5313B series, T5317 series, and former military T53 series, turboshaft engines with centrifugal compressor impellers having serial numbers (SN's) 83317, 83327, 83328, or 83330 installed. These engines are

installed on, but not limited to Bell Helicopter Textron 204, 205, and 209 series, and Kaman K-1200 series helicopters, and the following surplus military helicopters that have been certified in accordance with sections 21.25 or 21.27 of the Federal Aviation Regulations (14 CFR 21.25 or 21.27): Bell Helicopter Textron manufactured AH-1, UH-1, and SW-204/205 (UH-1) series.

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

Compliance

Compliance with this AD is required as indicated, unless accomplished previously.

Life limits

(a) When conducting a revised centrifugal compressor impeller operating cycle count on impellers having SN's 83317, 83327, 83328, or 83330, consider these impellers to be centrifugal compressor impeller P/N 1-100-078-07. The life limit must use the value as if these centrifugal compressor impellers are P/N 1-100-078-07.

Revised Operating Cycle Count (Prorate) for T53 engines

(b) For former military T53 series engines, within 25 operating cycles or 7 calendar days, whichever occurs first, after the effective date of this airworthiness directive (AD), perform the following:

(1) Conduct a revised centrifugal compressor impeller operating cycle count (prorate) in accordance with paragraph 2.E. of the Honeywell International, Inc. Service Bulletin (SB) that applies to the engine, from the following list:

(i) For T53-L-13B series engines, use SB T53-L-13B-0020, Revision 2, dated April 25, 2001.

(ii) For T53-L-13B/D engines, use SB T53-L-13B/D-0020, Revision 1, dated April 25, 2001.

(iii) For T53-L-703 engines, use SB T53-L-703-0020, Revision 1, dated April 25, 2001.

(2) Remove from service centrifugal compressor impellers with SN's 83317, 83327, 83328, or 83330, that exceed their new life limit as calculated in accordance with paragraph (b)(1) of this AD.

Impeller Marking

(c) At the next access to the centrifugal compressor impeller, mark the impeller by vibropeening a line over the -14 suffix, and vibropeen a -07 suffix immediately following the -14. Use the following vibropeening parameters:

(1) Vibropeen to a depth of 0.001–0.006 inch.

(2) Do not vibropeen within 0.30 inch of corners, fillets, or sharp edges.

Definition

(d) For the purpose of this AD, access to the centrifugal compressor impeller is defined as whenever the turboshaft engine is disassembled sufficiently as specified by the applicable maintenance manual, to expose the compressor impeller for marking in accordance with paragraph (c) of this AD.

Inspection of Impellers on T5313B and T5317 Series Engines

(e) For T5313B and T5317 series engines, inspect centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, for cracks in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, as follows:

(1) For those centrifugal compressor impellers installed on AlliedSignal, Inc. Model T5313B engines, accomplish the following:

(i) For centrifugal compressor impellers with equal to or greater than 4,600 cycles in service (CIS) on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 4,600 CIS on the effective date of this AD, initially inspect no later than 4,800 CIS.

(2) For those centrifugal compressor impellers installed on AlliedSignal, Inc. T5317 series engines, accomplish the following:

(i) For those centrifugal compressor impellers with equal to or greater than 3,500 CIS on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 3,500 CIS on the effective date of this AD, initially inspect no later than 3,700 CIS.

(3) Centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, must be removed from service and replaced with a serviceable part that does not exceed the life limit.

(4) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 500 CIS since last inspection in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993.

Inspection of Impellers on T53–L–13B Series Engines

(f) For T53–L–13B/D series engines with centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, perform the following:

(1) Within 25 operating hours from the effective date of this AD, inspect the centrifugal compressor impeller for cracks using the revised cycle count (prorate) required by paragraph (b)(1) of this AD, in

accordance with Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999.

(2) If cracks are detected, then prior to further flight, replace centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999, and replace with a centrifugal compressor impeller P/N 1–100–078–13/–14.

(3) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 100 operating hours since last inspection in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999.

(4) Within 300 operating hours or 6 calendar months, whichever occurs first, after the effective date of this AD, replace centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14. Replacement of centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14 constitutes terminating action for the inspection requirements of paragraphs (f)(1) and (f)(3) of this AD.

Inspection of Impellers on T53–L–13B/D Series Engines

(g) For T53–L–13B/D series engines with centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, perform the following:

(1) Within 25 operating hours from the effective date of this AD, inspect the centrifugal compressor impeller for cracks using the revised cycle count (prorate) required by paragraph (b)(1) of this AD, in accordance with Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999.

(2) If cracks are detected, then prior to further flight, replace centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999, and replace with a centrifugal compressor impeller P/N 1–100–078–13/–14.

(3) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 100 operating hours since last inspection in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999.

(4) Within 300 operating hours or 6 calendar months, whichever occurs first, after the effective date of this AD, replace centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14. Replacement of centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14 constitutes terminating action for the

inspection requirements of paragraphs (g)(1) and (g)(3) of this AD.

Inspection of Impellers on T53–L–703 Engines

(h) For T53–L–703 series engines with centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, perform the following:

(1) Within 25 operating hours from the effective date of this AD, inspect the centrifugal compressor impeller for cracks using the revised cycle count (prorate) required by paragraph (b)(1) of this AD, in accordance with Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–703–0108, Revision 1, dated November 22, 1999.

(2) If cracks are detected, then prior to further flight, replace centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–703–0108, Revision 1, dated November 22, 1999, and replace with a centrifugal compressor impeller part number (P/N) 1–100–078–13/–14.

(3) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 100 operating hours since last inspection in accordance with the Accomplishment Instructions of AlliedSignal, Inc. SB No. T53–L–703–0108, Revision 1, dated November 22, 1999.

(4) Within 300 operating hours or 6 calendar months, whichever occurs first, after the effective date of this AD, replace centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14. Replacement of centrifugal compressor impellers having SN's 83317, 83327, 83328, or 83330, with a centrifugal compressor impeller P/N 1–100–078–13/–14 constitutes terminating action for the inspection requirements of paragraphs (h)(1) and (h)(3) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Burlington, Massachusetts, on June 4, 2001.

Francis A. Favara,

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

[FR Doc. 01-14672 Filed 6-11-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NE-62-AD]

RIN 2120-AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to certain General Electric Company (GE) GE90 series turbofan engines. That AD currently requires inspecting and purging the P3B and Ps3 lines and associated fittings and ports of moisture. This proposal would allow the installation of improved hardware as terminating action to requirements of the AD, and remove the GE90-92B engine model from the AD applicability. This proposal is prompted by the recent FAA approval of redesigned P3B and Ps3 sense lines, and the removal of the GE90-92B engine from the applicability. The actions described in this proposal are intended to prevent loss of thrust control due to corruption of the P3B and Ps3 signals to the FADEC, which if it occurs in a critical phase of flight, could result in loss of airplane control.

DATES: Comments must be received by August 13, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-62-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information

referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, OH 45215; telephone: (513) 672-8400, fax: (513) 672-8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7135; fax: (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before we take action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments sent will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must send a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NE-62-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-62-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

On December 29, 1999, the FAA issued AD 99-27-15, Amendment 39-

11496 (65 FR 692, January 6, 2000), to require visually inspecting P3B and Ps3 sense lines and FADEC P3B and Ps3 sensing ports and fittings, cleaning P3B and Ps3 fittings and sensing ports, purging the P3B and Ps3 systems of moisture, and, if necessary, blending of high metal, nicks, burrs, or scratches on P3B and Ps3 fitting threads. That action was prompted by seven reports of loss of thrust control due to corruption of the signals to the FADEC caused by water freezing in the Ps3 sensing system. That condition, if not corrected, could result in loss of thrust control due to corruption of the P3B and Ps3 signals to the FADEC, which if it occurs in a critical phase of flight, could result in loss of airplane control. Since that AD was issued, improved hardware has been introduced as terminating action to the visual inspections, cleanings, purging, and blending of metal. Also, alternative methods of compliance approved for AD 99-27-15 are incorporated as conventional methods of compliance in this proposal. Also, the GE90-92B engine model has been removed from the AD applicability. The FAA recently removed the GE90-92B engine from the type certificate at the request of GE.

Service Information

The FAA has reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) GE90 73-A0060, Revision 3, dated September 14, 2000, that describes procedures for:

- Visually inspecting P3B and Ps3 sense lines and FADEC sensing ports and fittings.
- Cleaning P3B and Ps3 fittings and sensor ports, purging the P3B and Ps3 systems of moisture.
- Blending of high metal, nicks, burrs, or scratches on Ps3 and P3B fitting threads.

The FAA has also reviewed and approved the technical contents of GE Service Bulletin (SB) GE90 S/B 75-0031, Revision 3, dated March 30, 2001, that describes procedures for replacing existing P3B and Ps3 lines and related brackets and clamping with redesigned hardware.

Differences Between ASB, SB, and Proposal

This proposal contains provisions for initial actions and GE ASB GE90 73-A0060, Revision 3, dated September 14, 2000, assumes that all operators have completed the initial actions based on field reports. If, however, operators have already accomplished the required initial actions, they need not repeat those actions, but may proceed directly to accomplishing the repetitive actions,

or P3B and Ps3 line replacement. Also, GE SB GE90 S/B 75-0031, Revision 3, dated March 30, 2001, recommends a hardware installation date of not later than March 31, 2001, and this proposal requires hardware installation at the next shop visit after the effective date of this AD, or no later than October 31, 2001. The FAA is aware that almost all affected GE90 engines have been retrofitted with the new design hardware and, therefore, has established this end date of not later than October 31, 2001, to complete the retrofit program before the colder temperatures of winter arrive.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this proposed AD would supersede AD 99-27-15, to require:

- Visual inspections for high metal, nicks, burrs, or scratches on P3B and Ps3 fitting threads, and, if necessary, blending of these.
- Visual inspections for moisture, debris, or ice in P3B and Ps3 FADEC fittings, ports, and open sense lines.
- Cleaning of P3B and Ps3 FADEC fittings and sensing ports.
- Purging of any moisture from the P3B and Ps3 sense system.
- Replacement of existing P3B and Ps3 lines and related brackets and clamping with redesigned hardware at the next shop visit after the effective date of this AD, or no later than October 31, 2001.
- Engine idle leak check run following the maintenance activity to confirm there are no P3B or Ps3 sense system faults present, or a dual signoff procedure by a 2nd mechanic.

Economic Impact

There are about 208 engines of the affected design in the worldwide fleet. The FAA estimates that 28 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take about one work hour per engine to do the proposed inspection and purging, and that the average labor rate is \$60 per work hour. Based on these figures, the total proposed AD cost impact on U.S. operators for one inspection is estimated to be \$1,680. The FAA also estimates that it would take about four work hours per engine to do the proposed P3B/Ps3 sense line replacement, and that the average labor rate is \$60 per work hour. The manufacturer has stated that it may provide the redesigned hardware at no cost to operators. Based on this information, the total proposed AD cost

impact on U.S. operators for sense line replacement is estimated to be \$6,720.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-11496 (65 FR 692, January 6, 2000) and by adding a new airworthiness directive:

General Electric Company: Docket No. 99-NE-62-AD.

Applicability: General Electric Company (GE) Models GE90-76B, -77B, -85B, and -90B turbofan engines. These engines are installed on, but not limited to Boeing 777 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or

repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with the requirements of this AD is required as indicated, unless already done.

To prevent loss of thrust control due to corruption of the P3B and Ps3 signals to the full authority digital engine control (FADEC), which if it occurs in a critical phase of flight, could result in loss of airplane control, do the following:

Determination of Further Action

(a) If the engine has been configured as specified in one of the following service bulletins (SB's), or has one of the following serial numbers (SN's), no further action is required.

(1) SB GE90 S/B 75-0031, Revision 1, dated August 29, 2000.

(2) SB GE90 S/B 75-0031, Revision 2, dated September 14, 2000.

(3) SB GE90 S/B 75-0031, Revision 3, dated March 30, 2001.

(4) Engine SN is 900-326, 900-328, 900-332, 900-333, 900-334, or higher.

Initial Inspection, Cleaning, Moisture Purging, and Blending

(b) For engines that are not configured or listed by SN as specified in paragraph (a) of this AD, do the following:

(1) Inspect, clean, moisture purge, and if necessary, blend any high metal, nicks, or burrs on fitting threads, on one engine installed on Boeing 777 series aircraft, within 10 cycles-in-service (CIS) after the effective date of this AD in accordance with the Accomplishment Instructions, Section 3 of GE Alert Service Bulletin (ASB) No. GE90 73-A0060, Revision 3, dated September 14, 2000.

(2) Inspect, clean, moisture purge, and if necessary, blend any high metal, nicks, or burrs on fitting threads, on the other engine installed on the Boeing 777 series aircraft, within 20 CIS after the effective date of this AD in accordance with the Accomplishment Instructions, Section 3 of GE ASB No. GE90 73-A0060, Revision 3, dated September 14, 2000.

Credit for Previous Inspections, Cleaning, and Moisture Purging

(c) For engines that have complied with the initial and repetitive inspections of AD 99-27-15, GE ASB No. GE90 73-A0060, Revision 1, dated March 1, 2000; GE ASB No. GE90 73-A0060, Revision 2, dated May 12, 2000; GE ASB No. GE90 73-A0060, Revision 3, dated September 14, 2000; or with an FAA approved alternative method of compliance, perform repetitive inspections as specified in paragraph (d) of this AD.

Repetitive Inspections

(d) Thereafter, inspect, clean, and moisture purge, and if necessary, blend any high metal, nicks, or burrs on fitting threads of each engine in accordance with the Accomplishment Instructions, Section 3, of GE ASB No. GE90 73-A0060, Revision 3, dated September 14, 2000, within:

- (1) 30 CIS since-last-inspection, or,
- (2) If applicable, 125 CIS since-last-inspection for one-engine-only per airplane.

Replacement Engines

(e) For replacement engines, perform the initial inspection, cleaning, and moisture purging, and if necessary, blend any high metal, nicks, or burrs on fitting threads as specified in paragraph (b) of this AD, except perform initial inspection before accumulating 30 CIS or 125 CIS, depending on the existing inspection interval for the engine that was replaced.

Idle Leak Check or Dual Signoff Procedure Check

(f) After accomplishing the inspection and maintenance actions specified in paragraphs (b) through (e) of this AD, and before entry into service, do either of the following:

- (1) Perform an idle leak check to confirm no P3B or Ps3 sense system faults in accordance with Accomplishment Instructions, Section 3, paragraph (15), of GE ASB No. GE90 73-A0060, Revision 3, dated September 14, 2000, or,
- (2) Perform a dual signoff procedure check to confirm there are no loose fittings that could cause P3B and Ps3 sense system faults, in accordance with Accomplishment Instructions, Section 3, paragraph (15), of GE ASB No. GE90 73-A0060, Revision 3, dated September 14, 2000. Idle leak checks that were performed using GE ASB No. GE90 73-A0060, dated December 23, 1999, and idle leak checks or dual signoff procedure checks that were performed using GE ASB No. GE90 73-A0060, Revision 1, dated March 1, 2000, or GE ASB No. GE90 73-A0060, Revision 2, dated May 12, 2000, may be considered as alternative methods of compliance for this requirement.

Installation of Redesigned Hardware

(g) At the next engine shop visit after the effective date of this AD, but not later than October 31, 2001, install the redesigned P3B and Ps3 tubes, hoses, clamps, and bracket assembly in accordance with Accomplishment Instructions, Section 3.A. through 3.H. of GE ASB No. GE90 S/B 75-0031, Revision 3, dated March 30, 2001.

Definition

(h) For the purposes of this AD, an engine shop visit is defined as any time an engine has maintenance performed that involves separation of a major flange, such as removal of the low pressure turbine module, or high pressure compressor top case half.

Credit for Installation of Redesigned Hardware

(i) Hardware installation that was performed using GE ASB No. GE90 S/B 75-0031, Revision 2, dated September 14, 2000; or GE ASB No. GE90 S/B 75-0031, Revision

1, dated August 29, 2000, may be considered as alternative methods of compliance for this requirement.

No Simultaneous Actions

(j) Do not perform the actions required by this AD concurrently on both engines installed on Boeing 777 series aircraft.

Old Configuration Hardware

(k) After the effective date of this AD, do not install any of the old configuration hardware listed in the following table.

OLD CONFIGURATION HARDWARE NOT TO BE INSTALLED

Part	Part No.
Ps3 Tube	350-151-505-0 350-184-806-0 350-114-005-0
Ps3 Hose	649-794-573-0
P3B Tube	350-151-604-0 350-184-904-0 350-114-105-0
P3B Hose	649-794-572-0
Single Tube Clamp	2151M51P107
Double Tube Clamp	2151M52P102
Bracket Assembly	350-178-309-0 350-178-311-0

Terminating Action

(l) Installation of redesigned hardware as specified in paragraph (g) of this AD constitutes terminating action for requirements of paragraph (d) and paragraph (e) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Issued in Burlington, Massachusetts, on June 4, 2001.

Francis A. Favara,

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

[FR Doc. 01-14671 Filed 6-11-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 920**

[MD-050-FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a revision to the Maryland statutes pertaining to the use of financial disclosure forms by the Land Reclamation Committee to satisfy a required program amendment at 30 CFR 920.16(l). The amendment is intended to revise the Maryland program to be no less effective than the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4 p.m., E.D.T., July 12, 2001. If requested, a public hearing on the proposed amendment will be held on July 9, 2001. Requests to speak at the hearing must be received by 4:00 p.m., E.D.T., on June 27, 2001.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. George Rieger, Manager, Oversight and Inspection Office, at the address listed below. You may review copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Manager, Oversight and Inspection Office
Appalachian Regional Coordinating Center

Office of Surface Mining Reclamation and Enforcement 3 Parkway Center,
Pittsburgh PA 15220

Telephone: (412) 937-2153

E-mail: grieger@osmre.gov

Maryland Bureau of Mines
160 South Water Street
Frostburg, Maryland 21532

Telephone: (301) 689-4136

FOR FURTHER INFORMATION CONTACT:

George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Telephone: (412) 937-2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.15 and 920.16.

II. Description of the Proposed Amendment

By an undated letter received by OSM on May 7, 2001 (Administrative Record No. 578-12), Maryland submitted a copy of House Bill 984 as a formal proposed amendment to its program. The House Bill was enacted to require members of the Land Reclamation Committee to file a United States Department of Interior State Employee Statement of Employment and Financial Interests. Maryland submitted the formal amendment to satisfy a required amendment at 30 CFR 920.16(l).

Maryland proposes to add new paragraph 4. to Section 15-204 of the Annotated Code of the Public General Laws of Maryland, Environment, as follows:

(4) Members of the Land Reclamation Committee shall file a United States Department of Interior State Employee Statement of Employment and Financial Interests.

As a result of the proposed addition above, existing paragraph (4) is re-numbered as paragraph (5).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able

to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SPATS NO. MD-050-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Regional Coordinating Center at (412) 937-2153.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). 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.

Public Hearing: If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T. on June 27, 2001. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to

attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of

SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or

local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 22, 2001.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 01-14713 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN68-01b; FRL-6991-8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a State Implementation Plan (SIP) revision for Dakota County, Minnesota, for the control of emissions of sulfur dioxide (SO₂) in the Pine Bend Area of Rosemount. The site-specific SIP revision for Koch Petroleum Group, LP (Koch) was submitted by the Minnesota Pollution Control Agency on December 20, 2000, and is approvable because it satisfies the requirements of the Clean Air Act. Specifically, EPA is proposing to approve into the SO₂ SIP Amendment No. 4 to the Administrative Order for Koch. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final

rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive 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. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 12, 2001.

ADDRESSES: Written comments should be sent to: Canton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule document which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353-8328 before visiting the Region 5 Office.)

Dated: May 8, 2001.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 01-14615 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NO. MT-001-0034b, MT-001-0035b; FRL-6991-2]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Emergency Episode Avoidance Plan and Cascade County Open Burning Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on February 9, 2001. This submittal revises the State's Emergency Episode Avoidance Plan and Cascade County's

Local Regulation Chapter 7, Open Burning. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing on or before July 12, 2001.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312-6437.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: May 22, 2001.

Patricia D. Hull,

Acting Regional Administrator, Region 8.

[FR Doc. 01-14613 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN133-1b; FRL-6990-2]

Approval and Promulgation of Implementation Plans; IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to particulate matter (PM) regulations for Rolls-Royce Allison (Rolls-Royce), formerly Allison Engine Company. This facility is located in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted the revised regulations on August 31, 2000 as a requested amendment to its State Implementation Plan (SIP). The revisions consist of a name change for the company and the addition of a provision that allows the facility to use landfill gas as an alternate fuel. These requested SIP revisions do not change Rolls-Royce's emissions limits.

DATES: The EPA must receive written comments on this proposed rule by July 12, 2001.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-6524, E-Mail Address: rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

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- I. What actions are EPA taking today?
- II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Actions Are EPA Taking Today?

The EPA is proposing to approve revisions to the particulate matter

regulations for Rolls-Royce Allison in Marion County, Indiana. IDEM submitted the revised regulation on August 31, 2000 as amendments to its SIP.

The revisions are a name change for the company and the addition of landfill gas as an alternate fuel. These SIP revisions result in no increase of particulate matter emissions.

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 rules section of this **Federal Register**.

Dated: May 9, 2001.

Norman Neidergang,

Acting Regional Administrator, Region 5.

[FR Doc. 01-14611 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH140-1b; FRL-6992-1]

Approval and Promulgation of Implementation Plans; OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to sulfur dioxide (SO₂) emissions regulations for the Lubrizol Corporation (Lubrizol) in Lake County, Ohio. The Ohio Environmental Protection Agency (Ohio EPA) submitted Director's Final Findings and Orders (Orders) for the Lubrizol facility on November 9, 2000. These Orders are revisions to the Ohio State Implementation Plan (SIP). The revisions are the adjustment of six short-term emissions limits, the addition of an annual emissions limit, and the addition of a continuous emission rate monitoring system (CERMS) requirement for the facility. Three short-term emissions limits are relaxed and three short-term are tightened. There is no increase in the total potential short-term SO₂ emissions.

DATES: The EPA must receive written comments on this proposed rule by July 12, 2001.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of Ohio's submittal at: Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 886-6524, E-Mail Address: rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

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I. What Actions Are EPA Taking Today?

The EPA is proposing to approve revisions to sulfur dioxide emissions limits for the Lubrizol Corporation facility in Lake County, Ohio. Ohio EPA submitted the revised regulations on November 9, 2000 as an amendment to its SIP. These revisions are the adjustment of six short-term limits (three relaxed and three tightened), the addition of an annual limit, and the requirement of a continuous emission rate monitoring system (CERMS).

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 rules section of this **Federal Register**.

Dated: May 18, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01-14609 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242-0280b; FRL-6991-5]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the control of emissions of Oxides of Nitrogen (Nox) and sulfur compounds. We are proposing to approve a local rule to regulate these emissions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATE: Any comments on this proposal must arrive by July 12, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 1001 "I" Street,
Sacramento, CA 95814.

Monterey Bay Unified Air Pollution
Control District, Rule Development,
24580 Silver Cloud Ct., Monterey, CA
93940-6536.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1197.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: MBUAPCD 404, Sulfur Compounds and Nitrogen Oxides. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 8, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01-14607 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NC-T5-2001-01; FRL-6996-1]

Clean Air Act Proposed Full Approval of Operating Permit Programs; North Carolina, Mecklenburg County, and Western North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: EPA proposes to fully approve the operating permit programs of the North Carolina Department of Environment and Natural Resources, the Mecklenburg County Department of Environmental Protection, and the Western North Carolina Regional Air Quality Agency. These programs were submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. On November 15, 1995, EPA granted interim approval to the North Carolina, Mecklenburg County, and Western North Carolina operating permit programs (60 FR 57357). These agencies have revised their programs to satisfy the conditions of the interim approval and this action proposes approval of those revisions and other program changes made since the interim approval was granted.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by July 12, 2001.

ADDRESSES: Written comments on the program revisions discussed in this action should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8909. Copies of the North Carolina, Mecklenburg County, and Western North Carolina submittals and other supporting documentation used in developing the proposed full approval are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8909.

FOR FURTHER INFORMATION CONTACT: Kim Pierce, EPA Region 4, at (404) 562-9124 or pierce.kim@epa.gov/.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?

What is being addressed in this document?
 What are the program changes that EPA proposes to approve?
 What is involved in this proposed action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under the title V program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO_x), or particulate matter (PM₁₀); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of VOCs or NO_x.

What Is Being Addressed in This Document?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its

program to correct the deficiencies. Because the North Carolina, Mecklenburg County, and Western North Carolina programs substantially, but not fully, met the requirements of part 70, EPA granted interim approval to these programs in a rulemaking (60 FR 57357) published on November 15, 1995. The interim approval notice described the conditions that had to be met in order for the North Carolina, Mecklenburg County, and Western North Carolina programs to receive full approval. North Carolina submitted eight revisions to its interimly approved operating permit program; these revisions were dated March 23, 1995, August 16, 1996, March 19, 1997, July 29, 1998, November 15, 1999, January 21, 2000, June 14, 2000, and August 28, 2000. Mecklenburg County, which adopts the State's rules, submitted five revisions to its interimly approved program; these revisions were dated October 11, 1999, November 2, 1999, December 8, 1999, December 28, 1999, and July 26, 2000. Western North Carolina, which also adopts the State's rules, submitted five revisions to its interimly approved program; these revisions were dated January 23, 1997, September 29, 1999, November 10, 1999, January 5, 2000, and August 17, 2000. This document describes changes that have been made to the North Carolina, Mecklenburg County, and Western North Carolina operating permit programs since interim approval was granted.

What Are the Program Changes That EPA Proposes To Approve?

Full approval of the North Carolina, Mecklenburg County, and Western North Carolina title V operating permit programs was made contingent upon the following rule changes, as stipulated in EPA's November 15, 1995 rulemaking:

(1) Revise Rule 15A NCAC 2Q.0507 (and the corresponding local regulations) to require the inclusion of all fugitive emissions in permit applications, in accordance with 40 CFR 70.3(d). North Carolina revised Rule 15A NCAC 2Q.0507(b) to specify that applications include all the information described in 40 CFR 70.3(d); the state-effective rule change was submitted to EPA on March 19, 1997. Mecklenburg County adopted the state-effective rule change and submitted documentation of the adoption to EPA on December 8, 1999. Western North Carolina also adopted the state-effective rule change and submitted documentation of the adoption to EPA on January 23, 1997.

(2) Revise Rule 15A NCAC 2Q.0502(c) (and the corresponding local regulations) to ensure that research and

development facilities which are collocated with manufacturing facilities and which are under common control and belonging to a single major industrial grouping will be considered as the same facility for determining title V applicability. North Carolina responded by removing Rule 15A NCAC 2Q.0502(c) from its regulations; the state-effective regulatory changes were submitted to EPA on January 21, 2000 and August 28, 2000. Mecklenburg County adopted the State's rule changes and submitted documentation to EPA of the adoption on December 28, 1999. Western North Carolina also adopted the State's rule changes and submitted documentation of the adoption to EPA on January 5, 2000 and August 17, 2000.

(3) Revise Rule 15A NCAC 2Q.0102(b)(2)(B) (and the corresponding local regulations) to adjust the insignificant emission threshold levels downward from potential emissions of 40 tons per year (tpy) to five tpy for criteria pollutants and 1000 pounds per year for HAPs, and to provide that the activities listed in Rule 15A NCAC 2Q.0102(b)(2)(F) are subject to these caps. In addition, EPA notified North Carolina, Mecklenburg County, and Western North Carolina on July 15, 1996, of another deficiency in the insignificant activities provisions that came to light as a result of the court decision in *Western States Petroleum Association (WSPA) v. EPA*, 87 F.3d 280 (D.C. Cir. 1996); Rule 15A NCAC 2Q.0102(a) (and the corresponding local regulations) had inadvertently been approved without identifying the exemption of insignificant activities from permit requirements as a program deficiency. In the **Federal Register** document granting final interim approval to the Alaska operating permit program (61 FR 64466, December 5, 1996), EPA acknowledged that its approval of the insignificant activities provisions in the North Carolina programs may have been inconsistent with the WSPA decision. Further review revealed this to be true, which prompted EPA to follow up its July 1996 letter to the North Carolina agencies with a formal notification letter, dated August 14, 1999, that a Notice of Deficiency would be published in the **Federal Register** if the State and local agencies did not address the deficiencies.

North Carolina addressed the deficiencies in its insignificant activities provisions by removing Rule 15A NCAC 2Q.0102 from its operating permit program and revising Rule 15A NCAC 2Q.0503 to define two categories of insignificant activities: "insignificant activities because of category" and

“insignificant activities because of size or production rate.” The activities listed in the first category are identical to the insignificant activities identified by EPA in 40 CFR 71.5(c)(11)(i) except for the addition of new residential wood heaters subject to 40 CFR part 60, subpart AAA, which are exempt from permit requirements (see 40 CFR 70.3(b)(4)(i)).

The second category, “insignificant activities because of size or production rate,” is defined as “any activity whose emissions would not violate any applicable emissions standard and whose potential emission of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous air pollutants before air pollution control devices are each below 1000 pounds per year.” The State also made the following rule changes: (a) Revised Rule 15A NCAC 2Q.0508(f)(3) to remove the exemption from monitoring, recordkeeping, and reporting requirements for insignificant activities; (b) revised Rule 15A NCAC 2Q.0508(z) to eliminate the exemption from permitting for sources that have no applicable requirements; and (c) revised Rule 15A NCAC 2Q.0508(aa) to require the inclusion of insignificant activities in permits. State-effective rule changes that satisfy federal requirements were submitted to EPA on January 21, 2000 and August 28, 2000. Mecklenburg County adopted the State’s rule changes and submitted documentation of the adoption to EPA on July 26, 2000. Western North Carolina also adopted the State’s rule changes and submitted documentation of the adoption to EPA on January 5, 2000 and August 17, 2000.

(4) Revise Rule 15A NCAC 2Q.0514(a) to clarify that: (a) Administrative permit amendments may be used to change test dates or construction dates only as long as no applicable requirements are violated in the process, and (b) an administrative permit amendment may be used to move terms and conditions from the state-enforceable portion of the permit to the state-and federal-enforceable portion of the permit provided that the term being moved is a requirement which has become federally enforceable through sections 110, 111, 112, or other parts of the CAA. North Carolina added language to Rule 15A NCAC 2Q.0514(a)(4) stipulating that changes in test dates or construction dates qualify as administrative permit amendments “provided that no applicable requirements are violated by the change

in test dates or construction dates.” North Carolina also added language to Rule 15A NCAC 2Q.0514(a)(5) stipulating that administrative permit amendments may be used to move terms and conditions from the state-enforceable portion of the permit to the state-and federal-enforceable portion of the permit “provided that terms and conditions being moved have become federally enforceable through section 110, 111, or 112 or other parts of the federal Clean Air Act.” The state-effective rule changes were submitted to EPA on March 19, 1997. Mecklenburg County adopted the State’s rule changes and submitted documentation to EPA of the adoption on October 11, 1999. Western North Carolina also adopted the State’s rule changes and submitted documentation of the adoption to EPA on January 23, 1997.

(5) Revise Rule 15A NCAC 2Q.0515(f) to stipulate that a permit shield may not be granted for a minor permit modification. North Carolina responded by deleting the language in Rules 15A NCAC 2Q.0512(a)(5) and 15A NCAC 2Q.0515(g) (previously Rule 15A NCAC 2Q.0515(f)) that allowed permit shields for minor permit modifications. The state-effective rule changes were submitted to EPA on March 19, 1997. Mecklenburg County adopted the State’s rule changes and submitted documentation to EPA of the adoption on October 11, 1999. Western North Carolina also adopted the State’s rule changes and submitted documentation of the adoption to EPA on January 23, 1997.

(6) Revise Rule 15A NCAC 2Q.0515(d) to specify that in the event an applicant submits a single minor permit modification which exceeds the emissions thresholds listed in Rule 15A NCAC 2Q.0515(c), the minor permit modification must be processed within 90 days after receiving the application or 15 days after the end of EPA’s 45-day review period, whichever is later. North Carolina responded by adding a new Rule 15A NCAC 2Q.0515(d) to satisfy this part 70 requirement and submitted the state-effective rule change to EPA on March 19, 1997. Mecklenburg County adopted the State’s rule change and submitted documentation to EPA of the adoption on October 11, 1999. Western North Carolina also adopted the State’s rule change and submitted documentation of the adoption to EPA on January 23, 1997.

(7) Revise Rule 15A NCAC 2Q.0517(b) to provide that: (a) An operating permit shall be reopened and reissued within 18 months after a newly applicable requirement is promulgated; and (b) no reopening is required if the effective

date of the newly applicable requirement is after the expiration of the permit, unless the term of the permit was extended based on the fact that it had not been renewed prior to its expiration. North Carolina revised Rule 15A NCAC 2Q.0517(b) to require the completion of permit reopenings within 18 months after newly applicable requirements are promulgated. The rule was also revised to state that “[n]o reopening is required if the effective date of the requirement is after the expiration of the permit term unless the term of the permit was extended pursuant to Rule .0513(c).” The state-effective rule changes were submitted to EPA on March 19, 1997. Mecklenburg County adopted the State’s rule changes and submitted documentation to EPA of the adoption on October 11, 1999. Western North Carolina also adopted the State’s rule changes and submitted documentation of the adoption to EPA on January 23, 1997.

(8) Revise Rule 15A NCAC 2Q.0518(f) to remove the condition “subject to adjudication” from the requirement to take action on a complete permit application. North Carolina deleted Rule 15A NCAC 2Q.0518(f) and submitted the state-effective rule revision to EPA on March 23, 1995. Mecklenburg County adopted the State’s rule change and submitted documentation to EPA of the adoption on December 8, 1999. Western North Carolina also adopted the State’s rule change and submitted documentation of the adoption to EPA on January 23, 1997.

North Carolina made several additional program changes after EPA granted interim approval on November 15, 1995. The operating permit application processing schedule in Rule 15A NCAC 2Q.0507(f) was deleted and replaced with a new application processing schedule in Rule 15A NCAC 2Q.0525. The new schedule established time frames for the State to complete various aspects of permit issuance, including acknowledging receipt of the application, the completeness check, the technical review, mailing the public notice, and holding a public hearing if one is requested. Rule 15A NCAC 2Q.0525 was initially submitted to EPA on March 23, 1995 and then the State amended it to ensure that final action on permit applications would be taken within 18 months of being deemed complete, as stipulated in 40 CFR 70.7(a)(2). The amended rule was submitted to EPA on July 29, 1998. Mecklenburg County adopted the State’s rule changes and submitted documentation to EPA of the adoption on October 11, 1999. Western North Carolina also adopted the State’s rule

change and submitted documentation of the adoption to EPA on January 5, 2000.

The State also revised the permit content provisions in Rule 15A NCAC 2Q.0508(g) to further delineate the requirements for facilities subject to the Risk Management Program in section 112(r) of the CAA. The revised rule was submitted to EPA on January 21, 2000. Mecklenburg County did not adopt this rule revision, but Western North Carolina did adopt the revision and submitted documentation to EPA on November 10, 1999.

Pursuant to 40 CFR 70.9(c), the State, Mecklenburg County, and Western North Carolina submitted fee program updates demonstrating that their title V programs are adequately funded by operating permit fees. These updates were submitted on November 15, 1999, November 2, 1999, and September 29, 1999, respectively. The State also submitted a Title V Air Quality Permit Program Accountability Report on June 14, 2000 showing the aggregate fee payments collected from title V sources and a summary of the reasonable direct and indirect expenditures required to develop and administer the title V program. Rule 15A NCAC 2Q.0206(f) requires the State to prepare an annual accountability report and make it publicly available.

What Is Involved in This Proposed Action?

North Carolina, Mecklenburg County, and Western North Carolina have fulfilled the conditions of the interim approval granted on November 15, 1995, and EPA proposes full approval of their title V operating permit programs. EPA also proposes approval of other program changes made since the interim approval was granted. The regulations in North Carolina's federally approved title V program include Rules 15A NCAC 2Q.0201 through 2Q.0206 (fees), 2Q.0401 and 2Q.0402 (acid rain), and 2Q.0501 through 2Q.0525 (title V permitting procedures). Mecklenburg County's title V program includes Mecklenburg County Air Pollution Control Ordinance (MAPCO) Regulations 1.5231 (fees), 1.5302 through 1.5304 (enforcement), 1.5401 and 1.5402 (acid rain), and 1.5501 through 1.5525 (title V permitting procedures). Western North Carolina's title V program includes Western North Carolina Regional Air Quality Agency (WNCRAQA) Code Chapter 17.0200 (fees), .0400 (acid rain), and .0501 through .0525 (title V permitting procedures).

Administrative Requirements

A. Request for Public Comments

EPA requests comments on the program revisions discussed in this proposed action. Copies of the North Carolina, Mecklenburg County, and Western North Carolina submittals and other supporting documentation used in developing the proposed full approval are contained in docket files maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. EPA will consider any comments received in writing by July 12, 2001.

B. Executive Order 12866

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

C. Executive Order 12988

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.*).

D. 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 is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

E. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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.

F. 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 final 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 CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

G. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act 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 part 70 approvals under section 502 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because this 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 CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic

reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. [See *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).]

H. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to 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 proposed does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves 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.

I. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by August 13, 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) of the CAA.)

K. 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.

In reviewing operating permit programs, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 4, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01–14769 Filed 6–11–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 300**

[FRL-6963-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of intent to delete Schuylkill Metals Corporation Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Schuylkill Metals Corporation Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B to 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before: July 12, 2001.

ADDRESSES: Comments may be mailed to: Richard D. Green, Director, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.

Comprehensive information on this Site is available through the Region 4 public docket, which is available for viewing at the Schuylkill Metals Corporation Site information repositories at two locations. Locations, contacts, phone numbers and viewing hours are:

U.S. EPA Record Center, attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, Phone: (404) 562-8862, Hours: 8 a.m. to 4 p.m., Monday through Friday By Appointment Only
 Bruton Memorial Library, 302 McLendon Street, Plant City, Florida 33566-3299, Phone: (813) 757-9215, Hours: 9 a.m. to 9 p.m., Monday through Thursday 9 a.m. to 6 p.m.,

Friday, 10 a.m. to 6 p.m., Saturday, closed, Sunday

FOR FURTHER INFORMATION CONTACT: Galo Jackson, U.S. EPA Region 4, Mail Code: WD-SSMB, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, (404) 562-8937.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

I. Introduction

The EPA Region 4 announces its intent to delete the Schuylkill Metals Corporation Site, Plant City, Florida, from the NPL, which constitutes appendix B of the NCP, 40 CFR part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA proposes to delete the Schuylkill Metals Corporation Site, located at 402 South Woodrow Wilson Street in Plant City, Hillsborough County, Florida from the NPL.

EPA will accept comments concerning this Site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how this Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from, or re-categorized on, the NPL where no further response is appropriate. In making this determination, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- (i) Responsible or other parties have implemented all appropriate response actions required;
- (ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further action by responsible parties is appropriate; or
- (iii) The remedial investigation has shown that the release poses no

significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

CERCLA section 121(c), 42 U.S.C. 9621(c), provides in pertinent part that:

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the Site, the President shall review such remedial action no less often than each five years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. * * *

EPA policy interprets this provision of CERCLA to apply to those sites where treated, in this case solidified, waste remains on-site. On that basis, for reasons set forth below, the statutory requirement has been satisfied at this Site, and five year reviews and operation and maintenance activities will be required. In the event new information is discovered which indicates a need for further action, EPA may initiate appropriate remedial actions. In addition, whenever there is a significant release from a site previously deleted from the NPL, that site may be restored to the NPL without application of the Hazardous Ranking System. Accordingly, the Site is qualified for deletion from the NPL.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision on deletion. The following procedures were used for the intended deletion of the Site:

- 1. FDEP has concurred with the deletion decision;
- 2. Concurrently with this Notice of Intent, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day public comment period on the proposed deletion from the NPL; and
- 3. The Region has made all relevant documents available at the information repositories.

The Region will respond to significant comments, if any, submitted during the comment period.

Deletion of the Site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect any deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary, if any, will

be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

The Schuylkill Metals Corporation Site is located at 802 South Woodrow Wilson Street, Plant City, Hillsborough County, Florida. The Site is 17.4 acres in size and is currently occupied by the solidified monolith, two wetlands, the former wastewater holding pond and adjacent fields.

The Schuylkill Metals Corporation Site was in operation between 1972 and 1986 as a battery recycling facility. The facility received spent automobile and golf cart batteries. The tops of the spent batteries were sawed off, contents emptied on to the ground and lead plates shipped from the Site by rail to be smelted for reuse. Contaminated battery casings were crushed and buried on Site, or used as road or building material. Prior to 1981, acidic wash down waste waters were stored in the 2.2 acre unlined holding pond. Initially, lime was used for pH adjustment of the water stored in the holding pond. Subsequent to this, ammonia was used. In 1981, after upgrading of the wastewater system, discharge to the holding pond ceased. At this time, wastewater was treated with sodium hydroxide, prior to discharge under permit to the city's wastewater treatment plant.

In 1981, EPA conducted its initial investigation of the Schuylkill Metals Corporation Site. The results of this study indicated that groundwater from the surficial aquifer contained elevated levels of cadmium, chromium, lead and ammonia in the vicinity of the holding pond and the battery processing area.

The Site was placed on the NPL and a remedial investigation (RI) was performed at the facility during 1987. As a result of sampling of surface and subsurface soil, the former battery processing area was found to be the primary source of contamination. In April 1988, an addendum RI addressed specific areas of concern that were not included in the initial study. Later that year, a draft feasibility study (FS) was completed which included proposed cleanup levels for soil and groundwater, evaluated the remedial alternatives for the Site and specified the volume of soil requiring treatment. A treatability study work plan was submitted in January 1989, which evaluated various chemical formulas for a solidification/stabilization soil remedy.

In July 1989, a FS addendum was completed, in an effort to determine

appropriate cleanup levels for the perimeter ditch sediment and marsh sediment. The addendum allowed EPA to address potential remedial actions to mitigate the environmental threat to the marshes posed by the release of contaminants from the Schuylkill Metals Corporation Site. Late that year, the Environmental Services Division (ESD) of EPA conducted two studies on the east marsh at the Site: a wetland classification assessment and a sampling investigation. The wetland was classified, delineated, and analyzed for its functional value. Samples of the surface water and sediment were collected and analyzed. These reports identified the need to perform biological testing on marsh samples. Later that year, ESD collected surface water and sediment samples to determine the toxicity of the metal contaminants to terrestrial and aquatic organisms, indigenous plant and animal bioaccumulation, as well as the fate of these metals in the wetland system. The Wetland Impact Study was finalized in 1990 and presented the chemical and biological data, as well as the effect of potential remedial activities on the marsh.

A Draft Final Addendum to the Feasibility Study Report, concluded in July of 1990, evaluated the technologies for remediation and the remedial alternatives appropriate for the wetlands. It compared the feasibility of four alternatives in relation to the nine evaluation criteria.

In September 1990, EPA issued a Record of Decision (ROD), requiring the solidification/stabilization of the then-estimated 38,000 cubic yards (approximately 53,200 tons) of contaminated soil and sediment, having concentrations above 500 milligrams per kilograms (mg/kg); groundwater pumping-and-treatment; sequestration of lead in the wetland's sediment by changing the hydroperiod of the affected wetlands; and mitigation for the damage caused to the wetlands, as a result of the operation of a battery recycling facility adjacent to wetlands.

As a result of a hydrologic study conducted after the issuance of the ROD, the selected remedy for the wetland was modified to removal and solidification/stabilization of lead-contaminated sediment, above the 100 mg/kg clean-up goal. This modification was documented in a 1993 Explanation of Significant Differences.

The responsible party entered into an agreement with EPA, in which they agreed to perform the work outlined in the ROD. This was memorialized in a March 1991 Consent Decree. To implement the remedy, a remedial

design and remedial action (RD/RA) work plans were submitted to EPA. The last of these plans was approved in June 1993.

In December 1993 two slurry walls were installed in order to facilitate the management of the Site water. They allowed the volume of groundwater removed from the soil excavation area to be minimized and confined primarily to contaminated water in the immediate vicinity of the soil contamination, as well as rainfall which occurred during soil solidification/stabilization activities.

During the months of April and May 1994, approximately 8,100 cubic yards of lead-contaminated marsh sediments were removed from the east and west marshes. All sediment having lead concentrations greater than 125 mg/kg were excavated. The marsh sediment from grids with lead concentrations between 125 and 500 mg/kg stockpiled in a clean upland area. Sediment with lead concentration greater than 500 mg/kg were stockpiled within the north slurry wall areas for subsequent treatment.

In June 1994, construction of the groundwater pre-treatment system began. This system consisted of three major process operations: a metals removal system, an air stripper/ammonia scrubber and a chlorination system. For the first three months of the pre-treatment system's operation, the plant treated the existing pond water to provide room for groundwater storage. The treated water was discharged to the Plant City publicly owned treatment works (POTW). While the contaminated soil was being stabilized, groundwater from the excavation dewatering operation was treated prior to discharge to the POTW. An estimated 15-to-18 million gallons of groundwater was treated between the months of July 1994 and December 1996.

In December 1994, treatment of soil started and continued until May 1997. During this period approximately 258,000 tons (184,000 cubic yards) of soil and sediment were treated. This volume of lead-contaminated soil and sediment includes excavation and treatment of approximately 10,000 cubic yards of sediments removed from the bottom of the former holding pond. Excavation of the former holding pond required the installation of sheet piling to segregate the pond into three sections.

Wetland mitigation activities started in May 1995 and ended in August 1997. Wetland mitigation activities involved the creation of additional wetland acreage from upland or pond areas on-site to mitigate for the permanently

inundated or contaminated areas and temporary loss of function. This upland portion included mitigation at a ratio of 2:1 for the permanently inundated areas in the East Marsh plus an additional 1:1 compensation for natural resource damage agreed to in negotiations with the FDEP.

The Site's post-soil treatment groundwater was monitored on four occasions, in order to determine whether the groundwater treatment component of the ROD would need to be implemented. These results indicated that further groundwater recovery and treatment would not be necessary.

Due to the treatment of contaminated soil and sediment, hazardous substances have been immobilized, allowing for unlimited use of part of the Site. Excluded from unlimited use are the areas of the treated soil and the remediated wetlands, which are the subject of a conservation easement. In order to confirm that the Site is protective of public health and the environment, limited maintenance of the solidified monolith will be required, as well as Five Year Reviews.

EPA, with concurrence of FDEP, has determined that all appropriate actions at the Schuylkill Metals Corporation Site have been completed, and no further remedial action is necessary. Therefore, EPA is proposing deletion of the Site from the NPL.

Dated: March 26, 2001.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 01-14470 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-6964-5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Tobyhanna Army Depot Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 3 announces its intent to delete a portion of the Tobyhanna Army Depot Site, located in Monroe County, Pennsylvania, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances

Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion for the Tobyhanna Army Depot Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995).

This proposal for partial deletion pertains to all portions of the Tobyhanna Army Depot Site except for contaminated groundwater plumes at Operable Units 1 and 5 (OU1 and OU5) [Excluded Areas], which are undergoing natural attenuation and long-term monitoring. These Excluded Areas will remain on the NPL until the performance standards specified in the Records of Decision are met. EPA bases its partial deletion proposal on the determination by EPA, the Army, and the Pennsylvania Department of Environmental Protection that all appropriate actions under CERCLA have been completed to protect human health, welfare and the environment.

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty (30) days after publication of this document in the **Federal Register** and a local newspaper of record (the Pocono Record).

ADDRESSES: Comments may be mailed to Lorie Baker, Superfund Site Manager, U.S. EPA, Region 3 (3HS34), 1650 Arch Street, Philadelphia, PA, 19103; PHONE: 215-814-3355; FAX: 215-814-3001; EMAIL: baker.lorie@epamail.epa.gov.

Information Repositories: Comprehensive information on the Tobyhanna Army Depot Site as well as the Deletion Docket is available for review at the following two information repository locations:

Coolbaugh Township Municipal Building, Route 611, Tobyhanna, PA 18466. The Coolbaugh Township office hours are 8 a.m. to 4:30 p.m., Monday-Friday. The telephone number is (570) 984-8490.

Tobyhanna Army Depot, Public Affairs Office, 11 Hap Arnold Boulevard, Tobyhanna, PA 18466-5076. The Public Affairs Office hours are 7:30 a.m. to 4 p.m., Monday-Friday. The telephone number is (570) 895-6552.

The Deletion Docket is also available for review at the U.S. EPA Region 3 Regional Center for Environmental Information (RCEI), 1650 Arch Street (3PM52), Philadelphia, PA 19103-2029. The RCEI office hours are 8 a.m. to 5

p.m., Monday-Friday. The telephone number is (215) 814-5254.

FOR FURTHER INFORMATION CONTACT:

Lorie Baker, U.S. EPA, Region 3 (3HS34), 1650 Arch Street, Philadelphia, PA 19103; PHONE: 215-814-3355; FAX: 215-814-3001; EMAIL: baker.lorie@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
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- IV. Basis for Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region 3 announces its intent to delete a portion of the Tobyhanna Army Depot Site, located in Monroe County, Pennsylvania, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this proposal. This proposal for partial deletion pertains to all portions of the Tobyhanna Army Depot Site except for contaminated groundwater plumes at Operable Units 1 and 5 (OU1 and OU5) [Excluded Areas], which are undergoing natural attenuation and long-term monitoring. These Excluded Areas will remain on the NPL until the performance standards specified in the Records of Decision are met. EPA proposes to delete the Tobyhanna Army Depot Site except for the Excluded Areas as defined above because all appropriate CERCLA response activities have been completed in those areas.

The NPL is a list maintained by EPA of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Pursuant to 40 CFR 300.425(e) of the NCP, any site or portion of a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination pursuant to 40 CFR

300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met: Section 300.425(e)(1)(i): Responsible parties or other persons have implemented all appropriate response actions required; or Section 300.425(e)(1)(ii): All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or Section 300.425(e)(1)(iii): The remedial investigation has shown that the release poses no significant threat to human health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. The following procedures were used for the proposed deletion of the Tobyhanna Army Depot site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection concurs with this partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** document, and a concurrent notice in a newspaper of record, announces the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete a portion of the Tobyhanna Army Depot site from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the aforementioned information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region 3 to obtain a copy of the Responsiveness Summary. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. The partial deletion does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the Tobyhanna Army Depot (TYAD) site, except for the Excluded Areas, from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

Background

TYAD is located in the Pocono Mountains of northeastern Pennsylvania, approximately 20 miles southeast of Scranton, PA, in Coolbaugh Township, Monroe County. The installation covers approximately 2.2 square miles, measuring 1.6 miles east to west and 2.2 miles north to south at the widest point. The area surrounding TYAD is rural with the village of Tobyhanna bordering the installation at the southeast corner. Tobyhanna State Park and Gouldsboro State Park are adjacent to the installation on the northeast and northwest sides, respectively. Tobyhanna was established when the United States purchased 33 square miles of land in 1909. Tobyhanna was primarily used for machine gun and field artillery training

beginning in 1913, and as an ambulance and tank regiment training center and an ordnance storage depot during World War I. Tobyhanna was inactive until 1932, except for Army and National Guard Field Artillery training. From 1932 to 1938, Tobyhanna was a Conservation Corps camp area, and from 1938 to 1941, Tobyhanna, was used by West Point cadets for field artillery training. In 1942, Tobyhanna was reactivated and converted for storage and supply uses. Tobyhanna artillery ranges were deactivated in 1946. In 1949, the Commonwealth of Pennsylvania purchased approximately 21,000 acres from the United States, and in 1952, approximately 1,293 acres were deeded back to the United States government for the modern depot construction in 1953. Tobyhanna is currently a communication-electronics maintenance and supply depot. On August 30, 1990 (55 FR 35502), Tobyhanna was added to the National Priorities List due to the discovery of groundwater contaminated with elevated levels of volatile organic compounds. The contaminated groundwater was affecting one of the Tobyhanna Army Depot drinking water supply wells in addition to several nearby residential wells. The Department of the Army is considered the lead agency.

Tobyhanna Army Depot has five Operable Units: OU1 (Areas A and B), OU2 (Former PCB Transformer Area), OU3 (Former Hazardous Waste Storage Areas), OU4 (Powder Ridge UXO Area), and OU5 (Inactive Sanitary Landfill). In addition to the OUs, the Army also investigated fifty-eight (58) additional potential areas of concern (AOCs) identified in the November 1990 Tobyhanna site-specific Federal Facility Agreement (FFA), all of which have since been formally closed out and require no further action. These determinations were documented in three AOC Closeout Documents in 1998, 1999, and 2000. Therefore, no further CERCLA investigations or response actions are planned or anticipated. Long-term CERCLA and RCRA operation and maintenance (O&M) monitoring activities and five-year reviews will continue.

Remedial Action

A Record of Decision (ROD) for OU1 was signed on September 30, 1997. OU1 consists of a former burning area and a former hazardous waste staging area that resulted in volatile organic compounds (VOCs) leaching into the groundwater and contaminating several off-base private wells. The Army began supplying bottled water to the affected

residences in 1987, and in 1991, connected the residences to the Depot water supply. In 1996, the Army excavated the source material and surrounding soils as a Removal Action. The OU1 remedy consists of monitored natural attenuation and institutional controls (ICs). The Army monitors groundwater on a semi-annual basis, and VOC concentrations continue to decrease. The ICs will limit future use of the groundwater while contaminants remain above Maximum Containment Levels (MCLs) promulgated under the Safe Drinking Water Act, which are the performance standards as identified in the ROD. The expected duration of the monitored natural attenuation remedy is fifteen (15) years.

The ICs implemented at TYAD are designed to prevent human consumption of contaminated groundwater. An IC previously implemented by TYAD includes a waterline agreement with the residents to ensure that future residents will not be exposed to groundwater contaminated at levels above the MCLs. This ongoing interim measure includes supplying potable water to residences/businesses, which have wells with VOC concentrations above MCLs. The agreement specifies that individual residential wells will not be used for any purpose except for monitoring by the U.S. Army.

Another previously implemented IC is an agreement with the Coolbaugh Township Zoning Office to notify TYAD of new construction involving potable water. This control will ensure that new wells are not placed in areas of known or suspected contamination and will allow the resident to be connected to the TYAD potable water supply. Additionally, a control prohibiting the construction of any on-post drinking water well in the plume of groundwater contamination has been implemented. This IC has been incorporated into the TYAD Master Plan.

A ROD for OU2 was signed on September 27, 1996. OU2 consists of the former PCB transformer building. PCB-contaminated soils were removed from the site and residual contamination is below risk-based levels providing for unlimited use and unrestricted exposure. The selected remedy for the OU2 ROD was No Further Action.

A ROD for OU3 was signed on July 12, 1996. OU3 consists of two (2) former hazardous waste storage buildings, which were remediated according to an approved RCRA closure plan. The residual contamination was below risk-based levels providing for unlimited use and unrestricted exposure. The selected

remedy for the OU3 ROD was No Further Action.

A ROD for OU4 was signed on September 19, 2000. OU4 consists of a 400-acre area where artillery range use resulted in residual unexploded ordnance. In September 2000, the Army completed construction of a fence and hazard warning signs around the OU4 area as a Removal Action. The OU4 remedy consists of ICs and Operation and Maintenance (O&M) activities necessary to maintain the integrity of the physical controls constructed during the Removal Action. The ICs and O&M activities that comprise this remedy include the following: maintenance of the physical controls (i.e., fencing and signs); increased security patrols to minimize trespassing on TYAD property, and specifically OU4; proprietary controls such as deed restrictions to be placed on the land if it is ever transferred outside of the Government; public education to inform TYAD personnel and visitors with business in the vicinity of OU4 of the potential for UXO in the area; and periodic review to ensure that this remedial action remains effective in protecting the public. No remedial construction was required and the Army has implemented the IC and O&M procedures.

A ROD for OU5 was signed on September 28, 2000. OU5 consists of groundwater emanating from the inactive (RCRA) sanitary landfill. The landfill was closed with an engineered soil cover in accordance with a state- and EPA-approved RCRA closure plan, permit and O&M plan. The OU5 remedy consists of monitored natural attenuation and ICs. The expected duration of the monitored natural attenuation remedy is thirty (30) years. The Army will continue to monitor groundwater on a semi-annual basis, and ICs will prevent exposure to contaminated groundwater until monitoring data indicate that the remediation goals have been met. The ICs for OU5 are similar to those implemented at OU1, such that an agreement between TYAD and the Coolbaugh Township Zoning Office will ensure that future residents will not be exposed to groundwater with constituents above MCLs. In addition, construction of any onpost drinking water well in the area of groundwater contamination at OU5 will be prohibited until groundwater remediation goals have been met. This prohibition has been incorporated into the TYAD Master Plan. Also, ongoing public education regarding potential hazards associated with consumption of contaminated groundwater in OU5 and

results of long-term monitoring will be presented to all employees in articles in the installation newspaper.

Because hazardous substances, pollutants or contaminants that will remain onsite at OU-4, the UXO Area, do not allow unlimited use of, or unrestricted access to the site, the Army, as lead agency, will conduct five-year reviews as required by CERCLA. Five-year reviews will also be conducted in the Excluded Areas at OU1 and OU5, which are not being considered for deletion due to long term groundwater monitoring, until such time that it has been determined that cleanup goals have been attained.

Operation and maintenance (O&M) activities at the areas proposed for deletion will only be necessary at OU4, the UXO area. The O&M activities include continuing security patrols and maintenance of the fencing and the signs around the perimeter of OU4.

Community Relations Activities

Community interest in this site is currently low. Initially, community interest was very high when the VOC-contaminated groundwater plume was found to be migrating offsite to residential wells in the village of Tobyhanna. Since the affected residents have been connected to the Depot water supply, the interest in other sites at Tobyhanna has remained low. In March 1995, a Restoration Advisory Board (RAB) was formed. The RAB includes representatives of the Army, Monroe County, Coolbaugh Township, former TYAD employees, and other interested parties. The Army keeps the RAB well informed by providing members with copies of pertinent CERCLA documents for review and comment, and by holding periodic meetings to discuss ongoing CERCLA investigations and actions.

Applicable Deletion Criteria

The final ROD for the Tobyhanna Army Depot site was signed on September 28, 2000. All remedies are in place, including the institutional controls specified in the RODs for OU1, OU4, and OU5. Natural attenuation and long-term monitoring for the Excluded Areas, the groundwater at OU1 and OU5, is underway. One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if "responsible parties or other persons have implemented all appropriate response actions required." 40 CFR 300.425(e)(1)(i). At TYAD, EPA believes that the Army has implemented all appropriate response actions and therefore, EPA, with the concurrence of the Commonwealth of Pennsylvania, is

proposing deletion of this Site, except for the previously defined Excluded Areas, from the NPL. Documents supporting this action are available in the Deletion Docket.

While EPA does not believe that any future response actions in the areas to be deleted from the NPL will be necessary, if future conditions warrant such action, the proposed deletion areas of the Tobyhanna Army Depot site remain eligible for future Fund-financed response areas of the Tobyhanna Army Depot site remain eligible for future Fund-financed response actions. Furthermore, this partial deletion does not alter the status of the Excluded Areas, the groundwater plumes at OU1 and OU5, which are not proposed for deletion and remain on the NPL.

State Concurrence

In a letter dated January 11, 2001, the Commonwealth of Pennsylvania through its Department of Environmental Protection has concurred on EPA's final determination regarding the partial deletion.

Dated: March 30, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, U.S.
Environmental Protection Agency, Region 3.
[FR Doc. 01-14620 Filed 6-11-01; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket 99-231; FCC 01-158]

Spread Spectrum Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to improve spectrum sharing by unlicensed devices operating in the 2.4 GHz band (2400-2483.5 MHz), provide for introduction of new digital transmission technologies, and eliminate unnecessary regulations for spread spectrum systems. We take these actions to facilitate the continued development and deployment of new wireless devices for businesses and consumers.

DATES: Comments must be filed on or before August 27, 2001, and reply comments must be filed on or before September 25, 2001.

ADDRESSES: Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an

electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Parties who chose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW., TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Neal McNeil, Office of Engineering and Technology, (202) 418-2408, TTY (202) 418-2989, e-mail: nmcneil@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making and Order*, ET Docket 99-231, FCC 01-158, adopted May 10, 2001 and released May 11, 2001. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of Further Notice of Proposed Rulemaking and Order

1. The *Further Notice of Proposed Rulemaking and Order* ("FNPRM") propose to amend part 15 of the Commission's rules to improve spectrum sharing by unlicensed devices operating in the 2.4 GHz band (2400-2483.5 MHz), provide for introduction of new digital transmission technologies, and eliminate unnecessary regulations for spread spectrum systems. Specifically, this FNPRM proposes to revise the rules for frequency hopping spread spectrum systems operating in the 2.4 GHz band to reduce the amount of spectrum that must be used with certain types of operation, and to allow new digital transmission technologies to operate pursuant to the same rules as spread spectrum systems. It also proposes to eliminate the processing gain requirement for direct sequence spread spectrum systems, which will provide manufacturers with increased flexibility and regulatory certainty in the design of their products. We take these actions to facilitate the continued development and deployment of new wireless devices for businesses and consumers.

2. The original *Notice of Proposed Rule Making* ("NPRM") 64 FR 38877, July 20, 1999, in this proceeding, which was initiated in response to a request from the Home RF working group, proposed to amend the rules to allow frequency hopping spread spectrum

systems operating in the 2.4 GHz band to use hopping channel bandwidths wider than 1 MHz. The NPRM also proposed to adopt a new method for determining compliance with the requirement that direct sequence systems exhibit a minimum of 10 dB processing gain. *The First Report and Order* ("First R&O") 65 FR 57557, September 25, 2000, in this proceeding amended the spread spectrum rules to allow frequency hopping spread spectrum transmitters in the 2.4 GHz band to use bandwidths between 1 MHz and 5 MHz at a reduced power output of up to 125 mW. Frequency hopping systems with a bandwidth of up to 1 MHz are required to use at least 75 non-overlapping hopping frequencies. Use of 75 hopping frequencies is generally not feasible for systems having a bandwidth in excess of 1 MHz because the 2.4 GHz band, which covers 2400-2483.5 MHz, provides only 83.5 megahertz of spectrum. Accordingly, the rules were amended to permit systems using a bandwidth greater than 1 MHz but less than or equal to 5 MHz to use as few as 15 non-overlapping channels provided that the total span of hopping channels be at least 75 MHz. Therefore, while a system using 5 MHz hopping channel bandwidths is permitted to use as few as 15 hopping frequencies, one using 3 MHz hopping channel bandwidths must use at least 25 hopping frequencies to comply with the rules.

3. *Frequency Hopping Spread Spectrum Systems*. Thirteen parties filed a Joint Petition for Clarification, or in the Alternative, Partial Reconsideration ("Joint Petition") in response to the *First R&O* requesting that the Commission clarify its rules to specify a minimum of 15 hopping channels for any frequency hopping system operating in the 2.4 GHz band that uses adaptive hopping techniques as allowed under 47 CFR 15.247(h) and limits its output power to 125 mW, regardless of hopping channel bandwidth. We propose to amend 47 CFR 15.247 by incorporating the changes proposed in the Joint Petition. Interested parties are invited to comment on the acceptability of this proposal. Commenters are encouraged to include technical analyses that support claims that this change will either improve or degrade sharing of this spectrum. We particularly invite comment as to whether use of adaptive hopping techniques should be mandatory and how we should determine compliance with this requirement when evaluating specific devices for purposes of equipment certification. Commenters are also

encouraged to examine alternative operating parameters or conditions that may achieve the same goals. For example, the operating conditions in the Joint Petition would allow a system using 1 MHz bandwidth hopping channels to use as little as 18% of the available spectrum at 2.4 GHz to implement adaptive hopping techniques. Could the Commission realize the goals of the petitioners by requiring that adaptive hopping systems use a minimum of 25% or 50% of the band with a power reduction in relationship to amount of spectrum used? Could even fewer hops be used efficiently and effectively with a corresponding reduction in power? Those commenters who do not agree that the rule changes would be beneficial to operation in the 2.4 GHz band should provide an explanation.

4. *Digital Transmission Systems.* We observe that new digital transmission technologies have been developed that have spectrum characteristics similar to spread spectrum systems. Indeed, proponents of some of these technologies allege that their systems meet the processing gain requirement of 47 CFR 15.247(e) for direct sequence spread spectrum systems. However, the current rules only provide for specific types of spread spectrum technology and do not provide latitude to permit other types of technologies that have similar spectrum characteristics. We believe that the rules should be modified to permit the operation of these alternative digital technologies. We propose to amend 47 CFR 15.247 to provide for use of spread spectrum or digital technologies. This proposed change would apply for operations in the current spread spectrum bands at 915 MHz, 2.4 GHz and 5.7 GHz. Digital technologies would be required to meet the same technical requirements as spread spectrum systems, as modified in this proceeding. We believe that this proposal will allow more and more diverse products to utilize those bands and thereby increase consumer choice. It would provide the flexibility and certainty needed to promote the introduction of new, non-interfering products into the band, without the need for frequent rule changes to address each specific new technology that may be developed.

5. The rules for part 15 spread spectrum systems limit maximum peak output power to 1 watt. In addition, the rules for direct sequence systems limit peak power spectral density conducted to the antenna to 8 dBm in any 3 kHz band during any time interval of continuous operation. This peak power density limit is intended to control

interference by ensuring that the transmitted energy in a direct sequence system is not concentrated in any one portion of the emission bandwidth. In considering the appropriate power limits for digital modulation systems, it appears that the spectrum characteristics of these systems are very similar to the characteristics of direct sequence spread spectrum systems. Accordingly, it appears that digital systems may exhibit no more potential to cause interference to other devices than direct sequence systems. With this in mind, we invite comment on whether digitally modulated systems should be allowed to operate at the same power levels as direct sequence spread spectrum systems, namely 1 watt maximum output power with power spectral density not exceeding 8 dBm in any 3 kHz band. However, we also invite comment as to whether the flexibility we are allowing for digitally modulated systems warrants a reduction in permitted power levels to reduce the likelihood of any adverse impact on other systems operating in this spectrum, similar to the reduced power levels adopted for wide-band frequency hopping systems. If we find it necessary to reduce the allowed power for digitally modulated systems, should we make any changes in the power level adjustments for point-to-point operation in § 15.247(b)(3)?

6. The proposals made herein would more closely align the § 15.247 rules with the U-NII rules. We seek comment on whether the same result would be achieved by amending the U-NII rules to include the 915 MHz and 2.4 GHz bands. The upper limit of the 5.725–5.825 GHz U-NII band would also need to be expanded to 5.850 GHz in order to realign the standards with those presently permitted under § 15.247. We specifically invite comment on any detrimental impact this could have on manufacturers.

7. *Direct Sequence Processing Gain.* The processing gain requirement was adopted more than ten years ago as a means to ensure that manufacturers would not take advantage of the higher power levels afforded spread spectrum devices by designing systems with wide bandwidths where much of the energy transmitted is not needed for communication. As the spread spectrum industry has matured it is not clear that this requirement continues to be necessary. Manufacturers have an incentive to design their systems to include processing gain in order for their devices to operate properly when located near other radio frequency devices. In addition, it has become increasingly difficult to determine the

true processing gain of certain direct sequence spread spectrum systems. We observe that uncertainties about the processing gain requirement can be a significant impediment to the introduction of new technologies. In light of these factors, we are now proposing to eliminate the processing gain requirement for direct sequence spread spectrum systems. We invite comment on this proposal.

Initial Regulatory Flexibility Analysis

8. As required by Section 603 of the Regulatory Flexibility Act,¹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making and Order (Further Notice). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rule Making.

A. Need for and Objectives of the Proposed Rules

9. This Further Notice of Proposed Rulemaking proposes changes that remove unnecessary regulatory barriers to the introduction of new wireless devices using spread spectrum and other digital technologies. The proposals will also improve sharing of the spectrum by wireless devices operating in the 2.4 GHz band (2400–2483.5 MHz). Specifically, the *FNPRM* proposes to relax the frequency hopping spread spectrum rules in § 15.247 in accordance with a Joint Petition for Clarification, or in the Alternative, Partial Reconsideration filed by thirteen parties.² The proposed changes would permit all frequency hopping systems in the 2.4 GHz band to use as few as fifteen hopping channels instead of the seventy-five hopping channels some systems are now required to use. Systems using the minimum number of channels will be required to employ adaptive hopping techniques in order to avoid transmitting on occupied frequencies.

10. The *FNPRM* seeks comments regarding alternative operating parameters or conditions for frequency

¹ 5 U.S.C. 603.

² See Joint Petition for Clarification or, in the Alternative, Partial Reconsideration filed October 25, 2000 in ET Docket 99–231 on behalf of 3Comm, Apple Computer, Cisco Systems, Dell Computer, IBM, Intel Corporation, Intersil, Lucent Technologies, Microsoft, Nokia Inc., Silicon Wave, Toshiba America Information Systems, and Texas Instruments.

hopping systems that may achieve the same goals. For example, the operating conditions in the Joint Petition would allow a system using 1 MHz bandwidth hopping channels to use as little as 18% of the available spectrum at 2.4 GHz to implement adaptive hopping techniques. The *FNPRM* asks whether the Commission could realize the goals of the petitioners by requiring that adaptive hopping systems use a minimum of 25% or 50% of the band with a power reduction in relationship to amount of spectrum used.

11. The *FNPRM* also proposes to modify the rules for non-frequency hopping spread spectrum systems in the 915 MHz (902–928 MHz), 2.4 GHz, and 5.7 GHz (5725–5850 MHz) bands to accommodate developing systems that use digital modulation techniques. Systems using digital modulation techniques would be required to meet the same technical requirements as spread spectrum systems, as modified in this proceeding. The Commission believes that this proposal will allow more and more diverse products to utilize those bands and thereby increase consumer choice. It would also provide the flexibility and certainty needed to promote the introduction of new, non-interfering products into the band, without the need for frequent rule changes to address each specific new technology that may be developed. This proposal would more closely align the § 15.247 spread spectrum rules with the § 15.407 U–NII rules. Therefore, we seek comment on whether the same result would be achieved by amending the U–NII rules to include the 915 MHz and 2.4 GHz bands.

12. Finally, the *FNPRM* proposes to eliminate the processing gain requirement for direct sequence spread spectrum systems. The processing gain requirement was adopted more than ten years ago as a means to ensure that manufacturers would not take advantage of the higher power levels afforded spread spectrum devices by designing systems with wide bandwidths where much of the energy transmitted is not needed for communication. As the spread spectrum industry has matured it is not clear that this requirement continues to be necessary. Manufacturers have an incentive to design their systems to include processing gain in order for their devices to operate properly when located near other radio frequency devices.

B. Legal Basis

13. The proposed action is taken pursuant to Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

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

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.³ The Regulatory Flexibility Act defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small business concern” under section 3 of the Small Business Act.⁴ A small business concern in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁵

15. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees on order to qualify as a small business concern.⁶ Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.⁷ We do not believe this action would have a negative impact on small entities that manufacture unlicensed spread spectrum devices. Indeed, we believe the actions should benefit small entities because it should make available increased business opportunities to small entities. We request comment on these assessments.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

16. Part 15 transmitters are already required to be authorized under the Commission’s certification procedure as a prerequisite to marketing and importation. See 47 CFR 15.101, 15.201,

15.305, and 15.405. Additionally, manufacturers of direct sequence spread spectrum systems must submit a determination of system processing gain to the Commission in order to obtain product certification.

17. The proposed regulations will add permissible methods of operation for frequency hopping spread spectrum systems. No new reporting or recordkeeping requirements are proposed for the manufacturers of frequency hopping spread spectrum devices. However, the rules proposed in the *Further Notice* would eliminate the requirement that manufacturers of direct sequence systems submit evidence of compliance with a minimum processing gain. Therefore, the proposed rules reduce the reporting and recordkeeping burdens placed on all manufacturers, including small entities. None of the proposals would require alteration of any existing products.

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

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

19. At this time, the Commission does not believe the proposals contained in the *Further Notice* will have a significant economic impact on small entities. The *Further Notice* does not propose new device design standards. Instead, it relaxes the rules with respect to the types of devices which are allowed to operate pursuant to the spread spectrum regulations. There is no burden of compliance with the proposed changes. Manufacturers may continue to produce devices which comply with the former rules and, if desired, design devices to comply with the new regulations. The proposed rules will apply equally to large and small entities. Therefore, there is no inequitable impact on small entities. Finally, the *FNPRM* does not recommend a deadline for implementation. We believe that the proposals are relatively simple and do not require a transition period to

³ 5 U.S.C. 603(b)(3).

⁴ *Id.* 601(3).

⁵ *Id.* 632.

⁶ See 13 CFR 121.201, NAICS Code 334220 (SIC Code 3663). Although SBA now uses the NAICS classifications, instead of SIC, the size standard remains the same.

⁷ See U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663 (NAICS Code 334220).

implement. An entity desiring to take advantage of the relaxed regulations may do so at any time.

20. Unless our views are altered by comments, we find that the proposed rule changes contained in this *FNPRM* will not present a significant economic burden to small entities. Therefore it is not necessary at this time to propose alternative rules. Notwithstanding our finding, we request comment on alternatives that might minimize the amount of adverse economic impact, if any, on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

21. None.

22. Pursuant to sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r), the Further Notice of Proposed Rule Making is hereby *Adopted*.

List of Subjects in 47 CFR Part 15

Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 15 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Amend § 15.247 as follows:

a. Revise paragraphs (a) introductory text, (a)(1)(ii), (a)(1)(iii), (a)(2), (b)(1), (c) and (d).

b. Redesignate paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5).

c. Add a new paragraph (b)(3), and revise new paragraphs (b)(4) and (b)(5).

d. Remove paragraph (e).

e. Redesignate paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g).

f. Revise new paragraphs (e), (f), and (g) (The Note following redesignated paragraph (g) is unchanged.).

The additions and revisions read as follows:

§ 15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.

(a) Operation under the provisions of this section is limited to frequency hopping and direct sequence spread

spectrum systems and digitally modulated intentional radiators that comply with the following provisions:

(1) * * *

(ii) Frequency hopping systems operating in the 5725–5850 MHz band shall use at least 75 hopping frequencies. The maximum 20 dB bandwidth of the hopping channel is 1 MHz. The average time of occupancy on any frequency shall not be greater than 0.4 seconds within a 30 second period.

(iii) Frequency hopping systems in the 2400–2483.5 MHz band shall use at least 75 non-overlapping channels, except that as few as 15 non-overlapping channels may be used for systems that intelligently modify their hopsets in accordance with paragraph (g) of this section. Hopsets modified in this manner must be re-determined at least once every 30 seconds. The average time of occupancy on any channel shall not be greater than 0.4 seconds within a period of 0.4 seconds multiplied by the number of hopping channels employed.

(2) Systems using direct sequence spread spectrum and digital modulation techniques may operate in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands.

(b) * * *

(1) For frequency hopping systems in the 2400–2483.5 MHz band employing at least 75 hopping channels, and all frequency hopping systems in the 5725–5850 MHz band: 1 Watt. For all other frequency hopping systems in the 2400–2483.5 band: 0.125 Watt

* * * * *

(3) For systems using digital modulation in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5780 MHz bands: 1 Watt.

(4) Except as shown below in this paragraph (b)(4), if transmitting antennas of directional gain greater than 6 dBi are used, the peak output power from the intentional radiator shall be reduced below the stated values in paragraph (b)(3) by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(i) Systems operating in the 2400–2483.5 MHz band that are used exclusively for fixed, point-to-point operations may employ transmitting antennas with directional gain greater than 6 dBi provided the maximum peak output power of the intentional radiator is reduced by 1 dB for every 3 dB that the directional gain of the antenna exceeds 6 dBi.

(ii) Systems operating in the 5725–5850 MHz band that are used exclusively for fixed, point-to-point operations may employ transmitting

antennas with directional gain greater than 6 dBi without any corresponding reduction in transmitter peak output power.

(iii) Fixed, point-to-point operation, as used in paragraphs (b)(4)(i) and (b)(4)(ii) of this section, excludes the use of point-to-multipoint systems, omnidirectional applications, and multiple co-located intentional radiators transmitting the same information. The operator of the spread spectrum intentional radiator or, if the equipment is professionally installed, the installer is responsible for ensuring that the system is used exclusively for fixed, point-to-point operations. The instruction manual furnished with the intentional radiator shall contain language in the installation instructions informing the operator and the installer of this responsibility.

(5) Systems operating under the provisions of this section shall be operated in a manner that ensures that the public is not exposed to radio frequency energy levels in excess of the Commission's guidelines. See § 1.1307(b)(1) of this chapter.

(c) In any 100 kHz bandwidth outside the frequency band in which the spread spectrum or digitally modulated intentional radiator is operating, the radio frequency power that is produced by the intentional radiator shall be at least 20 dB below that in the 100 kHz bandwidth within the band that contains the highest level of the desired power, based on either an RF conducted or a radiated measurement. Attenuation below the general limits specified in § 15.209(a) is not required. In addition, radiated emissions which fall in the restricted bands, as defined in § 15.205(a), must also comply with the radiated emission limits specified in § 15.209(a) (see § 15.205(c)).

(d) For direct sequence spread spectrum and digitally modulated systems, the peak power spectral density conducted from the intentional radiator to the antenna shall not be greater than 8 dBm in any 3 kHz band during any time interval of continuous transmission.

(e) For the purposes of this section, hybrid systems are those that employ a combination of both frequency hopping and direct sequence or digital modulation techniques. The frequency hopping operation of the hybrid system, with the direct sequence or digital modulation operation turned off, shall have an average time of occupancy on any frequency not to exceed 0.4 seconds within a time period in seconds equal to the number of hopping frequencies employed multiplied by 0.4. The direct sequence or the digital modulation

operation of the hybrid system, with the frequency hopping operation turned off, shall comply with the power density requirements of paragraph (d) of this section.

(f) Frequency hopping systems are not required to employ all available hopping channels during each transmission. However, the system, consisting of both the transmitter and the receiver, must be designed to comply with all of the regulations in this section should the transmitter be presented with a continuous data (or information) stream. In addition, a system employing short transmission bursts must comply with the definition of a frequency hopping system and must distribute its transmissions over the minimum number of hopping channels specified in this section.

(g) The incorporation of intelligence within a frequency hopping system that permits the system to recognize other users within the spectrum band so that it individually and independently chooses and adapts its hopsets to avoid hopping on occupied channels is permitted. The coordination of frequency hopping systems in any other manner for the express purpose of avoiding the simultaneous occupancy of individual hopping frequencies by multiple transmitters is not permitted.

* * * * *

[FR Doc. 01-14526 Filed 6-11-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 24

[WT Docket No. 01-108; FCC 01-153]

Year 2000 Biennial Regulatory Review To Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and the Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission, pursuant to its year 2000 Biennial Review of regulations, proposes to modify or eliminate regulations that have become outdated as a result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related Commission rules, or a combination of these factors. The Commission focuses its review on the cellular rules, although it also considers modification or elimination of certain other rules that

affect all Public Mobile Services. The NPRM specifically addresses the following rules: cellular service requirements and limitations; cellular technical rules, including the analog cellular compatibility standard, the electronic serial number rule, channelization requirements, modulation requirements and in-band emissions limitations, the wave polarization requirement, assignment of system identification numbers, determination of cellular geographic service area, and service commencement and construction periods; the incidental services rule; and the cellular anti-trafficking rules.

DATES: Comments are due on or before July 2, 2001; reply comments are due on or before August 1, 2001. Written comments by the public on the proposed information collections are due on or before July 2, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the modified information collection(s) on or before August 13, 2001.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW.; TW-A325; Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lauren Van Wazer at (202) 418-0030 (Wireless Telecommunications Bureau). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Notice of Proposed Rulemaking ("NPRM") in WT Docket No. 01-108, FCC 01-153, adopted May 3, 2001 and released May 17, 2001. The complete text of the document is

available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 445 12th Street, SW., CY-B400, Washington, DC 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc01153.pdf>. This Notice of Proposed Rulemaking contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

I. Paperwork Reduction Act

1. This NPRM contains proposed revisions to existing information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this Notice; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed modifications to existing information collections are necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

2. The information collection requirements of 47 CFR 22.901, which is contained in OMB 3060-0508 (66 FR 109), is being proposed for elimination. Further, the Commission proposes to revise the information collection associated with 47 CFR 22.937, which is also contained in OMB 3060-0508. By revising 47 CFR 22.937 to eliminate the financial demonstration requirement for all cellular licensees who are not competing with cellular renewal licensees, the Commission thus eliminates the information collection

requirement(s) associated with this rule section.

OMB Control No.: 3060-0508.

Title: Rewrite and Update of Part 22.

Form No.: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 166,732.

Frequency of Response: On occasion, quarterly, semi-annually, annually.

Total Annual Burden: 250,415 hours.

Total Annual Cost: 0.

Needs and Uses: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services. Generally the collected information is used to determine legal, technical and/or financial qualifications of the respondents.

II. Introduction

3. This Notice of Proposed Rulemaking initiates a proceeding as part of the Commission's year 2000 Biennial Review of regulations pursuant to Section 11 of the Communications Action of 1934, as amended, 47 U.S.C. 161 (Communications Act). Section 11 requires the Commission to review all of its regulations applicable to providers of telecommunications services, and to determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service and whether such regulations should be deleted or modified. As a result, the NPRM sets forth and seeks comment on specific proposed changes to several CMRS service rules.

III. Background

4. In connection with the Commission's year 2000 Biennial Review, in CC Docket No. 00-175, FCC 00-456 (rel. Jan. 17, 2001) (not published in the **Federal Register**), the Commission staff prepared a comprehensive review of regulations that affect telecommunications service providers. The Commission subsequently issued a report endorsing recommendations made by staff as a result of that review. In the staff report, the staff notes that many of the part 22 rules regulating cellular telephone service date back to the inception of the service in the early 1980s, when the two cellular carriers in each market were the only providers of mobile telephony, thus creating a "duopoly" market for this service. The staff report recommends initiating a rulemaking to review the cellular rules and consider which of these rules are obsolete as a result of the technological advances and

growth of competition that have occurred in mobile telephony since the rules were adopted. The report also recommends review of certain other Part 22 rules on the same basis. This NPRM addresses many of the issues identified in the staff Biennial Review report.

IV. Discussion

5. This NPRM sets forth and seeks comment on specific proposed changes to several service rules. The following specific rules and issues are addressed in the item: (1) Cellular service requirements and limitations (§ 22.901); (2) Advanced Mobile Phone Service (AMPS) analog cellular compatibility standard (§§ 22.901 and 22.933); (3) manufacturing and design requirements governing the security of electronic serial numbers (ESNs) in cellular telephones (§ 22.919); (4) cellular channelization rules (§ 22.905); (5) cellular analog modulation requirement and out-of-band emissions limitations (§§ 22.915 and 22.917), as well as out-of-band emissions rules for broadband Personal Communications Service (PCS); (6) cellular wave polarization requirement (§ 22.367(a)(4)); (7) rule governing cellular System Identification Numbers (SIDs) (§ 22.941); (8) alternative methods for determining a Cellular Geographic Service Area (CGSA) (§ 22.911); (9) service commencement and construction period rules (§ 22.946); (10) incidental services rules (§ 22.323); and (11) cellular anti-trafficking rules (§§ 22.937, 22.943, and 22.945). Each of these issues will be discussed briefly in turn.

6. Cellular Service Requirements and Limitations (§ 22.901). Although this rule has been amended several times since its adoption, the NPRM notes that it appears outdated in several respects. First, the rule is drafted as though the principal technology employed is analog, which is no longer true. The NPRM proposes revising the rule to avoid characterizing any particular technology as either primary or alternative. Second, the NPRM seeks comment on the various types of service area information provided by non-cellular CMRS carriers, as well as whether the requirement for cellular carriers to provide reliable service area information is still necessary in light of the current level of competition for CMRS services. Also, the NPRM seeks comments on modifying or eliminating other provisions of the rule.

7. Advanced Mobile Phone Service (AMPS) analog cellular compatibility standard (§ 22.901 and 22.933). Currently, cellular carriers are required to provide analog service in accord with the Advanced Mobile Phone Service

(AMPS) specifications referenced and incorporated in the April 1981 version of Office of Engineering and Technology (OET) Bulletin No. 53. The NPRM seeks comment on whether the Commission should update or eliminate this standard in light of technological and market developments since the adoption of the requirement. In particular, the NPRM seeks comment on the possible impact of eliminating this rule on certain existing programs and services, and notes that the Commission is reluctant to eliminate the standard if doing so will significantly impair the access of users of analog-dependent technology to wireless telecommunications services.

8. Electronic Serial Number (ESN) rule (§ 22.919). Section 22.919 sets forth various design requirements for manufacturers of cellular telephones, which are not applicable to other CMRS services. These requirements were adopted to address the problem of cellular cloning fraud, which was prevalent in the early 1990s. Given the developments since the Commission promulgated the ESN requirements, which include enactment of a statute to address such fraud directly and changes in the technologies available to prevent fraud, the NPRM notes that many of the original reasons for establishing the ESN requirements may no longer be compelling and proposes removing § 22.919 from the Commission's rules.

9. Channelization Requirements (§ 22.905). The NPRM tentatively concludes that the channelization plan in the rules is no longer necessary because analog nationwide compatibility has already been established and the principal digital technologies are exempt from this plan.

10. Modulation Requirements and In-Band Emissions Limitations (§ 22.915). Section 22.915 of the Commission's rules requires that cellular systems be capable of providing service using the modulation types described in the existing analog compatibility specification. Since the adoption of this rule, the Commission has permitted licensees more flexibility in choosing the type of technology with which to operate. The NPRM seeks comment on how the Commission can define an out-of-band emissions limit to provide effective protection from interference while allowing licensees flexibility to establish a different limit where appropriate.

11. Wave Polarization Requirement (§ 22.367(a)(4)). The Commission's current rules require vertical wave polarization. In the NPRM, the Commission tentatively concludes that it should relax this requirement.

12. Assignment of System Identification Numbers (SIDs) (§ 22.941). Section 22.941 of the Commission's rules sets forth the procedure by which the Commission assigns system identification numbers (SIDs) in the Cellular Radiotelephone Service. The Commission proposes generally eliminating SIDs as a term of cellular licenses, and also seeks comment on proposals for SID coordination functions to be carried out by an industry organization, rather than the Commission.

13. Determination of Cellular Geographic Service Area (CGSA) (§ 22.911(a)). Section 22.911(a) of the Commission's rules sets forth a standardized method for determining the CGSA of a cellular system using a specific mathematical formula. Section 22.911(b) sets forth alternative methods that may be used if a licensee believes that the standard method produces a CGSA that substantially differs from the actual coverage of its system. The NPRM proposes modifications in this rule to clarify the acceptable methods for determining the CGSA.

14. Service Commencement and Construction Periods (§ 22.946). This rule sets forth the timing requirements relating to the deployment of new cellular systems. The NPRM seeks comment on correcting an oversight made during a recent change of the rule, as well as updating the rule in light of the level of competition for CMRS services.

15. Incidental Services Rule (§ 22.323). Section 22.323 authorizes carriers operating in the Public Mobile Radio Services to provide other communications services incidental to the primary public mobile services, provided certain conditions are met. The NPRM seeks comment on eliminating or modifying this rule to provide carriers more flexibility in providing wireless services to meet customer demands.

16. Cellular Anti-Trafficking Rules (§§ 22.937, 22.943, and 22.945). These rules were originally adopted to prevent speculation and trafficking in cellular licenses at a time when cellular licenses were awarded through a lottery process. Given that licenses are now principally awarded through the auction process, which in effect offers safeguards against speculative purchases of authorizations, the NPRM seeks comment on whether the Commission should eliminate or substantially modify these rules.

V. Filing Procedures

17. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 2, 2001, and

reply comments on or before August 1, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

18. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

19. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

20. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW., CY-B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

VI. Initial Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act (RFA),¹ the Commission

has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM, WT Docket No. 01-108. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the Notice provided in paragraph 76 of the NPRM. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.² In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.³

A. Need for, and Objectives of, the Proposed Rules

22. As part of our 2000 biennial regulatory review pursuant to Section 11 of the Communications Act of 1934, as amended (Communications Act), we are required to review all of our regulations that are applicable to providers of telecommunications service to determine whether any rule is no longer in the public interest. More specifically, in the *Biennial Review Report*, the Commission indicated that it would initiate a rulemaking proceeding to identify and address potentially outdated technical rules governing cellular service, based on the staff's recommendations that were included in the *Biennial Review Staff Report*.⁴ The staff report notes that many of the Part 22 technical rules regulating cellular telephone service date back to the inception of the service in the early 1980s and, given the significant technological changes and growth in competition for cellular services since that time, the rules may be obsolete. In particular, the *NPRM* seeks comment on elimination of the cellular analog compatibility standard and the Electronic Serial Number (ESN) rule, as well as modifying several other technical rules.⁵ In the same vein, some of the cellular anti-trafficking rules may be outdated because they were adopted during a period when the Commission

104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Enforcement Fairness Act of 1996 (SBREFA).

² See 5 U.S.C. 603(a).

³ See *id.*

⁴ Biennial Regulatory Review, CC Docket No. 00-175, Report FCC 00-456 (adopted December 29, 2000; released January 17, 2001) (*Biennial Review Report*); Biennial Regulatory Review 2000 Updated Staff Report, released January 17, 2001 (*Biennial Review Staff Report*).

⁵ The specific technical rules include: §§ 22.367(a)(4), 22.901, 22.905, 22.911, 22.915, 22.917, 22.919, 22.933, 22.941, and 22.946 of the Commission's rules.

¹ See 5 U.S.C. 603. The RFA, see U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law

resolved mutually exclusive applications for initial cellular services through lottery, rather than the current system of resolving such mutually exclusive applications through competitive bidding.⁶ We also take this opportunity to reevaluate certain other Part 22 rules that apply both to cellular and to other CMRS, specifically § 22.323, which imposes conditions on the provision of "incidental" services by Public Mobile Services providers.⁷

B. Certification Regarding Broadband PCS

23. With regard to broadband Personal Communications Service (PCS), we certify, pursuant to the RFA, that the proposed changes to § 24.238, emissions limitations, would not have "a significant economic impact on a substantial number" of small broadband PCS providers.⁸ The proposed changes to this rule would reduce the compliance burden on these entities by allowing these entities greater flexibility to establish out-of-band emissions limits to be used at specified band edges.⁹ Specifically, the proposed § 24.238(c) would allow parties to establish alternative out-of-band emissions limits pursuant to private contractual arrangements—a practice that is not permitted by the current rule. This proposal would effectively codify and expand upon a waiver that the Wireless Telecommunications Bureau (Bureau) granted for all broadband PCS licensees in August 2000.¹⁰ In that waiver grant, the Bureau waived § 24.238 "insofar as it limits out-of-band emissions on: (1) Adjacent contiguous frequency blocks that are separately assigned to the same PCS licensees, and (2) adjacent contiguous frequency blocks that are assigned to different PCS licensees who have entered into an agreement(s) concerning interference protection to the adjacent spectrum."¹¹ The proposed rule change would allow somewhat more flexibility to licensees because it would not limit a licensee's ability to contract for alternative emissions limitations to only those frequency blocks that are both adjacent and contiguous. Because our proposed change would effectively codify a waiver that permits greater flexibility for

broadband PCS licensees, the proposed changes to § 24.238 would not have a significant economic impact on broadband PCS providers.

C. Legal Basis

24. The potential actions on which comment is sought in this NPRM would be authorized under Sections 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r).

D. Description and Estimate of the Small Entities Subject to the Rules

25. The RFA requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the Agency certifies that "the rule will not, if promulgated, have a significant impact on a substantial number of small entities."¹² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴ A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁵ This IRFA describes and estimates the number of small-entity licensees and manufacturers that may be affected if the proposals in this NPRM are adopted.

26. This NPRM could result in rule changes that, if adopted, would affect small businesses that currently are or may become Cellular Radiotelephone Service providers that are regulated under subpart H of part 22 of the Commission's rules. In addition, the proposed changes to § 22.323 of the Commission's rules would, if adopted, affect service providers that are regulated under any provisions of part 22 of the Commission's rules. These include, in addition to Cellular Radiotelephone Service providers, providers of Paging and Radiotelephone (Common Carrier Paging), Air-Ground

Radiotelephone, Offshore Radiotelephone, and Rural Radiotelephone services. In addition, pursuant to § 90.493(b) of the Commission's rules, paging licensees on exclusive channels in the 929–930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22.¹⁶ As this rulemaking proceeding applies to multiple services, we will analyze the number of small entities affected on a service-by-service basis. In addition to service providers, some of the proposed rule changes may also affect manufacturers of cellular telecommunications equipment. We will include a separate discussion regarding the number of small cellular equipment manufacturing entities that are potentially affected by the proposed rule changes.

27. *Cellular Radiotelephone Service.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹⁷ According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms, which operated during 1992, had 1,000 or more employees.¹⁸ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or PCS, which are placed together in the data.¹⁹ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by these proposals, if adopted.

⁶ The specific cellular anti-trafficking rules include: §§ 22.937, 22.943, and 22.945 of the Commission's rules.

⁷ See 47 CFR 22.323.

⁸ See 5 U.S.C. 605.

⁹ See para. 42, *supra*.

¹⁰ Omnipoint Request for Broadband Declaratory Ruling or Waiver Concerning PCS Emissions Limits Rule Section 24.238, DA 00–1767, 15 FCC Rcd. 13,422 (2000).

¹¹ *Id.* at ¶ 1.

¹² U.S.C. 603(b)(3).

¹³ *Id.* at 601(6).

¹⁴ *Id.* at 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." *Id.*

¹⁵ Small Business Act, 15 U.S.C. 632 (1996).

¹⁶ See 47 CFR 90.493(b).

¹⁷ 13 CFR 121.201, SIC code 4812.

¹⁸ 1992 Census, Series UC92–S–1, at Table 5, SIC code 4812.

¹⁹ See *Telecommunications Industry Revenues: 1999*, Industry Analysis Division, Common Carrier Bureau (Sept. 2000).

28. *Paging.* The Commission has adopted, and the SBA has approved, a two-tier definition of small businesses in the context of auctioning licenses in the paging services. Under this definition, a small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. The Commission has estimated that as of January 1998, there were more than 600 paging companies in the United States.²⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or meet the small business thresholds set forth above, or the number of these carriers that are regulated under part 22 of the Commission's rules, and thus are unable at this time to estimate with precision the number of affected paging carriers that would qualify as small business concerns under our definition. However, we estimate that the majority of existing paging providers qualify as small entities under our definition. Consequently, we estimate that there are up to approximately 600 currently licensed small paging carriers that may be affected by the rule changes proposed in the NPRM. In addition, high bids were placed at auction in March 2000 for 985 new geographic area paging licenses, and an additional 15,645 geographic area paging licenses are expected to be awarded following future auctions. In the March 2000 auction, high bids were placed on paging licenses by 57 entities that qualify as small businesses under the Commission's definition. Licenses have been granted to 56 of these entities, and the application of the other entity remains pending. Thus, in addition to existing licensees, should the Commission adopt the rule changes proposed in the NPRM either 57 or 58 license winners in the recent auction would be affected small entities, and up to 15,645 winners of paging licenses in future auctions would be affected small entities.

29. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service.²¹ Accordingly,

we use the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

30. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore Radiotelephone Service. Accordingly, we use the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

31. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.²² A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).²³ We therefore use the SBA definition applicable to radiotelephone companies; i.e., an entity employing no more than 1,500 persons. There are approximately 1000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

32. *Cellular Equipment Manufacturers.* Some of the proposed actions in the NPRM will also affect manufacturers of cellular equipment. The Commission does not know how many cellular equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular equipment manufacturers is

considerably lower than 920. Under SBA regulations, a "communications equipment manufacturer," which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment, must have a total of 750 or fewer employees in order to qualify as a small business concern.²⁴ Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91%) of these firms had 750 or fewer employees and would therefore be classified as small entities.²⁵ Using our current estimate of cellular equipment manufacturers and the previous percentage estimate of small entities, we estimate that our current action may affect approximately 837 small cellular equipment manufacturers.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

34. This NPRM neither proposes nor anticipates any additional reporting, recordkeeping or other compliance measures.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

35. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁶

36. As stated earlier, several of the Commission's technical and anti-trafficking cellular rules may be outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for cellular service providers, provide additional flexibility in manufacturing cellular equipment, and also enhance the market demand for

²⁰ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Third Report, 13 FCC Rcd 19746, 19792 (1998).

²¹ Air-ground radiotelephone service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

²² Rural Radiotelephone Service is defined in § 22.99 of the Commission's rules, 47 CFR 22.99.

²³ BETRS is defined in §§ 22.757 and 22.729 of the Commission's rules, 47 CFR 22.757 and 22.729.

²⁴ 13 CFR 121.201, Standard Industrial Classification (SIC) code 3663.

²⁵ U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC code 3663 (estimate created by the Census Bureau under contract to the Office of Advocacy, SBA).

²⁶ See 5 U.S.C. 603.

some products. Also, amending or deleting the incidental services rules may allow licensees in the part 22 services greater flexibility in the types of services they offer. In the NPRM, the Commission has set forth various options it is considering for each rule, from modifying rules to eliminating them altogether. As discussed in the NPRM, the effect of any rule change on the regulatory burden of both licensees and equipment manufacturers will be a significant criterion in determining appropriate Commission action.

37. We note that the entire intent underlying our actions here is to lessen the levels of regulation, consistent with our mandate for undertaking biennial reviews. We have therefore described, *supra*, various alternatives to lessen the regulatory burden on carriers and equipment manufacturers, including small entities. We seek comment on any additional appropriate alternatives.

G. Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rules

38. None.

VII. Ordering Clauses

39. Authority for the issuance of this NPRM is contained in Sections 154, 222, 303, 309 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 222, 303, 309 and 332.

40. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 22

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Rural areas.

47 CFR Part 24

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend title 47, part 22 of the Code of Federal Regulations, as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.323 is revised to read as follows:

§ 22.323 Incidental communication services.

Carriers authorized to operate stations in the Public Mobile Services may use these stations to provide other telecommunications services incidental to the primary public mobile service(s) for which the authorizations were issued.

3. Section 22.367 is amended by removing and reserving paragraph (a)(4) and by revising paragraph (d), to read as follows:

§ 22.367 Wave polarization.

* * * * *

(a) * * *

(4) [Reserved]

* * * * *

(d) *Any polarization.* Base, mobile and auxiliary test transmitters in the Cellular Radiotelephone Service are not limited as to wave polarization. Public Mobile Service stations transmitting on channels higher than 960 MHz are not limited as to wave polarization.

§ 22.377 [Amended]

4. Section 22.377 is amended by removing paragraph (c).

5. Section 22.901 is revised to read as follows:

§ 22.901 Cellular service requirements and limitations.

The licensee of each cellular system is responsible for ensuring that its cellular system operates in compliance with this section. Each cellular system must provide either mobile service, fixed service, or a combination of mobile and fixed service, subject to the requirements, limitations and exceptions in this section. Mobile service provided may be of any type, including two-way radiotelephone, dispatch, one-way or two-way paging, and personal communications services (as defined in part 24 of this chapter). Fixed service is considered to be primary service, as is mobile service. When both mobile and fixed service are provided, they are considered to be co-primary services. In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.

6. Section 22.905 is revised to read as follows:

§ 22.905 Frequency bands.

The following frequency bands are allocated for assignment to service providers in the Cellular Radiotelephone Service.

(a) Channel Block A: 869–880 MHz paired with 824–835 MHz, and 890–891.5 MHz paired with 845–846.5 MHz.

(b) Channel Block B: 880–890 MHz paired with 835–845 MHz, and 891.5–894 MHz paired with 846.5–849 MHz.

7. Section 22.911 is amended by revising paragraphs (b)(1) and (b)(3), to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(b) * * *

(1) The alternative CGSA determination must define the CGSA in terms of distances from the cell sites to the 32 dBμV/m contour along the eight cardinal radials, with points in other azimuthal directions determined by the method given in paragraph (a)(6) of this section. The distances used for the cardinal radials must be representative of the coverage within the 45° sectors, as depicted by the alternative CGSA determination.

* * * * *

(3) The provision for alternative CGSA determinations was made in recognition that the formula in paragraph (a)(1) of this section is a general model that provides a reasonable approximation of coverage in most land areas, but may substantially under-predict or over-predict coverage in specific areas with unusual terrain roughness or features, and may be inapplicable for certain purposes, e.g., cells with a coverage radius of less than 8 kilometers (5 miles). In such cases, alternative methods that utilize more specific models are appropriate. Accordingly, the FCC does not consider use of the formula in paragraph (a)(1) of this section with parameters outside of the limits in paragraphs (a)(3), (a)(4) and (a)(5) of this section or with data for radials other than the cardinal radials to be a valid alternative method for determining the CGSA of a cellular system.

* * * * *

§ 22.915 [Removed]

8. Section 22.915 is removed.

9. Section 22.917 is revised to read as follows:

§ 22.917 Emission limitations for cellular equipment.

The rules in this section govern the spectral characteristics of emissions in the Cellular Radiotelephone Service.

(a) *Out of band emissions.* The power of any emission outside of the

authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least $43 + 10 \log(P)$ dB.

(b) *Measurement procedure.*

Compliance with the limitation in paragraph (a) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or more. However, for measurements within 1 MHz of the center of the main emission bandwidth, a resolution bandwidth of not less than 1% of the main emission bandwidth may be employed. For the purpose of this section, the main emission bandwidth is the continuous width of the signal outside of which all emissions are attenuated by at least 26 dB below the transmitting power. Either peak or average measurements may be used, provided that both the emissions and the reference transmitter power are measured the same way. When measuring emissions, the transmitter must be set to operate as close to each of the upper and lower channel block edges as the design permits for normal operation.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

§ 22.919 [Removed]

10. Section 22.919 is removed.

11. Section 22.921 is revised to read as follows:

§ 22.921 911 call processing procedures; 911-only calling mode.

Mobile telephones manufactured after February 13, 2000 that are capable of operating in the analog mode described in the standard publication ANSI TIA/EIA-553-A-99 "Mobile Station—Base Station Compatibility Standard" (published November 1, 1999—available for purchase from Global Engineering Documents, 15 Inverness East, Englewood, CO 80112), must incorporate a special procedure for

processing 911 calls. Such procedure must recognize when a 911 call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be transmitted through the analog systems of other carriers. This special procedure must incorporate one or more of the 911 call system selection processes endorsed or approved by the FCC.

1. Section 22.937 is revised to read as follows:

§ 22.937 Demonstration of financial qualifications in cellular renewal proceedings.

Each applicant for a new cellular system whose application is competing with a cellular renewal application must demonstrate that it has, at the time the application is filed, either a firm financial commitment, an irrevocable letter of credit or a performance bond in the amount of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system (the irrevocable letter of credit or performance bond must be from the type of financial institution described in paragraph (b) of this section), or available resources, as defined in paragraph (c) of this section, necessary to construct and operate its proposed cellular system for one year.

(a) The firm financial commitment may be contingent on the applicant obtaining an authorization. The applicant must also list all of its realistic and prudent estimated costs of construction and any other expenses to be incurred during the first year of operating its proposed system.

(b) The firm financial commitment required above shall be obtained from a state or federally chartered bank or savings and loan association, another recognized financial institution, or the financial arm of a capital equipment supplier; shall specify the terms of the loan or other form of credit arrangement, including the amount to be borrowed, the interest to be paid, the amount of the commitment fee and the fact that it has been paid, the terms of repayment and any collateral required; and shall contain a statement:

(1) That the lender has examined the financial conditions of the applicant, including audited financial statements where applicable, and has determined that the applicant is creditworthy;

(2) That the lender has examined the financial viability of the proposal for which the applicant intends to use the commitment;

(3) That the lender is committed to providing a sum certain to the particular applicant;

(4) That the lender's willingness to enter into the commitment is based solely on its relationship with the applicant; and,

(5) That the commitment is not in any way guaranteed by an entity other than the applicant.

(c) An applicant intending to rely on personal or internal resources must submit:

(1) Audited financial statements certified within one year of the date of the cellular application, indicating the availability of sufficient net current assets to construct and operate the proposed cellular system for one year;

(2) A balance sheet current within 60 days of the date of filing its application that clearly shows the continued availability of sufficient net current assets to construct and operate the proposed cellular system for one year; and,

(3) A certification by the applicant or an officer of the applicant organization attesting to the validity of the unaudited balance sheet.

(d) Applicants intending to rely upon financing obtained through a parent corporation must submit the information required by paragraph (c) of this section, as the information pertains to the parent corporation.

(e) As an alternative to relying upon a firm financial commitment, an irrevocable letter of credit, or a performance bond from a financial institution as described in paragraph (b) of this section, an applicant may state that it has placed in an escrow account sufficient cash to meet its construction and first-year operating expenses. Such a statement must specify the amount of cash, the escrow account number and the financial institution where the escrow account is located.

(f) Any competing application filed against the renewal application of an incumbent cellular system licensee that does not demonstrate, at the time it is initially filed, that the competing applicant has sufficient funds to construct and operate for one year its proposed cellular system will be dismissed.

13. § 22.941 is revised to read as follows:

§ 22.941 System identification numbers.

System identification numbers (SIDs) are transmitted by cellular systems to cellular telephones in their areas. Reception of a SID so transmitted enables cellular telephones to establish whether they would be in a "home" or "roamer" status when receiving service

from the cellular system. The SID of a cellular system is also programmed into the cellular telephones that are subscribed to that system. A cellular telephone transmits the programmed SID (among other numbers) when seeking service from a cellular system, enabling that system to determine whether the telephone is one of its subscribers or a roamer; and if a roamer, what the home system of that cellular telephone is. SIDs are also used for various billing purposes.

(a) Each cellular system must have at least one SID that is associated uniquely with it. Cellular system licensees must coordinate the usage of SIDs to ensure that this requirement is met.

(b) Cellular systems may transmit only their SID(s) or the SID(s) of other cellular systems. A cellular system may transmit the SID(s) of another cellular system only if the licensee of that system concurs with such use of its SID.

14. § 22.943 is amended by revising it to read as follows:

§ 22.943 Limitations on transfer of control and assignment for authorizations issued as a result of a comparative renewal proceeding.

Except as otherwise provided in this section, the FCC does not accept applications for consent to transfer of control or for assignment of the authorization of a cellular system that has been acquired by the current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years.

(a) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a part of a *bona fide* sale of an on-going business to which the cellular operation is incidental.

(b) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(c) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is *pro forma* and does not involve a change in ownership.

§ 22.945 [Removed]

15. Section 22.945 is removed.

16. Section 22.946 is amended by revising it to read as follows:

§ 22.946 Service commencement and construction periods for cellular systems.

This section specifies the service commencement and construction

requirements for cellular systems. Related rule provisions and notification requirements are contained in § 1.946 of this chapter.

(a) *Commencement of service.* Each new cellular system licensed in markets 91–306 must be partially constructed and begin providing service to subscribers within 18 months. All other cellular systems must be at least partially constructed and begin providing service to subscribers within 12 months, beginning on the date of grant of the initial authorization. The grant of any subsequent authorizations (such as for major modifications) do not extend this period. To satisfy this requirement, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is considered to be providing service only if mobile stations can originate telephone calls to and receive telephone calls from wireline telephones through the PSTN.

Note to paragraph (a) of § 22.946: The first cellular system authorized on each channel block in markets 1 through 90, inclusive, was allowed 36 months, rather than 12 months, to commence providing service. The first cellular system authorized on each channel block in markets other than markets 1 through 90, inclusive, was allowed 18 months, rather than 12 months, to commence providing service. These longer startup periods that were afforded to first-authorized cellular systems have all elapsed.

(b) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which a separate authorization is granted is one year, beginning on the date the authorization is granted.

PART 24—PERSONAL COMMUNICATIONS SERVICES

17. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

18. Section 24.238 is revised to read as follows:

§ 24.238 Emission limitations for Broadband PCS equipment.

The rules in this section govern the spectral characteristics of emissions in the Broadband Personal Communications Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least $43 + 10 \log(P)$ dB.

(b) *Measurement procedure.* Compliance with the limitation in paragraph (a) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or more. However, for measurements within 1 MHz of the center of the main emission bandwidth, a resolution bandwidth of not less than 1% of the main emission bandwidth may be employed. For the purpose of this section, the main emission bandwidth is the continuous width of the signal outside of which all emissions are attenuated by at least 26 dB below the transmitting power. Either peak or average measurements can be used, provided that both the emissions and the reference transmitter power are measured the same way. When measuring emissions, the transmitter must be set to operate as close to each of the upper and lower frequency block edges as the design permits for normal operation.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

[FR Doc. 01–14741 Filed 6–11–01; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1296; MM Docket No. 01–113; RM–9655]

Radio Broadcasting Services; Big Piney and LaBarge, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Mount Rushmore Broadcasting, Inc. (“petitioner”) requesting allotments at Big Piney and LaBarge, Wyoming.

Channel 224A can be allotted at Big Piney without a site restriction and Channel 231A can be allotted at La Barge without a site restriction. The coordinates for Channel 224A at Big Piney are 42–32–24 NL and 110–06–42 WL. The coordinates for Channel 231A at LaBarge are 42–15–42 NL and 110–11–36 WL.

DATES: Comments must be filed on or before July 16, 2001, and reply comments on or before July 31, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Thomas J. Hutton, Holland and Knight, 2100 Pennsylvania Ave., N.W., Washington, DC 20037–5564 (Counsel to Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–113 adopted May 16, 2001 and released May 25, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Petitioner originally requested the allotment of Channel 259A at Big Piney, Wyoming, and Channel 261A at La Barge, Wyoming as a counterproposal to MM Docket No. 99–56. Consistent with the minimum distance separation requirements of § 73.207(b) and the principal community coverage requirements of § 73.315(a) of the Commission's Rules, neither channel can be allotted at the requested community. We determined that alternate channels could be allotted at both communities.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Big Piney, Channel 224A and LaBarge, Channel 231A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–14804 Filed 6–11–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1303; MM Docket No. 01–114, RM–10128; MM Docket No. 01–115; RM–10129]

Radio Broadcasting Services; Morgantown, KY; and Au Gres, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes two allotments. The Commission requests comments on a petition filed by Green River Radio Company, proposing the allotment of Channel 256A at Morgantown, Kentucky, as the community's first local FM transmission service. Channel 256A can be allotted to Morgantown in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) west to avoid short-spacings to the licensed sites of Station WKNK(FM), Channel 256A, Edmonton, Kentucky, and Station WKDQ(FM), Channel 258C, Henderson, Kentucky. The coordinates for Channel 256A at Morgantown are 37–15–34 North Latitude 86–48–40. See Supplementary Information, *infra*.

DATES: Comments must be filed on or before July 16, 2001, and reply comments on or before July 31, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Brian M. Madden, Esq., Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, NW., Suite 600, Washington, DC 20006–1809; and Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, P.C., 5028 Wisconsin Ave., NW., Suite 301, Washington, DC 20016.

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–114 and MM Docket No. 01–115, adopted May 16, 2001, and released May 25, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission requests comments on a petition filed by Au Gres Broadcasting Company proposing the allotment of Channel 295A at Au Gres, Michigan, as the community's first local aural transmission service. Channel 295A can be allotted to Au Gres in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 295A at Au Gres are 44–02–55 North Latitude and 83–41–45 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Morgantown, Channel 256A.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Au Gres, Channel 295A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01-14806 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-U

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 95**

[WT Docket No. 01-97; FCC 01-148]

Revision of the Authorized Duty Cycle for Stolen Vehicle Recovery Systems (SVRSs)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend a Commission rule in order to revise the authorized duty cycle for SVRS operations on 173.075 MHz. The rule change was proposed in response to a Petition for Rulemaking filed by LoJack Corporation. Specifically, we propose to permit a duty cycle for mobile units of 1800 milliseconds every 300 seconds, in addition to the current duty cycle of 200 milliseconds every 10 seconds.

DATES: Comments must be submitted on or before July 16, 2001, and reply comments are due on or before July 31, 2001.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4-C325, Washington, DC 20554, telephone (202) 418-0627 or by e-mail to fthyden@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 01-148, adopted April 27, 2001, and released May 7, 2001. The full text of this *Notice*

of *Proposed Rulemaking (NPRM)* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth St., SW., Washington DC.

The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857-3800, facsimile (202) 857-3805. The full text of the NPRM also can be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/2001/fcc01148.wp>. Alternate formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

Summary of Notice of Proposed Rulemaking

1. On December 20, 1999, LoJack Corporation (LoJack) filed a Petition for Rulemaking seeking amendment of 47 CFR 90.20(e)(6) to revise the authorized duty cycle for SVRS operations on 173.075 MHz. LoJack indicates that use of a duty cycle of 1800 milliseconds permits the stolen vehicle recovery system to be activated by unauthorized movement. The mobile-to-base station "uplink" transmissions can be used to alert a control center, alert the vehicle owner in order to effect a prompt police theft report, and acknowledge base station activation and deactivation messages. LoJack submits that the new "uplink" feature obviates the need for repetitive transmissions by high-powered base stations, reducing the actual transmitting time on the channel by as much as a factor of 100:1. In order to benefit from these technological advances, a system must utilize the 1800 milliseconds cycle in addition to the 200 milliseconds cycle.

2. We believe the record warrants proposing amendment of 47 CFR 90.20(e)(6) to reflect current technological advancements that will benefit law enforcement and vehicle owners. By expediting the theft detection and reporting process, the "uplink" technology appears to greatly improve the chances for successful vehicle recovery and improves tracking efficiency. We invite comment on the merits of the proposal, specifically the public interest and public safety benefits associated with revising the duty cycle to permit the use of this new technology.

3. We believe that spectrum efficiency is an additional benefit of utilizing this new technology for recovering stolen vehicles. The "uplink" feature of the new system would be used to

acknowledge base station activation and deactivation messages, thereby obviating the need for repetitive transmissions by high-powered base stations. Although the "uplink" transmission will be greater in length than the tracking signal, the "uplink" transmissions will be fewer in number than the tracking signal. Viewing the proposal in its entirety, we believe that it would significantly reduce channel occupancy, and thereby promote spectrum efficiency. Commenters should address whether adoption of the proposal would advance efficient spectrum utilization.

4. The LoJack system transmits on a frequency of 173.075 MHz with an authorized bandwidth of 20 kHz. Therefore, interference to TV Channel 7 (174-180 MHz) reception is a concern. The possibility of interference to TV Channel 7 is largely determined by power and proximity. As such, it is the base station sites rather than the transponder units, that are of greater consequence. Nonetheless, transmissions by mobile units are restricted in order to reduce the impact of any potential interference from mobile units to TV Channel 7 reception. Instituting the 1800 millisecond duty cycle will not significantly increase the number of mobile transmissions. Consequently, we tentatively conclude that the possibility of interference from mobile units to TV Channel 7 will not significantly increase. Conversely, the number of base station transmissions needed for a typical stolen vehicle recovery sequence will be greatly reduced. Therefore, we tentatively conclude that the proposal will likely reduce the possibility of harmful interference to DTV and TV Channel 7 reception. Nevertheless, we invite commenters to address any concerns regarding interference to digital, as well as analog, broadcast operations on TV Channel 7.

5. In addition to proposing to modify the duty cycle rule, we invite comment on whether the public interest continues to be served by specification of the relevant duty cycles in our Rules. We seek comment on whether these concerns continue to merit specifying duty cycles, in whole or in part, or whether it is now appropriate to develop a rule permitting greater technical flexibility. Would elimination of a specified duty cycle for mobiles cause harmful interference to TV Channel 7 reception? Would removal of a duty cycle for base stations prevent competitive SVRS operations from commencing? In addition, would spectrum efficiency be impaired without specified duty cycles?

Commenters favoring removal of duty cycle limits also should explain the possible effect on the sharing of 173.075 MHz by the Federal Government, given that this is a shared frequency. Finally, we ask interested parties to address the question of what specific benefits could accrue from elimination of duty cycles for mobile and base transmitters.

Procedural Matters

6. *Ex Parte Rules Presentations.* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

7. *Comment Dates.* Pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 12, 2001, and reply comments on or before July 27, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998).

8. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

9. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th street, S.W., Room TW-A325, Washington, D.C. 20554.

10. *Paperwork Reduction Analysis.* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no proposed information collection.

11. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), 5 USC 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM* but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

I. Need for, and Objectives of, the Proposed Rules

In the *NPRM*, we propose to change the duty cycle for mobile transmissions in stolen vehicle recovery systems contained in 47 CFR 90.20(e)(6) to 1800 milliseconds every three hundred seconds to permit use of new technology. Such modification would be in the public interest because it would enhance the efficient use of spectrum and permit greater efficiency in use of police resources to track and recover stolen vehicles and apprehend more individuals involved in such activities.

II. Legal Basis

Authority for issuance of this item is contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r).

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. *See* 5 U.S.C. 601(b)(3). A small business concern is one that: (1) Is independently

owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration. *See* 5 U.S.C. 632. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." *See* 5 U.S.C. 601(5).

This proposal will provide marketing opportunities for radio manufacturers, some of which may be small businesses. Beyond this we are unable to quantify the potential effects on small entities. We, therefore, invite specific comments on this point by interested parties.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *NPRM* solicits comments that will not entail reporting, recordkeeping, and/or third-party consultation.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603.

As an alternative to modification of the subject rule, the Commission invited public comment on elimination of that rule, *i.e.*, specified duty cycles for mobile and base transmitters.

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

None.

Ordering Clauses

12. *It Is Ordered* that, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), *Notice Is Hereby Given* of proposed amendment to § 90.20(e)(6) of the Commission's rules, 47 CFR 90.20(e)(6), as described.

13. *It Is Further Ordered* that the Petition for Rulemaking, RM-9798, submitted by the LoJack Corporation on December 20, 1999 *Is Granted* to the extent indicated herein.

14. *It Is Further Ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, radio.
Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(c)(7).

2. Section 90.20 is amended by revising paragraph (e)(6) introductory text to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(e) * * *

(6) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited to 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized 20 kHz bandwidth. Transmissions from mobiles shall be limited to either 200 milliseconds every 10 seconds or 1800 milliseconds every 300 seconds, except that when a vehicle is being tracked actively, the transmissions under either duty cycle may be increased to 200 milliseconds every second. Applications for base stations operating on this frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV channel 7

transmitter of potential interference to TV channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant:

* * * * *

[FR Doc. 01-14802 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 052301C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the joint resource management plan (RMP), provided by the Washington Department of Fish and Wildlife and the Point-No-Point Treaty Tribes (Co-managers) for harvest of Hood Canal and Strait of Juan de Fuca summer-run chum salmon pursuant to the protective regulations promulgated for Hood Canal summer-run chum salmon under the Endangered Species Act (ESA). The RMP (the harvest component of the Summer Chum Salmon Conservation Initiative - An Implementation Plan to Recover Summer Chum Salmon in the Hood Canal and Strait of Juan de Fuca Region [SCSCI]) specifies the future management of commercial, recreational, and tribal salmon fisheries that potentially affect listed Hood Canal summer-run chum salmon.

This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined that implementing and enforcing the RMP will not appreciably reduce the likelihood of survival and recovery of the Hood Canal summer-run chum salmon Evolutionarily Significant Unit (ESU). This document also includes a summary of the underlying biological analysis used in the determination (Evaluation).

DATES: The final determination on the take limit was made on April 27, 2001.

ADDRESSES: Sustainable Fisheries Division, National Marine Fisheries

Service, 7600 Sand Point Way NE, Seattle, Washington 98115-0070.

FOR FURTHER INFORMATION CONTACT:

Keith Schultz at: 206/526-4447, or e-mail: keith.schultz@noaa.gov regarding the RMP.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Hood Canal Summer-Run Chum Salmon (*Oncorhynchus keta*) ESU.

Electronic Access

The full texts of NMFS' determination, and the final Evaluation are available on the Internet at the NMFS, Sustainable Fisheries Division web site at: <http://www.nwr.noaa.gov/1sustfsh/limit6/index.html>.

The Summer Chum Salmon Conservation Initiative - An Implementation Plan to Recover Summer Chum Salmon in the Hood Canal and Strait of Juan de Fuca Region is available on the Internet at the State of Washington, Department of Fish and Wildlife web site: <http://www.wa.gov/wdfw/fish/chum/chum.htm>.

Background

The Washington Department of Fish and Wildlife and the Point-No-Point Treaty Tribes provided NMFS a jointly developed RMP for Hood Canal and Strait of Juan de Fuca summer-run chum salmon. The RMP encompasses Washington Coastal and Puget Sound salmon fisheries affecting the Hood Canal summer-run chum salmon ESU. Harvest objectives specified in the RMP account for fisheries-related mortality throughout the migratory range of Hood Canal and Strait of Juan de Fuca summer chum salmon, from Northern British Columbia, Canada to South Puget Sound. The RMP also includes implementation, monitoring and evaluation procedures designed to ensure fisheries are consistent with these objectives.

On March 13, 2001, at 66 FR 14551, NMFS published a notice of availability for public review and comment on its evaluation of how the Hood Canal summer-run chum salmon RMP addressed the criteria in § 223.203(b)(4) of the ESA 4(d) rule (65 FR 42477).

As required by § 223.203 (b)(6) of the ESA 4(d) rule, NMFS must determine pursuant to 50 CFR 223.209 and pursuant to the government to government processes therein whether the RMP for Hood Canal summer-run chum salmon would appreciably reduce the likelihood of survival and recovery of the Hood Canal Summer-Run Chum Salmon ESU and other affected threatened ESUs. NMFS must take comments on how the RMP addresses

the criteria in § 223.203(b)(4) in making that determination.

Discussion of the Biological Analysis Underlying the Determination

The RMP establishes a harvest regime referred to as the Base Conservation Regime (BCR). Under the BCR, summer chum salmon are caught incidentally in fisheries targeting other, more abundant and healthy populations. Most of these fisheries require the catch-and-release of summer chum salmon. The RMP's management actions affect all salmon fisheries which impact listed Hood Canal summer-run chum salmon, including Canadian salmon fisheries.

The BCR is comprised of the following elements: (1) A base set of fishery-specific management actions for fisheries in U.S. and Canadian pre-terminal, Washington terminal and Washington extreme terminal areas; (2) Management unit and population abundance and escapement critical thresholds that trigger review of and possible adjustment of the management actions; (3) Expected fishery specific exploitation rate targets and ranges based on the application of the BCR on the Hood Canal and Strait of Juan de Fuca summer chum salmon management units; and (4) Overall management performance standards based on natural production against which to assess success of the Summer Chum Salmon Conservation Initiative and the harvest strategy, and make necessary adjustments. The actions required depend both on the status of the management unit and the populations within them, with the most conservative controls prevailing.

In any given year, the results of these management actions are designed to produce exploitation rates within the range of 3.3 to 15.3 percent on summer chum salmon bound for the Hood Canal and 2.8 to 11.8 percent on the Strait of Juan de Fuca populations. It is NMFS's determination that exploitation rates within these ranges, with the average annual exploitation rate near the mid-point, will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild. Although in any one year, fisheries may be managed for exploitation rates lower than this range, the upper end of the exploitation rate ranges may not be exceeded. If post-season analysis indicates that the range has been exceeded, the RMP requires Co-managers to take the necessary actions to identify the reasons for exceeding the ranges and to minimize this occurring the following year. At the time of the five-year plan review, the annual exploitation rates for the previous five-year period are not to be

clustered towards either extreme of the range. The expected average annual exploitation rate is 10.9 percent on summer chum salmon bound for the Hood Canal and 8.8 percent on the Strait of Juan de Fuca populations. As stated previously, it is NMFS' determination that the exploitation rates proposed in the RMP will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild.

The BCR will remain in place until such time as the Co-managers incorporate the population recovery goals into the management structure. At that time, the Co-managers will discuss with NMFS what terms of the existing plan will continue.

The RMP includes a monitoring and evaluation plan to assess fishing-related impacts to Hood Canal summer-run chum salmon, the abundance of naturally spawning fish for each of the identified management units, the effectiveness of the fishing regimes and general approach, and regulatory compliance. The RMP also requires a progress report to be completed annually, with a more comprehensive plan review every five years. This information will be used by NMFS and the Co-managers annually to assess whether impacts to listed fish are as expected, and to revise the RMP as necessary.

A more detailed discussion of NMFS' Evaluation is on the Sustainable Fisheries Division web site (See Electronic Access, under the heading **SUPPLEMENTARY INFORMATION**).

Summary of Comments Received in Response to the Proposed Evaluation and Recommended Determination

NMFS published notice of its proposed evaluation and recommended determination on the RMP for public review and comment on March 13, 2001 (66 FR 14551). The public comment period closed on March 30, 2001. NMFS received comments from one representative of an organization concerning this notice. NMFS has reviewed comments received by the closing date and no issues were raised which required modifying the proposed evaluation and recommended determination. Based on its evaluation and taking into account the public comments, NMFS issued (April 27, 2001) its final determination on the Hood Canal summer-run chum salmon RMP.

Those comments related to NMFS' proposed evaluation and recommended determination (Evaluation) are summarized here.

The March 13, 2001, **Federal Register** Notice (66 FR 14551) requested comments concerning NMFS' proposed evaluation and recommended determination of the RMP (harvest component of the SCSCI). Issues raised by the commenter that related directly to the RMP or addressed the habitat or hatchery components of the Summer Chum Salmon Conservation Initiative required no response because this was not the subject of NMFS' evaluation. The comments received were organized into five general categories; Critical Thresholds; Abundance and Escapement; Monitoring; Supplementation; and Population Growth Rate. NMFS' response to comments followed this same structure.

1. Critical Thresholds

Comment: The commenter suggested that the critical thresholds established by the RMP are too low. The commenter argued that increasing the critical thresholds would increase straying to areas where stocks are now extinct, introduce more salmon carcasses (nutrients) into the systems and compensate for catastrophic events.

Response: The RMP established critical thresholds for the five management units. The critical thresholds are based on the lowest abundance observed from 1974 to 1998 which produced a positive observed return (number of spawners was greater than the number of parents), plus a buffer of 25 percent of the difference between the highest and lowest observed abundances. The buffer was added to take into account management and forecast uncertainties, and environmental variation. NMFS' (2000a) Viable Salmonid Populations (VSP) document describes four key parameters for evaluating the status of salmonid populations. These parameters are: (1) population size (abundance); (2) population growth rate (productivity); (3) spatial structure; and (4) diversity. These parameters include the issues raised by the commenter. Section 4(I)(B) of the proposed determination document addressed adequately each of the VSP parameters for the Hood Canal summer chum salmon population. The critical thresholds were derived prior to the availability of the paper on VSP, but meet or exceed the guidelines, and are generally conservative when compared to the size of the populations historically (NMFS 2000b).

2. Abundance and Escapement

Comment: NMFS received three comments under this category. One addressed the RMP directly (the level of terminal versus pre-terminal harvest)

and required no response because this was not the subject of NMFS's evaluation. One comment addressed the need for increased abundance and escapement to encourage natural straying into adjacent streams.

Supplementation and reintroduction approach are described in the Artificial Production section of the SCSCI and was not part of the review of this RMP (the harvest component of the SCSCI). This issue was also addressed adequately in the critical threshold discussion in the response to the previous comment and in the proposed evaluation and recommended determination document (dated March 13, 2001) in the VSP parameters analysis. The last comment under this category was the commenter's comment that the criteria for "renewing" harvest should be that the average abundance must be higher than the critical threshold for at least three life cycles (the commenter suggested nine years).

Response: The RMP establishes an annual harvest regime (called the Base Conservation Regime) for Hood Canal and Strait of Juan de Fuca terminal and Washington pre-terminal salmon fisheries. The harvest management strategy during this regime is designed to minimize incidental take of listed Hood Canal summer-run chum salmon, while providing opportunity for fisheries directed at other species. Very specific fishing restrictions are outlined in the RMP. These restrictions include closure of all summer chum salmon directed fisheries, delayed or truncated fishery openings for other salmonid species, chum salmon non-retention in fisheries directed at other species, and area closures around freshwater spawning tributaries. All state and tribal fisheries will operate in compliance with the Base Conservation Regime (BCR), and with any modifications made in response to the critical status for one or more management units or populations. The BCR will remain in place until such time as the Co-managers (Washington Department of Fish and Wildlife and the Point-No-Point Treaty Tribes) incorporate the population recovery goals into the management structure. It is anticipated that the BCR will be in place for the foreseeable future. However, as an implementation term, Co-managers will provide NMFS with an assessment report on the anticipated impacts associated with any new harvest regime (including direct take) on the Hood Canal Summer-Run Chum Salmon ESU. The Co-managers and NMFS will meet and discuss the results of the anticipated impacts of any new harvest

regime prior to implementation. At that time, NMFS will determine if the new harvest regime is consistent with Limit 6 of the ESA 4(d) Rule.

3. Monitoring

Comment: The commenter suggested that the use of exploitation rate is not an adequate method to assess the "run health."

Response: The RMP uses several population-specific, performance indicators to assess the effectiveness of the RMP. The performance indicators include: abundance, productivity, escapement, and management actions. The combined status of all these indicators are used to determine "run health". These indicators are explained in more detail in the RMP and in the proposed evaluation and recommended determination document. Performance indicators also include indicators for monitoring the fisheries. The primary monitoring indicator is the estimates of exploitation rates obtained from the fisheries. Secondary fishery indicators include catch and catch rate, fishing effort, non-landed fishing-related mortality, and catch and escapement composition (size, age, mark rates, etc.).

Comment: The commenter suggested that the abundance numbers used in the RMP cannot be validated.

Response: NMFS recognizes that there are data gaps in the summer chum salmon escapement and harvest information. However, the RMP and NMFS' evaluation used the best available scientific information. Currently, over 90 percent of the spawning grounds are surveyed. Catch is estimated by intensively sub-sampling a proportion of the harvest. More importantly, an exploitation rate approach is more resilient to data uncertainty and environmental variability than a fixed goal approach.

Comment: The commenter's suggested the elimination of gill nets as a gear type.

Response: This comment is directed at the RMP and not NMFS' proposed evaluation and recommended determination. No response was necessary.

Comment: The final comment in this category addressed the commenter's concern over the commitment of the Co-managers to conduct the required monitoring.

Response: The Co-managers have designed the BCR management actions to provide sufficient protection for summer-run chum populations at the current levels of monitoring. The Co-managers have committed to maintaining the core elements of the monitoring programs, while recognizing

that additional monitoring activities are important and are actively seeking funds to support them. However, as an implementation term, NMFS required all sampling, monitoring, assessment, evaluation, enforcement and reporting tasks or assignments related to harvest management in the RMP be conducted by the Co-managers as required in the RMP. The RMP requires the Co-managers to maintain fishery sampling at 1998 levels or above. The RMP also calls for specific and integrated monitoring programs to maintain and improve population assessment methodologies as well as evaluating the effectiveness of harvest management actions and objectives.

4. Supplementation

All comments received under this category addressed hatchery operations (supplementation) and fall outside the harvest component of the SCSCI (the RMP). No response was necessary.

5. Population Growth Rate

Comment: Two of the three comments received under this category addressed the RMP or hatchery operations and not NMFS' proposed evaluation and recommended determination of the harvest component of the SCSCI (the RMP). No response was necessary. The commenter also suggested that the proposed average exploitation rates could be reduced further by selective fishing methods.

Response: Selective fishing is a key aspect of the RMP. During the BCR, no direct take of Hood Canal summer-run chum salmon is allowed. Summer chum salmon are caught incidentally in fisheries targeting other abundant and healthy populations. Most of these fisheries require the non-retention of summer chum salmon. The proposed RMP management actions affect all salmon fisheries which impact listed Hood Canal summer-run chum salmon, including Canadian salmon fisheries. In any given year, the results of these management actions are designed to produce exploitation rates within the range of 3.3 to 15.3 percent on summer chum salmon bound for the Hood Canal and 2.8 to 11.8 percent on the Strait of Juan de Fuca populations. Although in any one year, fisheries may be managed for exploitation rates lower than this range, the upper end of the exploitation rate ranges may not be exceeded. At the time of the five-year plan review, the annual exploitation rates for the previous five-year period are not to be clustered towards either extreme of the range. The expected average annual exploitation rate is 10.9 percent on summer chum salmon bound for the

Hood Canal and 8.8 percent on the Strait of Juan de Fuca populations.

NMFS' analysis indicates that the proposed fishing regime (BCR) would not result in escapement significantly less than if fishing had not occurred at all. These exploitation rates were evaluated by NMFS and found to meet the requirements of Limit 6 of the ESA 4(d) Rule. This included the NMFS' recommended determination that the RMP will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild. Based on this analysis, excluding populations that are below the critical thresholds (which require Co-managers to investigate additional harvest management measures), a further reduction in the BCR average exploitation rate is not needed to meet the Limit 6, ESA 4(d) Rule requirements.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or through the documents available on the Sustainable Fisheries web site (see Electronic Access, under the heading **SUPPLEMENTARY INFORMATION**).

Authority

Under section 4 of the ESA, NMFS, by delegated authority from the Secretary of Commerce, is required to adopt such regulations as it deems necessary and advisable for the conservation of the species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that are adequately regulated to provide for the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a RMP developed jointly by the State of Washington and the Tribes (joint plan) and determined by NMFS to be in accordance with the salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000).

Dated: June 7, 2001.

Chris Mobley,

*Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 01-14770 Filed 6-11-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 052301D]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the joint resource management plan (RMP) for harvest of Puget Sound chinook salmon provided by the Washington Department of Fish and Wildlife (WDFW) and the Puget Sound Treaty Tribes pursuant to the protective regulations promulgated for Puget Sound chinook salmon under the Endangered Species Act (ESA). The RMP specifies the future management of commercial, recreational and tribal salmon fisheries that potentially affect listed Puget Sound chinook salmon.

This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined pursuant to the Tribal Rule and the government-to-government processes therein that implementing and enforcing the RMP will not appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook salmon Evolutionarily Significant Unit (ESU).

DATES: The final determination on the take limit was made on April 27, 2001.

ADDRESSES: Sustainable Fisheries Division, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, Washington 98115-0070.

FOR FURTHER INFORMATION CONTACT: Susan Bishop at: 206/526-4587, or e-mail: susan.bishop@noaa.gov regarding the RMP.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Puget Sound chinook salmon (*Oncorhynchus tshawytscha*) ESU.

Electronic Access

The full texts of NMFS' determination, and the final Evaluation are available on the Internet at the NMFS, Sustainable Fisheries Division web site at: <http://www.nwr.noaa.gov/1sustfsh/limit6/index.html>.

Background

In February of this year, the WDFW and the Puget Sound Treaty Tribes (Co-managers) provided a jointly developed RMP that encompasses Washington coastal and Puget Sound salmon fisheries affecting the Puget Sound chinook salmon ESU. The RMP is the harvest management component of a larger Puget Sound management and conservation planning effort called Comprehensive Chinook. Harvest objectives specified in the RMP account for fisheries-related mortality of Puget Sound chinook throughout its migratory range DBU*COM003*MDNM from Oregon and Washington to Southeast Alaska. The RMP also includes implementation, monitoring and evaluation procedures designed to ensure fisheries are consistent with these objectives. On March 5, 2001, at 66 FR 13293, NMFS published a notice of availability for public review and comment in the **Federal Register**, on its evaluation of how the Puget Sound chinook RMP addressed the criteria in § 223.203 (b)(4) of the ESA 4 (d) rule (65 FR 42422).

As required by § 223.203 (b)(6) of the ESA 4 (d) rule, NMFS must determine pursuant to 50 CFR 223.209 and pursuant to the government to government processes therein whether the RMP for Puget Sound chinook would appreciably reduce the likelihood of survival and recovery of the Puget Sound chinook and other affected threatened ESUs. NMFS must take comments on how the RMP addresses the criteria in § 223.203 (b)(4) in making that determination.

Discussion of the Biological Analysis Underlying the Determination

The RMP's approach to establishing management objectives is risk averse and progressive, representing significant improvements from past management practices, including (1) management objectives based on natural production and natural spawning have been established for the majority of naturally producing populations which historically had self-sustaining chinook populations and for which data is available. These management units represent the entire range of life history types (races) and geographic distribution that comprise the Puget Sound ESU; (2) the RMP derives exploitation rates based on conservative, quantifiable standards directly related to recovery, which take into account scientific uncertainty; (3) in isolating the effect of harvest on survival and recovery, the approach is valuable in ensuring that harvest actions do not

impede recovery, regardless of the contribution of the other Hs (hatcheries, habitat, hydropower). At the same time, the approach is linked to the other Hs by taking into account current environmental and habitat conditions; (4) the proposed objectives are generally consistent with NMFS' Rebuilding Exploitation Rates (RER), population standards previously used to assess the likelihood of survival and recovery of the Puget Sound ESU. These standards included an assessment of the long-term effects of exploitation rates at these levels; (5) the RMP includes specific and integrated monitoring programs to maintain and improve population assessment methodologies as well as evaluate the effectiveness of harvest management actions and objectives. The RMP also includes provisions for annual progress reports and a 5-year comprehensive plan evaluation. These reports will assess compliance with, parameter validation of, and effectiveness of the RMP objectives. The inclusion of new information through monitoring and evaluation provides greater assurance that objectives will be achieved in future seasons.

A more detailed discussion of NMFS' Evaluation is on the Sustainable Fisheries Division web site (see Electronic Access, under the heading, **SUPPLEMENTARY INFORMATION**).

Summary of Comments Received in Response to the Proposed Evaluation and Recommended Determination

NMFS and the Co-managers recognize that there is a need for more information regarding the Puget Sound ESU. For this reason, the application of Limit 6 of the ESA 4 (d) rule to the RMP is in effect from May 1, 2001, through April 30, 2003. Prior to the end of that period, NMFS will evaluate all of the information obtained and determine whether to extend the application of Limit 6 of the ESA 4(d) rule to the RMP. This document also includes a summary of the underlying biological analysis used in the determination (Evaluation).

NMFS published notice of its proposed Evaluation and recommended determination on the RMP for public review and comment on March 5, 2001 (66 FR 13293). During the 21-day public comment period, three organizations and one private citizen submitted comments to NMFS. Several of the comments were addressed in NMFS' final Evaluation and Recommended Determination document, but no changes were required to the RMP. Based on its Evaluation and taking into account the public comments, NMFS issued (April 27, 2001) its final

determination on the Puget Sound chinook RMP.

Those comments related to NMFS' proposed evaluation and recommended determination (Evaluation) are summarized here. Similar comments have been combined where appropriate.

Comments and Responses

Comment 1: Several comments spoke to the legality of the listing itself, the ESA 4(d) rule, the treatment of hatchery fish under the ESA, and the allowance of direct take.

Response: NMFS understands the concerns of the commenters on these issues, but they are not relevant to the Evaluation itself. NMFS addressed these issues in its response to public comment at the time of promulgation of the ESA 4(d) rule, the decision to list, and in various NMFS technical documents and reports.

Comment 2: Two commenters stated that they were denied the opportunity to provide meaningful comment on the Evaluation because of (1) difficulty in locating the Evaluation on the website and (2) the availability of the Evaluation but not the RMP itself.

Response: The website address for NMFS Northwest Region as well as the telephone number and email address of the NMFS contact person were included in the **Federal Register** notice, dated March 5, 2001. When the FRN was first published, NMFS received several calls and e-mails from reviewers asking for assistance in locating and printing the Evaluation. The difficulties were found to be a combination of software and web design problems, which NMFS corrected and improved by the second day of notification. The FRN also listed the same contact information in order to obtain further information on the RMP. The RMP was, in fact, provided to several reviewers on request. The timeliness in which the problems were solved and the availability of NMFS staff to assist reviewers resulted in no substantial effect on the opportunity to review and comment.

Comment 3: Commenters expressed concern (1) about a 2-year approval of the RMP despite acknowledged data uncertainties, asserting that the RMP fails to meet the requirements of the ESA 4(d) rule, and (2) it constituted an inconsistency in the treatment of fishery activities versus habitat activities.

Response: Limit 6 of the ESA 4 (d) rule requires that NMFS determine whether (1) the RMP addresses the criteria as referenced in either Limit 4 or 5, and (2) that the RMP does not appreciably reduce the likelihood of survival and recovery. NMFS has determined that the Puget Sound

chinook RMP does adequately address each of the criteria as referenced in Limit 4, and that it would not appreciably reduce the survival and recovery of the Puget Sound chinook ESU. The ESA requires that in making that decision, NMFS must use the best available scientific information.

However, NMFS recognizes that there will be some uncertainty associated with whatever information is available, and considers the degree of uncertainty when making its decisions. To address these uncertainties, the data analyses incorporated variability around the productivity and capacity stock-recruit parameters, survival variables and management error (NMFS 2000b, WDFW/PSTT 2001). In making its decision on the RMP, NMFS determined that the data uncertainties did not represent a significant risk in the short term to the ESU, and that the benefits to the ESU in immediate implementation of the plan outweighed the risks represented by the uncertainty in the data. NMFS believes that the 2-year time limit is an adequate amount of time to address the data uncertainties without increased risk to the ESU, and that it corresponds with the current schedule for completion of the tasks assigned to the Puget Sound and Olympic Peninsula Technical Recovery Team (TRT), including establishment of recovery goals.

The ESA 4 (d) rule does not specify the duration that take limits must be applied for activities approved under any of the Limits in the 4 (d) rule. This approach is consistent with the implementation of other sections of the ESA. For example, both the section 7 biological opinions and section 10 permits that NMFS has issued have varied from single year to multi-year duration. Therefore, the two-year application of take limits for the RMP and the treatment of data uncertainty do not represent inconsistency in treatment among the activities considered under the 4 (d) rule.

Comment 4: One commenter expressed concern about a lack of viable thresholds for several of the populations where natural production occurs.

Response: The RMP identified viable thresholds for all of the management units where natural production occurs and self-sustaining natural production occurred historically, and for all populations for which the Co-managers believed data were sufficient. Where the Co-managers believed data were insufficient to define viable thresholds for individual populations, populations were aggregated and a viable threshold was determined for the management unit as a whole. This is consistent with

the ESA 4 (d) rule which allows populations to be aggregated into management units "when dictated by information scarcity." (4 (d) rule Limit 4, Criteria 1). NMFS derived viable thresholds for several populations where the Co-managers felt the data were insufficient, and determined that the RMP objectives for the management unit were sufficiently protective of the individual populations, and the ESU as a whole. However, NMFS does not believe the original Evaluation was clear on this point and has revised it to clarify this information.

Comment 5: Two of the commenters expressed concern that the Evaluation inadequately addresses the lack of recovery goals and management objectives for productivity in the RMP.

Response: The ESA 4(d) rule does not require that a RMP include recovery goals. This is taken up in the separate recovery planning process. The 4 (d) rule does require that the viable and critical thresholds be consistent with the concepts in the Viable Salmon Populations document (VSP)(McElhaney *et al.* 2000). There is very limited direct information on the current capacity and productivity of most chinook systems in Puget Sound to define explicit objectives for productivity. However, information on productivity and capacity can be inferred by deriving population dynamic relationships for management units and populations based on available escapement, survival and age data. Productivity and capacity are components within the formulas used to derive several of the management objectives in the RMP, and all of NMFS' RER standards. In areas where this information was not available, the RMP escapement and exploitation rate management objectives used escapement goals adopted in the Puget Sound Salmon Management Plan that were based on information from the 1960s and 1970s. The Puget Sound Salmon Management Plan (PSSMP) goals are probably conservative in that they likely overestimate the current capacity and productivity of the chinook habitat when compared with current habitat condition. NMFS evaluated these escapement goals against its own population standards and VSP guidance. Using this approach, NMFS concluded the objectives in the RMP were consistent with the concepts in the VSP document as required by the 4 (d) rule criteria.

Comment 6: One commenter expressed concern that the Evaluation did not adequately address the impacts of fishing on spatial structure since the RMP did not define take targets for

spatial structure. It suggested there should be impact studies of fishing actions on the spatial structure of chinook salmon populations.

Response: Providing adequate spatial structure for salmonid populations requires that the habitat is of sufficient quality and quantity, that it is connected, and that the timing and biological characteristics of the salmon themselves provide for the use of the available habitat. Fishing activities can affect the return timing and biological characteristics of the fish (age, size, sex), and in some cases the pattern of spawning. Generally, this occurs when a certain segment of the population is disproportionately harvested over a period of time. However, as stated in the Evaluation, there is currently no information to indicate that these fisheries are having deleterious effects on specific segments of the populations, and certainly not to the ESU as a whole. For example, NMFS' status review (Myers *et al.*, 1998) did not discern any trends in size, weight, fecundity or other life history traits for Puget Sound chinook that might be a result of fishing activities. NMFS sees no reason to change its conclusion on this issue. However, NMFS agrees with the commenter that the potential effects of fishing activities on spatial structure should continue to be monitored and evaluated for shifts in run or spawning timing, or biological characteristics attributable to fishing activities. Such monitoring was included in the implementation terms accompanying the final determination.

Evaluating spatial structure at the ESU level, NMFS concluded that the management units represent the full complement of the natural chinook populations within Puget Sound and include all principal life history traits (spring, summer and fall runs).

Comment 7: One of the commenters expressed concern about the quality of the coded wire tag (CWT) data underlying the derivations of the rebuilding exploitation rates (RERs) and their connection to the Maximum Sustainable Yield (MSY) escapement goals established in the PSSMP.

Response: The MSY-based RERs in the RMP use current information on spawning escapement, age structure and survival. They are not based on the PSSMP escapement goals. At this time, CWT data provide the best available information to estimate survival rates by age and mortality rates by fishery. Wild stock tagging in Puget Sound has been tried in several areas, but the resulting mortality has been high, and there have not been enough wild juveniles captured to result in sufficient tag

recoveries to estimate stock composition of fisheries or population distribution with confidence. However, where both wild and hatchery stocks of the same outmigrant type have been tagged successfully, significant differences in distribution or exploitation rate between the two groups have not been detected. The simulation models used to assess the RERs incorporated uncertainty. Until more direct estimates are available, this represents the best available scientific information. Management performance will be evaluated annually and the management objectives will be revised as significant new information becomes available.

Comment 8: Commenters expressed concern about the magnitude of the exploitation rate and escapement threshold objectives, especially relative to the PSSMP escapement goals.

Response: For the purposes of evaluating the RMP under the requirements of the ESA 4 (d) rule, it is not appropriate to comment on the objectives of the RMP relative to those in other management plans. NMFS evaluated the RMP management objectives against NMFS' independently derived population standards and the guidelines provided by the VSP document. NMFS' guidelines and standards were developed through a thorough review of the ecological, conservation and salmonid literature (McElhaney *et al.*, 2000) or through independent analysis of spawner-recruit relationships based on the best available estimates of escapement, hatchery contribution to escapement, natural production and survival. Acknowledging data uncertainties, NMFS' analysis incorporated variability in capacity, productivity, management error and survival (NMFS 2000b). NMFS concluded that the RMP objectives are consistent with NMFS' guidelines.

Comment 9: One commenter questioned the need for exploitation rate objectives for Category 2 populations (those systems where established chinook populations existed historically but have largely been replaced by hatchery production) and the inclusion of the Hoko River chinook in the RMP.

Response: One of the ESA 4 (d) rule criteria is to establish escapement or exploitation rate objectives for each of the populations or management units within the ESU. It is up to the Co-managers how to structure these objectives. Exploitation rate objectives for Category 2 populations were included in the RMP provided to NMFS for review and evaluation consistent with that criterion. NMFS believes that it is important to establish management objectives for these populations since

they may play an important role in recovery. Hatchery contribution to the natural escapement of these populations is probably significant. However, information on the amount of contribution is limited for most of these systems. As more information becomes available on stray rates, and the hatchery and harvest programs are successfully integrated, the management objectives may be revised and refined to better reflect the natural production of the systems.

The harvest management component of the Comprehensive Chinook Management Plan was provided to NMFS for evaluation as an RMP under Limit 6 of the 4(d) rule. However, it was developed as part of a larger planning effort by the Co-managers, unrelated to ESA, that encompasses the western Strait of Juan de Fuca, where the Hoko River is located, and the rest of Puget Sound. The Hoko River chinook population is not part of the Puget Sound chinook salmon ESU, and NMFS did not include it in its evaluation of the RMP under Limit 6 of the 4 (d) rule.

Comment 10: Two commenters expressed concern about the inclusion of hatchery fish in determining whether escapement thresholds have been achieved.

Response: The composition of escapement thresholds is described in Table 1 of the Evaluation. Escapement thresholds are defined in terms of natural origin recruits for six of the ten management units managed for natural production. Three of the remaining four of these management units use hatchery production to maintain and rebuild the associated chinook populations. In areas with significant hatchery production, it is currently difficult or impossible to distinguish between hatchery-origin and wild-origin fish on the spawning grounds. Mass-marking programs have been or will be implemented for most hatcheries releasing chinook in Puget Sound, allowing separation of returning hatchery and natural origin adults. However, marked adults will not return for several years. In addition, there are not currently hatchery contribution guidelines in place for the proportion of hatchery fish on the spawning grounds. Both the Hatchery and Genetic Management Plans which NMFS is in the process of developing with the Co-managers, and ultimately the recovery plan for Puget Sound chinook will address this issue. When this information is available, management objectives may be revised, as per the evaluation requirements of the RMP.

Comment 11: One commenter expressed confusion over the terms used to describe escapement threshold and

exploitation rate objectives in the Evaluation, and asked for more specificity on the actions that would be taken should escapements fall below the thresholds.

Response: NMFS acknowledges the use of the different terms in the Evaluation may have been confusing and has revised the Evaluation to clarify the definition and use of these terms. Long-term abundance and low abundance thresholds are terms the state and tribal Co-managers use in the RMP to describe lower and upper escapement objectives for fisheries management. Critical and viable thresholds are terms used by NMFS in its ESA 4(d) rule and in the VSP document for ESA purposes. NMFS evaluates the long-term and low abundance management objectives provided in the RMP against its guidelines for viable and critical thresholds to see whether the RMP thresholds, used for a variety of fishery management objectives, meet the requirements under ESA. The exploitation rate objectives are in terms of brood year exploitation rates.

Examples of the types of fishery actions that would be taken should escapements fall below their lower abundance thresholds are captured in section H of the Evaluation, and in appendices A and C of the RMP. The actions taken must be appropriate to the circumstances and will vary depending on the population, distribution of fishery mortality and the cause of the failure to meet the escapement objectives. A generic, one-size-fits-all response is rarely the most beneficial to either the resource or fishery objectives. Fishery closures and restrictions are among the actions listed in the RMP, and increasingly among the actions the Co-managers have voluntarily taken in recent years in response to declines in chinook abundance.

Comment 12: One commenter disagreed with NMFS' statement that an exploitation rate rather than a fixed-escapement goal approach would result in rebuilding of Puget Sound chinook populations. The commenter uses an example from the Snohomish system to support its position.

Response: The comments reflect a misunderstanding of the analyses used to derive the objectives in the RMP and the implementation of those objectives. The exploitation rates are designed to provide an 80-percent probability of exceeding the upper escapement threshold (the viable or long-term escapement threshold) within 25 years, starting from the existing levels of spawning escapement. In other words, resulting in a high probability of

rebuilding chinook populations to viable escapement levels, not merely meeting the critical or low-abundance escapement thresholds as asserted by the commenter. This approach is designed such that the upper escapement level will increase as habitat capacity increases, integrating harvest with habitat recovery and restoration actions. In effect, this provision guards against inappropriately increasing exploitation rates when habitat capacity or productivity increases. The exploitation rates are maximum rates that fisheries may be managed below, but cannot be exceeded. In fact, managers have consistently set annual exploitation rates below exploitation rate objectives over the last several years. If management units and populations do not rebuild as expected, the RMP contains provisions to revise exploitation rates if the data evaluation shows that fishery activities are impeding rebuilding.

Some of the information the commenter uses to support its assertion is incorrect. The 1996 Puget Sound run size of Snohomish summer/fall chinook wild adults was approximately 5,200 rather than the 8,000 originally reported. The revised estimate was based on the results of an otolith marking study that enables managers to better distinguish between hatchery and wild spawners. With a run size of 5,200, the spawning escapement of 5,250 would not have been achieved even with closure of all fisheries in Puget Sound. The exploitation rate in southern U.S. fisheries was very low, estimated to be less than 10 percent. With this correction, the data appear to support the contention of the Evaluation that exploitation rates have contributed to higher escapement in years of higher return. In both 1996 and 1998, the post-season return was higher than preseason estimates, the exploitation rates remained very low, and the escapements were correspondingly higher. In 1996, the pre-season run size expectation was 4,200, the post-season return was 5,200, and the escapement was 4,851. In 1998, the preseason terminal run size was expected to be 5,600, the post-season return was 6,400, and the escapement was 6,304. Based on this information, NMFS sees no need to change its evaluation of the RMP.

Comment 13: The commenter stated that the Evaluation does not address what it perceived are inconsistencies with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) policies regarding overfishing and the use of biological reference points.

Response: NMFS' evaluation of an RMP must conclude that it is consistent with the requirements of the ESA as defined by Limit 6 of the 4(d) rule for Puget Sound chinook. It does not involve procedures under the Magnuson-Stevens Act. Stocks listed under the ESA is one of three exceptions to the application of the general overfishing criteria under Amendment 14 to the Pacific Coast Salmon Plan (FMP) (PFMC 2000). Instead, fishery actions are automatically required to be consistent with the jeopardy standards and recovery objectives for listed stocks. As explained in the FMP, the jeopardy standards and recovery plans developed by NMFS for listed populations are considered interim rebuilding plans. Although NMFS' jeopardy standards and recovery plans may not by themselves recover listed populations to historical MSY levels within 10 years, they are sufficient to stabilize populations until freshwater habitats and their dependent populations can be restored and estimates of MSY developed consistent with recovered habitat conditions. As species are delisted, the Pacific Fisheries Management Council will establish conservation objectives with subsequent overfishing criteria and manage to maintain the stocks at or above MSY levels (PFMC 2000).

Comment 14: One commenter stated that the Evaluation failed to adequately address the uncertainty in fisheries management models, and failed to consider the effect of fishing on life history traits such as body size and age structure.

Response: NMFS agrees that having finer resolution fishery impact models is desirable, but is often limited by the level of available information. The commenter appears to suggest that the current fishery models are not fishery, time, or stock specific, nor do they contain information on maturation rates, age, or stock distribution. In fact, the Fisheries Regulation and Assessment Model (FRAM) used in fishery planning assesses stock-specific fishing mortality by time step (3-month blocks), fishery (catch area by general gear type) and age (ages 2–5). The model estimates stock-specific mortality using age-specific exploitation rates, maturation rates by size category, and stock distribution data, based on CWT recoveries. The model developed by the WDFW in the early 1970's, to which the commenter refers, was a pioneering effort in harvest management models. However, it was developed prior to the advent of the CWT data system and the stock specific data on catch composition and stock

distribution that it provides. The current models, including FRAM, are significant improvements over the initial WDFW effort due to both increased knowledge and greater computing power.

The commenter relied on information for California chinook populations to infer the same effects on Puget Sound chinook. However, although NMFS concurs that fishing activities may select for body size, and may, therefore, have an indirect effect on age structure, NMFS' status review (Myers *et al.*, 1998) did not discern any trends in size, weight, fecundity or other life history traits for Puget Sound chinook that might be a result of fishing activities. If, however, deleterious effects are detected, the RMP commits to taking the appropriate measures such as gear modification or adoption of size limits. The RMP identifies the need to conduct analysis of harvest regulations for existence of size or sex selectivity and the extent of the potential impact. Therefore, NMFS does not agree with the commenter's assessment and sees no need to revise its conclusion.

Comment 15: One commenter suggested that without more detail on the parameters and assumptions made in the simulation modeling, it could not verify the Evaluation's conclusion that the RMP was sufficiently risk averse.

Response: As part of its evaluation, NMFS compared the RMP objectives with its own population standards and viability guidelines for the Puget Sound chinook ESU. The approach and assumptions for the derivation of these standards can be found in two previous biological opinions, the 2000-2001 Pacific Fisheries Management Council and Puget Sound fisheries (NMFS 2000a) and the implementation of the 1999 Pacific Salmon Treaty agreement (NMFS 1999), and the VSP document (McElhaney *et al.*, 2000). The first two documents are available on the NMFS Northwest Region web site and the VSP document is available on the NMFS Northwest Fisheries Science Center web site. Any of the three documents is also available on request.

Comment 16: The commenter suggests that by managing many units simultaneously for extinction probabilities, the overall extinction probability for the ESU will be greater than the extinction probability for any individual population.

Response: NMFS disagrees with the commenter's conclusion for several reasons. First, the commenter's formula assumes that the population dynamics of the 21 Puget Sound chinook populations are independent. In fact, population abundance is highly correlated. Second, the commenter fails

to take into account the function of lower abundance thresholds in reducing extinction probabilities. The simulation models used to derive the exploitation rate objectives assumed that the rates would be applied at all abundance levels, when, in fact, fisheries will be further constrained when abundance falls below the low abundance thresholds. Finally, the commenter fails to note that the lower abundance thresholds against which the exploitation rates are derived are generally higher than quasi-extinction thresholds used in formal viability assessment. Therefore, the derivation of the management objectives does not involve assessment of absolute extinction probabilities, but rather probabilities of declining below a level significantly higher than extinction, and, in fact, in most cases, significantly higher than VSP critical abundance thresholds, for each population.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or through the documents available on the Sustainable Fisheries web site (see Electronic Access, under the heading, **SUPPLEMENTARY INFORMATION**).

Authority

Under section 4 of the ESA, NMFS, by delegated authority from the Secretary of Commerce, is required to adopt such regulations as it deems necessary and advisable for the conservation of the species listed as threatened. The ESA salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that are adequately regulated to provide for the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a RMP developed jointly by the State of Washington and the Tribes and determined by NMFS to be in accordance with the salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000).

Dated: June 7, 2001.

Chris Mobley,

*Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 01-14771 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 053001E]

RIN 0648-A023

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Golden Crab Fishery off the Southern Atlantic States; Amendment 3

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

ACTION: Notice of availability of Amendment 3 to the FMP for the golden crab fishery off the southern Atlantic states; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 3 to the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (FMP) for NMFS' review, approval, and implementation. Amendment 3 would make a number of modifications in the FMP's management program including extending the time period for the allowed use of cable for mainlines attached to golden crab traps, modifying vessel permitting requirements, changing the restrictions regarding which vessels are allowed to fish in each of the management zones, liberalizing the allowed increase in permitted vessel size, creating a small-vessel subzone in the southern zone, and specifying maximum sustainable yield (MSY) and stock status determination criteria for golden crab under the FMP. The intended effect of Amendment 3 and its implementing rule is to protect the golden crab resource while allowing the development of the fishery that is dependent on that resource. Specifically, Amendment 3 is designed to reduce gear conflict in the southern zone of the fishery, increase participation in the fishery by easing permit renewal requirements, and expand fishing activities in the northern zone where no fishing currently occurs. Expected benefits include better information on the long-term biological productivity of the resource and an increase in the supply of golden crab in the market place with attendant economic benefits to the fishery.

DATES: Written comments must be received on or before August 13, 2001.

ADDRESSES: Written comments on Amendment 3 must be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent to Peter Eldridge via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for Amendment 3, which includes an Environmental Assessment, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; e-mail: safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, NMFS; telephone: 727-570-5305; fax: 727-570-5583; e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each Regional Fishery Management Council to submit any fishery management plan (FMP) or FMP amendment to NMFS for review and approval, disapproval, or partial approval. NMFS implements approved FMP or amendment measures by issuing a final rule. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document in the **Federal Register** stating that the FMP or amendment is available for public review and comment.

The golden crab fishery off the southern Atlantic states is managed under the FMP. This FMP was prepared by the Council and approved and implemented by NMFS.

Amendment 3 would (1) extend through December 31, 2002, the allowed use of cable for a mainline attached to golden crab traps; (2) clarify the size of the required escape panel or door on a golden crab trap; (3) remove the catch requirement for renewing a commercial vessel permit for golden crab; (4) allow the issuance of a commercial vessel permit for golden crab for the southern zone for a vessel that held a valid permit for the southern zone in October 2000 but did not meet the subsequent 5,000-lb (2,268-kg) catch requirement for renewal; (5) allow a vessel greater than 65 feet (19.8 m) in length with a permit to fish in the southern zone to fish also in the northern zone; (6) allow two new commercial vessel permits to be issued for the northern zone; (7) provide that a commercial vessel permit will not be renewed if the NMFS Regional Administrator does not receive an

application for renewal by June 30 each year; (8) liberalize the allowed increase in the size of a permitted vessel; (9) create a small-vessel sub-zone within the southern zone in which only permitted vessels 65 feet (19.8 m) or less in length may fish for golden crab; such vessels would be prohibited from fishing for golden crab in the remainder of the southern zone; and (10) add to the FMP's list of management measures that may be modified via its framework procedure for regulatory adjustments measures related to the southern zone's sub-zone.

In addition to the measures described above, Amendment 3 would establish the following: (MSY) for golden crab in the management area; a maximum fishing mortality threshold (MFMT), which is the fishing mortality rate that, if exceeded, constitutes overfishing; and a minimum stock size threshold (MSST), which is the stock size below which golden crab are considered overfished. The proposed specific parameters are as follows:

MSY would be an annual yield between 4 and 12 million lb (1,814 and 5,443 metric tons).

MFMT would be a fishing mortality rate that is in excess of the fishing mortality rate that produces MSY.

MSST would be either a ratio of current biomass to biomass at MSY (BMSY) or one minus the natural mortality rate (1 - M) times BMSY where 1 - M should never be less than 0.5.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 3, the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by August 13, 2001, whether specifically directed to Amendment 3 or to the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 3. All comments received by NMFS on Amendment 3 or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 5, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01-14772 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622****[I.D. 052301E]****Gulf of Mexico Fishery Management Council; Public Hearings**

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on its proposed Amendment 18 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico that proposes to establish a 10-year red grouper stock rebuilding program and address other reef fish fishery gear and enforcement issues.

DATES: The public hearings will be held in June. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings. Written comments will be accepted until June 28, 2001.

ADDRESSES: Written comments should be sent to and copies of draft Amendment 18 and its draft supplemental environmental impact statement (DSEIS) are available from the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619; telephone 813-228-2815. Public hearings will be held in Texas, Louisiana, Mississippi, Alabama, and Florida. See **SUPPLEMENTARY INFORMATION** for specific hearing locations.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; 813-228-2815.

SUPPLEMENTARY INFORMATION: In October 2000, NMFS informed the Council that it had determined that the Gulf of Mexico red grouper stock is overfished and undergoing overfishing. Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council is required to propose management measures to initiate rebuilding the stock within one year of NMFS' determination that the stock is overfished.

The Council has developed Amendment 18, in part, to address its responsibility under the Magnuson-Stevens Act, to propose stock rebuilding measures for red grouper. The Council

will convene public hearings to review draft Amendment 18 and its accompanying DSEIS. Amendment 18 proposes to establish a 10-year red grouper rebuilding program and address other gear and enforcement issues. The issues and proposed alternative measures contained in draft Amendment 18 are summarized below; the section references refer to sections of the draft Amendment 18 document.

Draft Amendment 18 Issues and Alternative Measures*Longline and Buoy Gear Endorsement (Section 6.1.1)*

6.1.1.1 Establish a longline/buoy gear endorsement - No preferred alternative selected.

6.1.1.2 Transferability of endorsement - Fully transferable.

6.1.1.3 Appeals board - Appeals to be handled by NMFS.

Longline and Buoy Gear Boundary Line (Section 6.1.2) - No preferred alternative selected.

Longline and Buoy Gear Phase-Out (Section 6.1.3) - No preferred alternative selected.

Use of Powerheads When Spearfishing (Section 6.2) - Require a permit for the use of powerheads when reef fish fishing (both commercially and recreationally), and eliminate the regulatory exemption that allows the use of powerheads in the stressed area for harvest of sand perch, dwarf sand perch, and hogfish.

Use of Reef Fish for Bait (Section 7.0) - Prohibit the use of all species in the reef fish management unit or parts thereof, except sand perch and dwarf sand perch, with any gear for bait. No preferred alternative has been selected regarding whether to apply this provision to commercial fishing, recreational fishing, or both.

Vessel Monitoring System (Section 8.0) - Require fishing vessels engaged in the bottom (reef fish) longline fishery to be equipped with an electronic vessel monitoring system (VMS), with the cost of the vessel equipment, installation, maintenance, and month-to-month communications to be paid or arranged by the owners as appropriate. NMFS would maintain and publish in the **Federal Register** a list of type-approved units and communications protocols.

Dormant Reef Fish Permits (Section 9.0) - No preferred alternative selected.

Red Grouper Rebuilding Plan (Section 10.0)

10.1 Red Grouper Sustainable Fishing Parameters - Set red grouper maximum sustainable yield (MSY), fishing mortality rate at MSY (FMSY), and

spawning stock biomass proxy at MSY (SSMSY) at the range of values estimated by the Reef Fish Stock Assessment Panel, MSY = 6.705 to 7.012 million pounds; FMSY = 0.223 to 0.270; SSMSY = 350.7 to 433.2 million grams female gonad weight.

10.2 *Red Grouper Minimum Stock Size Threshold (MSST)* - Red grouper minimum stock size threshold (MSST) shall be 80% of SSMSY (280.6 to 346.6 million grams female gonad weight).

10.3 *Red Grouper Maximum Fishing Mortality Threshold (MFMT)* - Red grouper maximum fishing mortality threshold (MFMT) shall be FMSY (0.223 to 0.270), or the F consistent with recovery to the MSY level in no more than 10 years.

10.4 *Red Grouper Optimum Yield (OY)* - Red grouper optimum yield (OY) shall be 90% of MSY (6.035 to 6.311 million pounds).

10.5 *Red Grouper Rebuilding Strategy* - Adopt a 10-year red grouper rebuilding plan based on a constant catch strategy. The annual ABC during the rebuilding period is initially set at 4.3-5.2 million pounds. (This is a reduction of 21-34 percent from the 1996-99 average landings of 6.6 million pounds.) This ABC range may be modified following a future stock assessment by a regulatory amendment or plan amendment.

10.6 *Commercial Shallow-Water Grouper Closed Seasons, Reef Fish Recreational Harvest on a Commercial Vessel, and Reef Fish Fishing Year* - In addition to consideration of commercial shallow-water grouper closed seasons, this section also contains an alternative to consider prohibiting the retention of both commercial and recreational harvest of reef fish species on the same trip, and an alternative to consider changing the start of the fishing year for stocks that have a fixed closed season. No preferred alternative selected.

10.7 *Recreational Closed Seasons* - No preferred alternative selected.

10.8 *Commercial Grouper Trip Limits* - No preferred alternative selected.

10.9 *Recreational Grouper Bag Limits* - No preferred alternative selected.

10.10 *Closed Areas* - No preferred alternative selected.

Tilefish and Deep-Water Grouper Quotas and Closed Seasons (Section 11.0) - Combine tilefish and deep-water grouper into a new deep-water reef fish aggregate; set the new deep-water reef fish quota at 1.47 million pounds (which is the average annual harvest of tilefish and deep-water grouper from 1996-99); and consider a closed season for deep-water grouper and tilefish.

Changes to the Reef Fish Management Unit (Section 12.0) - Add the following species to the FMP management unit as

indicated: Add the marbled grouper (*Epinephelus inermis*) to the shallow-water grouper aggregate under the management unit; and add the sand tilefish (*Malacanthus plumieri*) to the management unit.

Modifications to the Reef Fish FMP's Framework Procedure for Setting Total Allowable Catch (TAC) (Section 13.0) - The primary modification is to allow a species TAC and commercial-to-recreational allocation to be set for an individual species within an aggregate (such as the shallow-water grouper aggregate) that differs from the aggregate allocation, provided the aggregate allocation remains as specified. A second modification allows NMFS stock assessments to report the status of stocks in terms of biomass or biomass proxy instead of spawning potential ratio (SPR). This section also contains an alternative to consider specifying that, if a TAC is set for red grouper or gag, the allocations will be based on catch histories of those stocks for the years 1986 to 1999.

Time and Location for Public Hearings

Public hearings for Reef Fish Amendment 18 will be held at the following locations and dates from 7 p.m. - 10 p.m.

1. Thursday, June 14, 2001, Port Aransas Community Center, 408 North Allister, Port Aransas, TX.
2. Monday, June 18, 2001, Larose Regional Park, 307 East 5th Street, Larose, LA.
3. Tuesday, June 19, 2001, Imperial Palace Hotel, 850 Bayview, Biloxi, MS.
4. Wednesday, June 20, 2001, Hilton Beachfront Garden Inn, 23092 Perdido Beach Boulevard, Orange Beach, AL.
5. Thursday, June 21, 2001, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL.
6. Monday, June 25, 2001, Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL.
7. Tuesday, June 26, 2001, Edison Comm. College, Hendry Hall, room K143, Ft. Myers, FL (Use Shoreline Blvd. entrance. Park in 1st lot on right (Lot 8). For Map directions see: <http://www.edison.edu/aboutecc/lee-campus.htm>).

8. Wednesday, June 27, 2001, Madeira Beach City Hall, 300 Municipal Drive, Madeira Beach, FL.

9. Thursday, June 28, 2001, Plantation Inn, 9301 West Fort Island Trail, Crystal River, FL.

The Council will also hear public testimony before taking final action on Amendment 18 at another meeting. A notification of the date, time, and location of that meeting will be published in the **Federal Register**. The Council will accept written comments received by June 28, 2001.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by June 7, 2001.

Dated: June 7, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-14893 Filed 6-8-01; 3:25 pm]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 66, No. 113

Tuesday, June 12, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on June 20–21, 2001. The first day will be a field trip starting at 9:00 am at the Maupin, Oregon Visitor's Center for a tour of developed sites to view improvements and to discuss a variety of issues. The second day will be a business meeting starting at 0900 at the Jefferson County Firehall on the corner of Adam and "J" Street in Madras, Oregon. Agenda items will include a presentation on the Regional Recreation and the National Fire Plan strategies. The remainder of the day will include member's goal setting and tasks, Info Sharing and a Public Forum from 4:00 pm till 4:30 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd., Bend, OR, 97701, Phone (541) 416-6872.

Dated: June 6, 2001.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor.

[FR Doc. 01-14718 Filed 6-11-01; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on

Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 7 p.m. on July 9, 2001, at the Center for Hispanic Policy & Advocacy, 421 Elmore Avenue, Providence, Rhode Island 02907. The purpose of the meeting is to receive briefings from invited community leaders and civil rights advocates, and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Olga Noguera, 401-462-2130, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 2001.

Edward A. Hailes, Jr.

General Counsel.

[FR Doc. 01-14680 Filed 6-11-01; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1173]

Approval for Expanded Manufacturing Authority Rotorex Company, Inc. (Air Cleaners) Walkersville, MD

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Maryland Department of Transportation, grantee of FTZ 73, has requested authority on behalf of the Rotorex Company, Inc. (Rotorex), to expand the scope of manufacturing activity (air cleaners) conducted under zone procedures within Subzone 73A at the Rotorex facility in Walkersville, Maryland (FTZ Doc. 45-2000, filed 7-27-00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 47712, 8-3-00);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Sec. 400.28.

Signed at Washington, DC, this 29th day of May 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01-14797 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1168]

Expansion of Foreign-Trade Zone 44 Mount Olive, NJ Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones (FTZ) Board (the Board) adopts the following Order:

Whereas, the New Jersey Commerce and Economic Growth Commission, grantee of Foreign-Trade Zone 44, submitted an application to the Board for authority to expand FTZ 44 to include the Rockefeller Cranbury Industrial Park (309 acres) in Cranbury Township (Middlesex County), New Jersey (Site 2), within the New York/Newark Customs port of entry (FTZ Docket 52-2000; filed 8/22/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 52984, 8/31/00; extended, 65 FR 76218, 12/6/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 44 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of May 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01-14795 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1169]

Expansion of Foreign-Trade Zone 54, Clinton County, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the County of Clinton, New York, grantee of Foreign-Trade Zone 54, submitted an application to the Board for authority to expand FTZ 54 to include a site at the former Plattsburgh Air Force Base located in Plattsburgh, New York (Site 4), within the Champlain Customs port of entry (FTZ Docket 57-2000; filed 11/13/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 70693, 11/27/00) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 54 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 29th day of May 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01-14796 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1175]

Approval of Manufacturing Activity Within Foreign-Trade Zone 246 Waco, TX; Caterpillar Inc. (Construction Equipment)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Waco (Texas), grantee of FTZ 246, has requested authority on behalf of Caterpillar Inc., to manufacture construction equipment under zone procedures within FTZ 246, Waco, Texas (filed 12-15-2000, FTZ Docket 69-2000);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is the same, in terms of products involved, as activity recently approved by the Board and similar in circumstances (§ 400.32(b)(1)(i));

Whereas, the Board's Executive Secretary has determined that the application meets the criteria for review under § 400.32(b)(1)(i); and,

Whereas, the FTZ staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 29th day of May 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01-14798 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1170]

Expansion of Foreign-Trade Zone 115 Beaumont, TX Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 115, submitted an application to the Board for authority to expand FTZ 115 to include a site at the Sun Pipe Line Company crude oil petroleum terminal (Site 8) in Nederland, Texas (including certain areas previously authorized as Subzone 116B), within the U.S. Customs Service consolidated port of Port Arthur and Sabine (FTZ Docket 67-2000; filed 11/29/00 and amended on 2/7/01).

Whereas, notice inviting public comment was given in the **Federal Register** (65 F.R. 77560, 12/12/00, and as amended, 66 F.R. 10010, 2/13/01), the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 115 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of May 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01-14799 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

A-427-801, A-428-801, A-475-801, A-588-804, A-401-801, A-412-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Sweden, and the United Kingdom; Notice of Extension of Time Limits for Final Results of Antidumping Administrative Reviews

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

ACTION: Notice of extension of time limits for final results of antidumping duty administrative reviews.

EFFECTIVE DATE: June 12, 2001.

FOR FURTHER INFORMATION CONTACT:

Richard Rimlinger, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482-4477.

Extension of Time Limits for Final Results

The Department of Commerce (the Department) has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Sweden, and the United Kingdom. On July 7, 2000, the Department initiated these administrative reviews covering the period May 1, 1999, through December 31, 1999, for certain orders and May 1, 1999, through April 30, 2000, for other orders.

Because of the complexity of certain issues which have arisen and the large number of respondents under review, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). Therefore, in accordance with that section, the Department is extending the time limit for the final results of these

administrative reviews until July 5, 2001. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: June 5, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01-14793 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-828]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from Taiwan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request by a producer/exporter of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel wire rod (SSWR) from Taiwan. This review covers one producer/exporter of the subject merchandise. The period of review (POR) is September 1, 1999, through August 31, 2000.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) and the NV.

Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate parties submitting written comments to provide the Department with an additional copy of the public version of any such comments on diskette.

EFFECTIVE DATE: June 12, 2001.

FOR FURTHER INFORMATION CONTACT:

Alexander Amdur or Karine Gziryan, at (202) 482-5346 or (202) 482-4081, respectively; AD/CVD Enforcement Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 2000).

Case History

On September 15, 1998, the Department issued an antidumping duty order on SSWR from Taiwan. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod From Taiwan*, 63 FR 49332 (September 15, 1998) (*Amended Final Determination and Order*). On September 20, 2000, we published in the **Federal Register** the notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 65 FR 56868 (September 20, 2000).

On September 26, 2000, Walsin Lihwa Corporation (Walsin) requested that the Department conduct an administrative review for the period from September 1, 1999, through August 31, 2000.

On October 30, 2000, we published the notice of initiation of this antidumping duty administrative review, covering the period September 1, 1999, through August 31, 2000. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 65 FR 64662 (October 30, 2000).

On October 20, 2000, we issued an antidumping questionnaire to Walsin. The Department received Walsin's response in December 2000. We issued supplemental questionnaires to Walsin in January, March, April and May 2001, and received responses from Walsin in February, March, April and May 2001. In its March 30, 2001 supplemental questionnaire response, Walsin requested that it not be required to report an insignificant amount of sales made in Taiwan by its Shape, Pipe and Special Products Business Unit during the POR. On April 17, 2001, we granted this request.

Scope of the Review

For purposes of this review, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares,

octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar. The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter.

Two stainless steel grades are excluded from the scope of the review. SF20T and K-M35FL are excluded. The chemical makeup for the excluded grades is as follows:

SF20T

Carbon 0.05 max
Manganese 2.00 max
Phosphorous 0.05 max
Sulfur 0.15 max
Silicon 1.00 max
Chromium 19.00/21.00
Molybdenum 1.50/2.50
Lead-added (0.10/0.30)
Tellurium-added (0.03 min)

K-M35FL

Carbon 0.015 max
Silicon 0.70/1.00
Manganese 0.40 max
Phosphorous 0.04 max
Sulfur 0.03 max
Nickel 0.30 max
Chromium 12.50/14.00
Lead 0.10/0.30
Aluminum 0.20/0.35

The products subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Successorship

Walsin, in July 1998, purchased the operating assets, including the SSWR operations, of its affiliate, Walsin

Cartech Specialty Steel Corporation (Walsin CarTech), one of the respondents in the original investigation of this proceeding. Prior to this purchase, Walsin did not produce the subject merchandise. Walsin integrated Walsin CarTech's former SSWR operations into its own corporate structure. These operations, which are now known as Walsin's Yenshui plant, are part of Walsin's stainless steel business unit. Walsin CarTech itself, as of March 2000, no longer exists as a corporate entity.

Walsin did not request that the Department make a successorship determination for purposes of applying the antidumping duty law, but the Department is now making such a successorship determination in order to apply the appropriate and necessary company-specific cash deposit rates. In determining whether Walsin is the successor to Walsin CarTech for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass Sheet and Strip from Canada*); *Steel Wire Strand for Prestressed Concrete from Japan, Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 55 FR 28796 (July 13, 1990); and *Industrial Phosphorous From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass Sheet and Strip from Canada*. Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record, including Walsin's Yenshui plant's and Walsin CarTech's company brochures, customer lists, and lists of suppliers, including those listed in Walsin's section D response,¹ demonstrates that with

respect to the production and sale of the subject merchandise, Walsin is the successor to Walsin CarTech.

Specifically, the evidence shows that Walsin has the same SSWR production facilities, and most of the same customers, suppliers, and management, as Walsin CarTech had. Moreover, Walsin's SSWR operations are essentially the same as Walsin CarTech's former operations, except that the SSWR operations are now an integrated corporate unit of Walsin, while previously, the operations were organized as a separate, affiliated corporate entity, Walsin CarTech, of which Walsin owned 93.9% of the equity.

Therefore, since Walsin's SSWR operations are essentially inclusive of Walsin CarTech's former SSWR operations, we preliminarily determine that Walsin is the successor to Walsin CarTech for purposes of this proceeding, and for the application of the antidumping law.

Fair Value Comparisons

We compared EP to NV, as described in the *Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous U.S. and comparison markets sales of products that are identical with respect to the following characteristics: grade, diameter, further processing and coating. Where we were unable to compare sales of identical merchandise, we compared U.S. sales to comparison market sales of the most similar merchandise based on the above characteristics, which are listed in order of importance for matching purposes. Since we were able to find appropriate comparison market sales of comparable merchandise for all of the merchandise sold in the United States, we made no comparisons to constructed value.

Export Price

For the price to the United States, we used EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, by Walsin to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States, and constructed export price (CEP) methodology was not otherwise warranted based on the facts on the record.

We calculated EP based on the packed, CIF prices charged to unaffiliated customers in the United States or to unaffiliated customers for

¹ For information on Walsin CarTech, *see* Memorandum to the File dated June 4, 2001 regarding information on Walsin CarTech from the

investigation state of this proceeding; and for information on Walsin, *see* Walsin's February 28, 2001 section A, B, C, and D responses.

exportation to the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including brokerage and handling, harbor maintenance charges, and inland freight), international freight, and marine insurance.

Normal Value

After testing home market viability, whether sales to affiliates were at arm's-length prices, and whether home market sales were at below-cost prices, we calculated NV as noted in subsection 4, *Calculation of NV*, below.

1. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Walsin's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Because Walsin's aggregate volume of home market sales of the foreign like product is greater than five percent of its aggregate volume of U.S. sales of subject merchandise, we determined that the home market is viable for Walsin.

2. Affiliated-Party Transactions and Arm's-Length Test

We included arm's-length sales to an affiliated home market customer in our analysis because we considered them to be made in the ordinary course of trade. See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.102. To test whether sales to the affiliated customer in the home market were made at arm's-length prices, we compared, on a model-specific and quality-specific (*i.e.*, prime and non-prime quality) basis, prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Since, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the prices to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c) and 62 FR at 27355 (preamble to the Department's regulations).

3. Cost of Production (COP) Analysis

In the investigation of SSWR from Taiwan, the most recently completed segment of this proceeding, the Department disregarded Walsin

CarTech's sales that were found to have failed the cost test. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated a COP investigation of Walsin (the successor of Walsin CarTech) for purposes of this administrative review. We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of materials and fabrication costs, general and administrative (G&A) expenses, and packing costs. We relied on the submitted costs except in the specific instances noted below, where the submitted costs were not appropriately quantified or valued.

We recalculated Walsin's G&A expenses to account for the company's total 1999 non-operating loss on idle assets valuation and obsolescence, and non-operating gain from the sale and disposal of fixed assets. We made this adjustment because these items relate to the general manufacturing activities of the company as a whole. We also adjusted Walsin's G&A expenses to reflect foreign exchange gains and losses related to accounts payable. We excluded from the G&A calculation certain non-operating expense and income items, such as other financial income and expense, rent income and expense, and commission and royalty income, because these items do not relate to the general manufacturing activities of the company.

We recalculated Walsin's interest expense factor using the company's total 1999 consolidated interest expense, foreign exchange gains and losses from notes and interest payable, and short-term interest income (used as an offset). Walsin had excluded an allocated portion of the interest expense related to investment income from its calculation of the interest expense factor. Walsin contends that, since the Department does not allow investment income as an offset to interest expense, it would be distortive, and contrary to the "matching principle" in generally accepted accounting principles (GAAP), to include the interest expense related to the same investment income in its interest expense. However, it is the Department's practice to derive net financing costs based on the borrowing experience of the entire consolidated company, including investment arms of the consolidated company. See *Final Determination of Sales at Less Than Fair Value: New Minivans From Japan*, 57 FR 21937, 21945 (May 26, 1992). Furthermore, the Department does not reduce the COP by income from long-

term investments because we do not consider such income to be related to a company's manufacturing operations. See *Final Determination of Sales at Less Than Fair Value: Pasta from Italy*, 61 FR 30326, 30359 (June 14, 1996).

We also adjusted Walsin's cost of goods sold (COGS) used in the calculation of the G&A and interest expense ratios by the amount of the applicable scrap revenue offset. We made this adjustment in order to make the COGS consistent with the COM (which includes this offset) to which the G&A and interest expense ratios are applied.

B. Test of Comparison Market Sales Prices

As required under section 773(b) of the Act, we compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, billing adjustments, and other direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Walsin's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Walsin's sales of a given product were made at prices below the COP, we determined that such sales were made in substantial quantities within an extended period of time (*i.e.*, a period of one year). Further, because we compared prices to POI-average costs, we determined that the below-cost prices would not permit recovery of all costs within a reasonable time period, and thus, we disregarded the below-cost sales in accordance with sections 773(b)(1) and (2) of the Act.

We found that for certain products, Walsin made home market sales at prices below the COP within an extended period of time in substantial quantities. Further, we found that these sales prices did not permit the recovery of costs within a reasonable period of time. We therefore excluded these sales from our analysis in accordance with section 773(b)(1) of the Act.

4. Calculation of NV

We determined price-based NVs for Walsin as follows: We calculated NV based on packed, delivered prices to all home market customers. We made deductions from the starting price for foreign inland freight and billing adjustments, where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale (COS) adjustments to the starting price, where appropriate, for differences in credit, royalty, and warranty expenses.

We deducted home market packing costs from, and added U.S. packing costs to, the starting price, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in the physical characteristics of the merchandise sold in the U.S. and comparison market, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market. For EP sales, the U.S. LOT is also the level of the starting-price sales.

To determine whether NV sales are at a different LOT than EP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this review, we obtained information from Walsin about the marketing stages for the reported U.S. and comparison market sales, including a description of the selling activities performed by Walsin for each channel of distribution. In identifying levels of trade for EP and comparison market sales, we considered the selling functions reflected in the starting price before any adjustments. See 19 CFR 351.412(c)(1)(i) and (iii). We expect that, if claimed levels of trade are the same, the selling functions and activities of the seller at each level should be similar. Conversely, if a party

claims that levels of trade are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In this review, Walsin claimed that all of its sales involved identical selling functions, irrespective of the channel of distribution or market. We examined these selling functions, and found that sales activities were limited in nature and scope in both the comparison and U.S. markets, and consisted primarily of providing freight services. Therefore, we have preliminarily found that there is one LOT in the U.S. and comparison market, and thus, no level-of-trade adjustment is required for comparison of U.S. sales to comparison market sales. For further details, see Memorandum on Level of Trade Analysis dated June 4, 2001.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period September 1, 1999, through August 31, 2000:

Manufacturer/exporter	Margin (percent)
Walsin Lihwa Corporation	4.75

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication date of this notice. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the deadline for filing case briefs. Interested parties are invited to comment on the preliminary results. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of

any such comments on a diskette. The Department will publish the notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from the publication date of this notice.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries. We have calculated each importers' duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of examined sales. Where the assessment rate is above *de minimis*, we will assess the importer-specific rate uniformly on all entries made during the POR.

If the Department determines in the final results of this review that Walsin is the successor to Walsin CarTech for purposes of applying the antidumping duty law, we will further instruct the U.S. Customs Service to assign Walsin CarTech's antidumping company identification number to Walsin.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of SSWR from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Walsin Lihwa Corporation will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above (except for Walsin CarTech²), the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm

² If we determine in the final results that Walsin is the successor to Walsin CarTech for purposes of applying the antidumping duty law, Walsin CarTech will no longer have its own company-specific cash deposit rate.

covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 8.29 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 4, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01-14801 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Virginia, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket Number: 01-009. Applicant: University of Virginia, Charlottesville, VA 22904-4400. Instrument: Electron Microscope, Model JEM-1010. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 66 FR 20637, April 24, 2001. Order Date: October 30, 2000.

Docket Number: 01-010. Applicant: University of Colorado, Boulder, CO 80309-0347. Instrument: Electron Microscope, Model Tecnai F20. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 66 FR 21742, May 1, 2001. Order Date: December 21, 2000.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01-14800 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-839]

Certain Softwood Lumber Products From Canada: Extension of Time Limit for Preliminary Determination in Countervailing Duty Investigation

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

ACTION: Notice of extension of time limit for preliminary determination in countervailing duty investigation.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determination in the countervailing duty (CVD) investigation of certain softwood lumber products from Canada from June 27, 2001 until no later than July 27, 2001. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT:

Tipten Troidl at 202-482-1767 or Eric B. Greynolds at 202-482-6071, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Extension of Due Date for Preliminary Determination

On April 23, 2001, the Department of Commerce (the Department) initiated the CVD investigation of certain softwood lumber products from Canada. See *Notice of Initiation of Countervailing Duty Investigation: Certain Softwood Lumber Products from Canada*, 66 FR 21332 (April 30, 2001). Currently, the preliminary determination is due no later than June 27, 2001. However, pursuant to section 703(c)(1)(B) of the Act, we have determined that this investigation is "extraordinarily complicated" and are therefore extending the due date for the preliminary determination by 30 days to no later than July 27, 2001.

Under section 703(c)(1)(B), the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if:

(B) The administering authority concludes that the parties concerned are cooperating and determines that

(i) The case is extraordinarily complicated by reason of

(I) The number and complexity of the alleged countervailable subsidy practices;

(II) The novelty of the issues presented;

(III) The need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) The number of firms whose activities must be investigated; and

(ii) Additional time is necessary to make the preliminary determination.

We find that all concerned parties are cooperating. Moreover, we find that this case is extraordinarily complicated because of the number of alleged programs, and the complexity of each program. As a consequence, we determine that additional time is necessary to complete the preliminary determination. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determination in this investigation to no later than July 27, 2001.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: June 5, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01-14794 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051501B]

International Whaling Commission: Nominations

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

ACTION: Request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the July 2001 International Whaling Commission (IWC) annual meeting.

DATES: All nominations for the U.S. Delegation to the IWC annual meeting must be received by June 22, 2001.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to the U.S. Commissioner to the IWC, and sent, via post or fax, to Cathy Campbell at Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, (fax) 301-713-0376. Prospective Congressional advisors to the delegation should contact the Department of State directly.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, 301-713-2322, Extension 141. Fax 301-713-0376.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, Marine Mammal Commission, and by other agencies. The non-federal representative selected as a result of this nomination process is responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations.

The IWC is hosting its 53rd annual meeting from July 23-27, 2001 in London.

Dated: June 6, 2001.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01-14773 Filed 6-11-01; 8:45 am]

BILLING CODE 3510-22-S

CONSUMER PRODUCT SAFETY COMMISSION

Meetings; Sunshine Act

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Tuesday, June 19, 2001, 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f)(1) and 16 CFR 1013.4(b)(3)(7)(9) and (10) and submitted to the **Federal Register** pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504-0800

Dated: June 7, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01-14913 Filed 6-8-01; 2:23 pm]

BILLING CODE 6355-01-M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to

comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its request for approval of a new information collection from representatives of communities served by organizations that conduct community service activities under the sponsorship of Corporation grants. This information will be used by the Corporation to evaluate the nature and effectiveness of its national service programs.

Copies of the proposed information collection request may be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by August 13, 2001.

ADDRESSES: Send comments to the Corporation for National and Community Service Attn: Marcia Scott, Office of Evaluation, 1201 New York Avenue, N.W., 9th floor, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Marcia Scott, (202) 606-5000, ext. 100.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Propose ways to enhance the quality, utility and clarity of the information to be collected; and

- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background:

The Corporation for National Service has the responsibility to evaluate the effectiveness of its program. The Corporation's major initiative is AmeriCorps, the national service program funded at \$360 million annually. While the primary emphasis of AmeriCorps is on providing services to communities and other beneficiaries, of key importance is participant development. AmeriCorps includes the State and National program and the National Civilian Community Corps (NCCC) program. The objectives of this study are to describe the changes in those outcomes over time; to identify factors explaining variation in outcomes at different stages of time; and to identify relationships between selected program features and member outcomes. Outcome domains will include civic engagement, educational skill aspiration and achievements, employment skill aspiration and achievements, and life skills.

The Longitudinal Study of AmeriCorps Member Outcomes is designed to assess the effectiveness of AmeriCorps programs in meeting these objectives—member development outcomes. Previously, the Corporation received OMB approval (OMB # 3045–0060, expires September 30, 2002 and #3045–0070, expires September 31, 2003) to launch three rounds of surveys of AmeriCorps members and their counterparts in comparison groups.

Current Action

The Corporation seeks approval to continue to study the impact of AmeriCorps*State and National and AmeriCorps*NCCC. This is a request to add another round of data collection to the study. The purpose of this additional round of data collection is to supplement data collected at baseline and post-program and collect additional information about participation in service prior to AmeriCorps, and the decision-making process concerning enrolling or not enrolling in AmeriCorps. In addition, the survey will collect details about the AmeriCorps experience of members, and employment and educational experiences of individuals in the comparison group in the year after they considered joining, but did not actually join AmeriCorps. Analysis of baseline data collected in the initial round of surveys raised questions about participants' motivations about, and previous involvement in, community service. Data collected in the supplemental survey will allow us to address those concerns.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The Longitudinal Research on Member Outcomes.

OMB Number: #3045–0070.

Agency Number: None.

Affected Public: AmeriCorps members, comparison group individuals.

Total Respondents: 1600 (800 AmeriCorps members; 800 Comparison group members).

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: June 6, 2001.

David Rymph,

Acting Director, Department of Evaluation and Effective Practices.

[FR Doc. 01–14673 Filed 6–11–01; 8:45 am]

BILLING CODE 6050–SS–U

DEPARTMENT OF DEFENSE**Office of the Secretary****Proposed Collection; Comment Request**

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 13, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Logistics Agency Headquarters, ATTN: Mr. Joseph Kunda, J–331, 8725 John J. Kingman Rd., Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposal information collection or to obtain a copy of the proposal and associated collection instructions, please write to the above address, or call J–331 at (703) 767–1542.

Title, Associated Form, and OMB Number: End-Use Certificate, DLA Form 1822, OMB No. 0704–0382.

Needs and Uses: All individuals wishing to acquire government property identified as Munitions List Items (MLI) or Commerce Control List Item (CCLI) must complete this form each time they enter into a transaction. It is used to clear recipients to ensure their eligibility to conduct business with the government. That they are not debarred bidders; Specially Designated Nationals (SDN) or Blocked Persons; have not violated U.S. export laws; will not divert the property to denied/sanctioned countries, unauthorized destinations or sell to debarred/Bidder Experience List firms or individuals. The EUC informs the recipients that when this property is to be exported, they must comply with the International Traffic in Arms Regulations (ITAR), 22 CFR 120 et seq.; Export Administration Regulations (EAR), 15 CFR 730 et seq.; Office of Foreign Asset Controls (OFAC), 31 CFR 500 et seq.; and the United States Customs Service rules and regulations.

Affected Public: Individuals; businesses or other for profit; not-for-profit institutions.

Annual Burden Hours: 13,200.

Number of Respondents: 40,000.

Responses Per Respondent: 1.

Average Burden Per Response: 0.33 hours (20 minutes).

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:**Summary of Information Collection**

Respondents are individuals/businesses who receive defense property identified as Munitions List Items and Commerce Control List Items through: purchase, exchange/trade, or donation. They are checked to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws.

The form is available on the DoD DEMIL/TSC web page, Defense

Reutilization and Marketing Service sales catalogs and web page, Defense Contact Management Agency offices, FormFlow and ProForm.

Dated: June 4, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-14677 Filed 6-11-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number:

Department of Defense Application for Priority Rating for Production or Construction Equipment; DD Form 691; OMB Number 0704-0055.

Type of Request: Extension.

Number of Respondents: 610.

Responses Per Respondent: 1.

Annual Responses: 610.

Average Burden Per Response: 1 Hour.

Annual Burden Hours: 610.

Needs and Uses: Executive Order 12919 delegated to the Department of Defense authority to require certain contracts and orders relating to approved Defense Programs to be accepted and performed on a preferential basis. This program helps contractors acquire industrial equipment in a timely manner, thereby facilitating development and support of weapons systems and other important Defense Programs. This information is used so the authority to use a priority rating in ordering a needed item can be granted. This is done to assure timely availability of production or construction equipment to meet current Defense requirements in peacetime and in case of national emergency. Without this information DoD would not be able to assess a contractor's stated requirement to obtain equipment needed for fulfillment of contractual obligations.

Affected Public: Business or Other For Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondents Obligation: Voluntary.

OMB Desk Officer: Mr. David M. Pritzker.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: June 4, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-14678 Filed 6-11-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology, and Associated Clauses at DFARS 252.239-7000 and 252.239-7006; OMB Number 0704-0341.

Type of Request: Extension.

Number of Respondents: 1,598.

Responses Per Respondent: 1.

Annual Responses: 1,598.

Average Burden Per Response: 1.13 Hours.

Annual Burden Hours: 1,806.

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

construction by common carriers. The clause at DFARS 252.239-7000, Protection Against Compromising Emanations, requires that the contractor provide, upon request of the contracting officer, documentation supporting the accreditation of a computer system to meet the appropriate security requirements. The clause at DFARS 252.239-7006, Tariff Information, requires that the contractor provide to the contracting officer: (1) Upon request, a copy of the contractor's existing tariffs; (2) before filing, a copy of any application to a Federal, State, or other regulatory agency for new rates, charges, services, or regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, and, upon request, a copy of all information, material, and data developed or prepared in support of or in connection with such an application; and, (3) a notification to the contracting officer of any application submitted by anyone other than the contractor that may affect the rate or conditions of services under the agreement or contract. DFARS 239.7408 requires the contracting officer to obtain a detailed construction proposal from a common carrier that submits a proposal or quotation that has special construction requirements related to the performance of basic telecommunications services.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. David M. Pritzker.

Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: June 4, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-14679 Filed 6-11-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF EDUCATION**[CFDA No.: 84.351-B]****The Cultural Partnerships for At-Risk Children and Youth Program****AGENCY:** Department of Education.**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2001.

Purpose of Program: The Cultural Partnerships for At-Risk Children and Youth Program, funded under Subpart 2 of Part D of Title X of the Elementary and Secondary Education Act (ESEA), makes demonstration grants to eligible entities for the development of school-community partnership programs designed to improve the educational performance and future educational potential of at-risk children by providing comprehensive, coordinated educational and arts programs and services.

Eligible Applicants: A local educational agency (LEA), acting on behalf of an individual school or schools in which 75 percent or more of the children enrolled in such school(s) are from low-income families based on data used in determining a school's eligibility to operate a schoolwide program pursuant to Title I Section 1114 of the ESEA, in partnership with at least one: institution of higher education, museum, local arts agency, or cultural entity that is accessible to individuals within the school district of such school(s) and that has a history of providing quality services to the community. Such entities may include: (i) Nonprofit institutions of higher education, museums, libraries, performing, presenting and exhibiting arts organizations, literary arts organizations, State and local arts organizations, cultural institutions, and zoological and botanical organizations; or (ii) private for-profit entities with a history of training children and youth in the arts. To be eligible, such partnerships shall serve: (1) Students enrolled in schools participating or eligible to participate in a schoolwide program under ESEA Title I Section 1114 and, to the extent practicable, the families of such students; (2) out-of-school children and youth at risk of disadvantages resulting from teenage parenting, substance abuse, recent migration, disability, limited English proficiency, illiteracy, being the child of a teenage parent, living in a single parent household, or dropping out of school; or (3) any combination of in-school and out-of-school at-risk children and youth. Any school or schools to be served through grants received under this program must submit evidence for

inclusion in the grant application to the Secretary demonstrating that the school or schools meet the poverty criteria described above. Applicants may submit records kept for the purpose of ESEA Title I that provide proof of eligibility for each school to be served or to participate in the partnership.

Note: The LEA must serve as the fiscal agent for the program.

Applications Available: June 12, 2001.

Applications Must be Received By: July 27, 2001.

Deadline for Intergovernmental Review: August 28, 2001.

Available Funds: Approximately \$2,000,000.

Estimated Number of Awards: 7–10.

Estimated Size of Awards: \$100,000–\$250,000.

Average Size of Awards: \$200,000.

Matching Requirement: Recipients of grants under this program must share in the cost of the activities assisted under the grant. Grant recipients must make available non-Federal contributions, as authorized under Section 10414 of the program statute, in cash or in-kind in the following percentage: 20 percent of the cost of carrying out project activities for the project period. Applicant in-kind resources must be described as required in Sections B and C of the ED Form 524 Non-Construction Programs found within the application package.

Project Period: 12 months.

Note: The Department of Education is not bound by any estimates in this notice. The Administration is not requesting funding for this program in FY 2002.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 81, 82, 85, 86, 97, 98, and 99.

E-mail Notification of Intent to Apply for Funding: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by e-mail that it intends to submit an application for funding. The Secretary requests that this e-mail notification be sent no later than July 12, 2001. The e-mail notification should be sent to Ms. Madeline Baggett at madeline.baggett@ed.gov. Applicants that fail to provide this e-mail notification may still apply for funding.

SUPPLEMENTARY INFORMATION:**Background**

Arts education programs are beneficial to all students. Participation

in the arts enhances a student's knowledge of self and the full range of human experience and potential. Involvement in music, literature, dance, theater, and the visual arts has the potential to transform the lives of children and youth, who often exhibit a greater sense of accomplishment and self-confidence through participation in arts education activities.

Recent studies, such as those conducted by the National Endowment for the Arts, continue to reveal the positive correlation between participation in arts education and the academic, social, and experiential growth of children and youth. Improvements in academic achievement, standardized test scores, and school dropout rates are reported. Arts and humanities programs foster the development of creative thinking, higher-order skills, problem-solving, and a motivation to learn for all students, especially those considered to be at-risk.

Studies have shown social and behavioral benefits for students engaged in arts education as well. Participation in arts activities is linked to these indicators: decreased anti-social behavior, decreased drug and alcohol use, and increased motivation for learning and participation in school activities.

While it is important for all children and youth to benefit from arts education, at-risk children and youth are especially in need of quality arts and cultural programs both during and after school. Unfortunately, at-risk students are generally less likely to have access to and participate in arts education programs, which are often inadequately funded in high-poverty rural and urban areas. Beleaguered school systems must frequently curtail or eliminate music and other arts programs due to budget constraints. Consequently, at-risk children and youth have even less opportunity to benefit from the arts.

Partnership programs that document ways in which to effectively coordinate local, State, and Federal resources into comprehensive, integrated arts education service delivery systems are needed. Such partnerships help ensure that all children have greater opportunities to benefit from and enjoy arts education programs and experiences. At-risk students will enjoy greater access to, and participation in, high-quality arts education activities and programs through funded projects, and successful approaches may be replicated in other communities for similar purposes and target populations.

Partnership Purposes

Through combined resources, facilities, services, materials, expertise, and funding, the arts activities and programs offered through a school-community partnership can reach those youth most in need of such opportunities and experiences. Cultural partnership programs developed, enhanced, or expanded to meet the outcomes described within this program will maximize the outreach and impact of arts education programs and enrichment activities for at-risk middle and high school students, both in and out of school.

The Cultural Partnerships for At-Risk Children and Youth Program will support the development of school-community partnership programs that coordinate and integrate local, State, and Federal resources for arts education and enrichment into a coordinated and comprehensive service delivery system for at-risk children and youth. The cultural partnership projects will evaluate their effectiveness in achieving the following program outcomes for both in- and out-of-school at-risk children and youth:

- Increased access to and participation in high-quality arts education programs and enrichment activities linked to educational improvement.
- Improved student academic performance through participation in comprehensive and coordinated high-quality arts education programs.
- Increased range in the types of arts education programs (*i.e.*, a variety of music programs in addition to drama and dance, for example) and activities available.

At the end of the project period, the Department will disseminate information and materials on successful approaches for developing, enhancing, or expanding cultural partnerships designed to improve the educational performance or future potential of at-risk children and youth through comprehensive and coordinated educational services. This will include any evidence of improved educational achievement or potential educational achievement of at-risk students along with information regarding the arts education programs and methodologies linked to such improvements. The Department requires that, upon completion of the project, any materials or products developed be provided to the Department for further dissemination. Dissemination efforts will be carried out in full compliance with Departmental copyright requirements.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary to exempt rules governing the first competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). Funding was provided for this new initiative in the Fiscal Year 2001 Department of Education Appropriations Act, enacted in December 2000. Because this competition is the first competition under the program, it therefore qualifies as a new competitive grants program. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards. These regulations will apply for the FY 2001 grant competition only.

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute priority to partnership programs that focus school and cultural resources in the community on coordinated arts education services to address the needs of at-risk middle and high school-aged children and youth both in- and out-of-school. In addition, the project must fully address all of the desired outcomes for at-risk children and youth as described under the Partnership Purpose section.

Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applicants that meet the absolute priority.

Empowerment Zones and Enterprise Communities: Under 34 CFR 299.3 and 34 CFR 75.105(c)(2)(i), the Secretary gives a 5-point competitive preference to applications whose partnerships are located within an Empowerment Zone, including Supplemental Empowerment Zones, or an Enterprise Community as designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities may be found at this website: <http://www.ezec/mainmap.html>.

Coordination Requirement: Under subpart 2 of Part D of Title X ESEA, section 10412(b)(3), grants under this competition may only be awarded to eligible entities (*i.e.*, partnerships) that agree to coordinate activities carried out under the grant with other Federal, State and local grants administered by the individual partners. The applicant must demonstrate how the services supported through the Cultural Partnerships for

At-Risk Children and Youth Program and other similar services supported through grants administered by the individual partners will be coordinated into an integrated service delivery system. The integrated services must be coordinated at a school, cultural, or other community-based site accessible to and utilized by at-risk youth. An applicant must provide evidence that the partnership members have met this requirement in order to receive funding under this program.

General Requirements: The following requirements must be met for any application submitted under this program: the program narrative is limited to no more than 45 double-spaced pages using the following standards: (1) A "page" is 8.5" x 11" (on one side only) with one inch margins (top, bottom, and sides); and (2) Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs. The page limit applies to the narrative section only. However, all of the application narrative must be included in the narrative section. If the narrative section of an application exceeds the page limitation, the application will not be reviewed. (b) The projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, D.C. (c) The project application must address the following factors as required by the statute in ESEA Section 10413(c)(2): (1) the cultural entity or entities that will participate in the partnership; (2) the target population to be served; (3) the services to be provided; (4) a plan for evaluating the success of the program; (5) for each local educational agency or school participating in the partnership, how the activities assisted by the grant will be perpetuated beyond the duration of the grant; (6) the manner in which the eligible entity will improve the educational achievement or future potential of at-risk youth through more effective coordination of cultural services in the community; (7) the overall and operational goals of the program; (8) the nature and location of all planned sites where services will be delivered and a description of services to be provided at each site; and (9) training activities provided to individuals who are not trained to work with children and youth, and how teachers will be involved. Most of these application requirements should be addressed in the application narrative, which applicants are encouraged to organize around the selection criteria for

this competition. However, items 1, 2, 8, and 9, which are not directly covered within the selection criteria, should be addressed separately and included as appendices to the program narrative.

Selection Criteria: The Secretary will use the following selection criteria to evaluate applications under this competition. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(a) *Significance* (15 Points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(ii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies for implementing cultural partnership programs for at-risk children and youth.

(b) *Improvement in the Educational Achievement or Future Potential of At-Risk Youth* (15 points).

Under 34 CFR 75.209(a)(1)(ii), the Secretary reviews each application to determine the manner in which the partnership will improve the educational achievement or future potential of at-risk youth through comprehensive and coordinated services designed to: (1) enhance student academic performance in core academic subjects and on standardized tests; and (2) foster the academic potential of at-risk students.

(c) *Quality of the Project Design* (20 points). (1) The Secretary considers the quality of the project design of the proposed project.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent to which the proposed project represents an exceptional approach for meeting the priority or priorities established for the competition.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable and appropriate to the needs of the intended recipients of the project services.

(iii) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or

strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) *Quality of Project Personnel* (10 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualification, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of Resources* (10 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the lead applicant organization.

(ii) The extent to which the budget is adequate to support the proposed project.

(iii) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(f) *Quality of the Management Plan* (15 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring continuous feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and other key project personnel are

appropriate and adequate to meet the objectives of the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project.

(g) *Quality of the Project Evaluation* (15 points). (1) The Secretary considers the quality of the project evaluation.

(2) In determining the quality of the project evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation include objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

For Applications or Information Contact: Madeline E. Baggett, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-6140. Telephone (202) 260-2502.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format also by contacting that person. However, the Department is not able to reproduce in an alternative format the standards forms included in the application package.

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Access at: <http://www.access.gpo.gov/nara/index.html>.

Program Authority: 20 U.S.C. 7909.

Dated: June 7, 2001.

Thomas M. Corwin,

*Acting Deputy Assistant Secretary for
Elementary and Secondary Education.*

[FR Doc. 01-14765 Filed 6-11-01; 8:45 am]

BILLING CODE 4000-01-U

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. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, June 20, 2001, 6 p.m.–9 p.m.

ADDRESSES: Hotel Santa Fe, 1501 Paseo de Peralta, Santa Fe, New Mexico.

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—6–7 p.m.
2. Public Comments—7–7:30 p.m.
3. Discussion on Community Communication and Coordination.
4. Committee Reports: Monitoring and Surveillance, Waste Management, Environmental Restoration, Community Outreach, Bylaws, 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. This **Federal Register** notice is being published less than 15 days prior to the meeting due to programmatic issues that had to be resolved prior to the meeting date. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

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 a.m.–4 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 June 6, 2001.

Belinda G. Hood,

*Acting Deputy Advisory Committee
Management Officer.*

[FR Doc. 01-14731 Filed 6-11-01; 8:45 am]

BILLING CODE 6401-01-P

DEPARTMENT OF ENERGY

National Nuclear Security Administration Advisory Committee

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice announces a meeting of the National Nuclear Security Administration Advisory Committee (NNSA AC). The Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, June 26, 2001, 8 a.m. to 5 p.m. and Wednesday, June 27, 2001, 8 a.m. to 5 p.m.

ADDRESSES: National Nuclear Security Administration, Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jennifer Leonard (202-586-5555), Staff Director of NNSA AC.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide the Administrator of the National Nuclear Security Administration with advice and recommendations on matters of technology, policy, and operations that lie within the mission and responsibilities of the National Nuclear Security Administration, as set forth in 50 U.S.C. 20402(b).

Purpose of the Meeting: To discuss national security research, development, and policy programs.

Closed Meeting: In the interest of national security, the meeting will be closed to the public, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App 2 § 10 (d), and the Federal Advisory Committee Management Regulation, 41 CFR § 101-6.1023, "Procedures for Closing an Advisory Committee Meeting", which incorporate by reference the Government in the Sunshine Act, 5 U.S.C. § 552b, which, at §§ 552b (c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters are discussed.

Minutes: Minutes of the meeting will be recorded and classified accordingly.

Issued at Washington, DC on June 9, 2001.

Rachel M. Samuel,

*Deputy Advisory Committee Management
Officer.*

[FR Doc. 01-14897 Filed 6-11-01; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration; Maiden Wind Farm Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: BPA intends to prepare an EIS on the proposed Maiden Wind Farm (Project), located northeast of the town of Sunnyside in Benton and Yakima Counties, Washington. Washington Winds, Incorporated (Washington Winds) proposes to construct and operate the 150- to 494-megawatt (MW) wind generation facility. BPA proposes to purchase the electrical output from the Project and to provide transmission services. The EIS will be site-specific as to the potential environmental impacts of the construction and operation of the wind project itself, as well as all related transmission facilities. In addition, the EIS will take a broad programmatic look at the balance of the Project study area.

Benton and Yakima Counties, Washington, will be cooperating agencies because of their need to comply with the State Environmental Protection Act.

DATES: An EIS scoping meeting will be held at the location below on June 26, 2001. Written comments are due to the address below no later than July 13, 2001.

ADDRESSES: Send comment letters and requests to be placed on the Project mailing list to Communications, Bonneville Power Administration—KC-7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503-230-3478 in Portland; toll-free 1-800-622-4519 outside of Portland. Comments may also be sent to the BPA Internet address: comment@bpa.gov.

The scoping meeting will be held on June 26, 2001, from 4:00 p.m. to 7:00 p.m., at the Prosser Senior Citizen Center, 1231 Dudley Avenue, in Prosser, Washington. At this informal meeting, Washington Winds will provide information, including maps, about the Project. Written information will be available, and BPA staff will answer questions and accept oral and written comments on the proposed scope of the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Sarah T. Branum, Bonneville Power Administration—KEC-4, P.O. Box 3621, Portland, Oregon 97208-3621, phone number 503-230-5115, fax number 503-230-5699, email stbranum@bpa.gov.

SUPPLEMENTARY INFORMATION:

Background. Currently, there is a shortage of electricity in the Northwest; this Project would help to alleviate this shortage. In addition, there is an increased demand in the electric utility industry to diversify energy portfolios and include energy produced by new renewable resources. The Northwest Power Planning Council's Fourth Conservation and Electric Power Plan recommends that Northwest utilities offer green power purchase opportunities as a way to help the region integrate renewable resources into the power system in the future. BPA has committed to increasing its supply of conservation and renewable resources to help meet load.

Purpose and Need. BPA is facing an era of growing electrical loads, increasing constraints on the existing energy resource base, and heightened customer demand for renewable resources. BPA needs to acquire additional renewable resources that will contribute to the diversification of its

energy portfolio and be available promptly to help remedy BPA's power supply issues. The purposes BPA would fulfill by addressing this need include:

- Protecting BPA and its utility customers against risk;
- Assuring consistency with BPA's responsibility under the Pacific Northwest Electric Power Planning and Conservation Act to encourage the development of renewable energy resources;
- Meeting customer demand for energy from renewable energy resources, thereby assuring consistency with BPA's Business Plan EIS (DOE/EIS-0183, June 1995) and Business Plan Record of Decision (ROD);
- Assuring consistency with the resource acquisition strategy of BPA's Resource Programs EIS (DOE/EIS-0162, February 1993) and ROD; and
- Meeting the objective in the January 2000 Strategic Plan of BPA's Power Business Line to acquire at least 150 average MW of new renewable resources by the end of fiscal year 2006 in order to meet customer demand for new renewable resources.

Proposed Action. BPA proposes to execute one or more power purchase and transmission services agreements to acquire the full electrical output of Washington Winds' proposed Maiden Wind Farm. This 150-to 494-MW wind generation facility would be located primarily in Benton County, Washington, 15 miles north of Prosser, and, to a lesser extent, in Yakima County, Washington, 10 miles northeast of Sunnyside. The proposed site is located on the southwestern slopes of the Rattlesnake Hills, which includes: portions of Sections 7, 8, 9, 10 14, 15, 16, 17, 18, 22, 23, 24, 25, 26, 35, 36, T11N, R24E, Benton County; portions of Sections 28, 30, 31, 33, T11N, R25E, Benton County; and portions of Sections 3, 10, 11, 12, 13, T11N, R23E, Yakima County; State of Washington, Department of Natural Resources public lands include portions of Sections 16 and 36, T11N, R24, Benton County; road access involves portions of Sections 14, 19, 20, 29, 30, T11N, R24E, Benton County and portions of Sections 23, 24, 25, 26, 35, 36, T11N, R23E, Yakima County. None of the Project would be located on land owned by the United States. Land uses within the Project site consist of non-irrigated agriculture—primarily cattle grazing and dryland wheat farming.

Approximately 167 to 549 wind turbines would be arranged in several "strings," with approximately 250 to 450 feet between turbines in each string, depending upon the turbine size and topographical features. Washington

Winds is considering using turbines ranging from 900-kilowatt (kW) to 2,000-kW output each. The proposed turbine type would be an upwind, fixed-speed turbine (i.e., the rotor always faces upwind and turns at a constant speed), mounted on tubular steel towers installed on a reinforced concrete foundation. The typical operating range of wind speeds for these turbine types is approximately 9 to 65 miles per hour (mph). At speeds greater than approximately 65 mph, the wind turbines automatically cease operating and remain stationary until the wind speeds become slower. The height of the turbines will range from approximately 246 feet to 380 feet, depending upon the turbine size. Foundations would be either caisson or pad style, ranging from approximately 15 to 50 feet in width (depending upon turbine size) and extending 20 to 50 feet underground (depending upon turbine size) and/or anchored into bedrock. Agricultural activities can continue to take place directly adjacent to the turbine pads.

Power from all turbines in the Project would be collected by an underground and overhead cable system and then fed to one or two proposed substations to be located on the Project site. The fenced substation site(s) would occupy approximately two to four acres each. From the substation site(s), power from the Project would be interconnected to BPA's existing Hanford-John Day 500-kilovolts (kV), Midway-Big Eddy 230-kV, or the Midway-Grandview 115-kV transmission lines that transect the Project site. Other facilities required as part of the Project are small pad-mounted transformers located at the base of each wind turbine tower, access roads, and two or three operation and maintenance buildings. The Project is scheduled to begin construction as early as March 2002, followed by commercial operation as early as November 2002, and would operate year-round for at least 20 years.

Process to Date. An application for a conditional use permit for Benton County has been submitted, plus a conditional use permit application for Yakima County is in progress. Surveys for sensitive plant and wildlife species (including birds) were initiated in the spring of 2001. Scoping will help identify what additional studies will be required.

Alternatives Proposed for Consideration. The alternatives include the proposed action (executing a power purchase agreement with Washington Winds for 150 to 400 MW of electrical energy from the proposed Maiden Wind Farm and authorizing transmission over

BPA power lines), and the No Action alternative.

Public Participation and Identification of Environmental Issues. For other wind projects, noise, visual, and cultural resources effects, and effects on sensitive plant and animal species including migratory birds, have been identified as potential environmental issues. BPA has established a 30-day scoping period during which affected tribes, landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the EIS. Scoping will help BPA identify the range of environmental issues that should be addressed in the EIS. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold at least one public comment meeting for the Draft EIS. BPA will consider and respond in the Final EIS to comments received on the Draft EIS. The Final EIS is expected to be published in early 2002. BPA's subsequent decision will be documented in a Record of Decision. The EIS will satisfy the requirements of the National Environmental Policy Act.

Issued in Portland, Oregon, on June 5, 2001.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 01-14734 Filed 6-11-01; 8:45 am]

BILLING CODE 6450-01-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-442-000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 6, 2001.

Take notice that on May 31, 2001, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective June 1, 2001:

Forty-seventh Revised Sheet No. 8
Forty-seventh Revised Sheet No. 9
Forty-sixth Revised Sheet No. 13
Fifty-seventh Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately \$3.0 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharged applicable to its Part 284 firm

transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS-2, so as to recover the remaining ten percent (10%). ANR advises that this filing also includes the annual restatement of the Eligible MDQ used to design the reservation surcharge. ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from \$4,003,607 to \$2,995,512.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14688 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF01-2021-000]

Department of Energy, Bonneville Power Administration; Notice of Filing

June 6, 2001.

Take notice that on May 30, 2001, the Bonneville Power Administration (Bonneville) filed an amendment to its December 14, 2000 filing of its proposed 2002 Transmission and Ancillary Services (2002 Transmission) rates with

the Federal Energy Regulatory Commission (Commission).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 14, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions 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. 01-14710 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-437-000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

June 6, 2001.

Take notice that on May 31, 2001, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 1, 2001.

First Revised Sheet No. 7
Second Revised Sheet No. 8
First Revised Sheet No. 11
Fifth Revised Sheet No. 19B
Second Revised Sheet No. 27
Second Revised Sheet No. 28
Fifth Revised Sheet No. 29
Second Revised Sheet No. 44
Third Revised Sheet No. 45
Second Revised Sheet No. 51
Third Revised Sheet No. 52
Fourth Revised Sheet No. 66

Chandeleur asserts that the purpose of this filing is to include, in its tariff, provisions relating to Chandeleur's authority to enter into operational

balancing agreements (OBAs) at points of interconnection on its system and to clarify certain language relating to the nominating, confirming, scheduling, curtailing and balancing of gas as it might relate to such OBA provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14693 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-441-000]

Colorado Interstate Gas Company; Notice of Tariff Filing

June 6, 2001.

Take notice that, on May 31, 2001, Colorado Interstate Gas Company (CIG) tendered for filing of as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-first Revised Sheet No. 11A, with an effective date of July 1, 2001.

CIG states that the tariff sheets reflects an increase in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.07% to 1.30% effective July 1, 2001.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and that the filing is available for public

inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14689 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01-1515-000 and ER01-1515-001]

Duke Energy Audrain, LLC; Notice of Issuance of Order

June 6, 2001.

Duke Energy Audrain, LLC (Duke Audrain) submitted for filing a rate schedule under which Duke Audrain will engage in wholesale electric power and energy transactions at market-based rates. Duke Audrain also requested waiver of various Commission regulations. In particular, Duke Audrain requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuance of securities and assumptions of liability by Duke Audrain.

On May 14, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Audrain should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Duke Audrain is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Audrain's issuance of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 13, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, DC 20426. The Order may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14706 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01-1208-000 and ER01-1208-001]

Duke Energy Moapa, LLC; Notice of Issuance of Order

June 6, 2001.

Duke Energy Moapa, LLC (Duke Moapa) submitted for filing a rate schedule under which Duke Moapa will

engage in wholesale electric power and energy transactions at market-based rates. Duke Moapa also requested waiver of various Commission regulations. In particular, Duke Moapa requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Duke Moapa.

On May 14, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Moapa should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Duke Moapa is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Moapa's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 13, 2001.

Copies of the full text of the Order are available from the Commission's Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14707 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01-1129-000 and ER01-1129-001]

Duke Energy Power Marketing LLC; Notice of Issuance of Order

June 6, 2001.

Duke Energy Power Marketing, LLC (DEPM) submitted for filing a rate schedule under which DEPM will engage in wholesale electric power and energy transactions at market-based rates. DEPM also requested waiver of various Commission regulations. In particular, DEPM requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by DEPM.

On May 14, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by DEPM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, DEPM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of DEPM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 13, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

[/www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm) (call 202-208-2222 for assistance).

Comments, protests, and interventions 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. 01-14705 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-439-000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 6, 2001.

Take notice that on May 31, 2001 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its annual Fuel Retention Adjustment filing pursuant to Section No. 1.

Eastern Shore states that Section 31, "Fuel Retention Adjustment", specifies that with no less than thirty (30) days prior notice, Eastern Shore shall file with the Commission revised tariff sheets containing a re-determined Fuel Retention Percentage ("FRP") for affected transportation rate schedules to be effective July 1 of each year. Such FRP is designed to reimburse Eastern Shore for the cost of its Gas Required for Operations ("GRO") which consists of (a) gas used for compressor fuel and (b) gas otherwise used, lost or unaccounted for, in its operations. Eastern Shore's FRP is calculated by determining the GRO quantities attributable to system-wide operations for the affected transportation rate schedules using the last twelve (12) month period for which actual data is available and then dividing such quantity by the transportation quantities received by Eastern Shore for the corresponding twelve (12) month period.

Eastern Shore states that as shown in its filing, Eastern Shore's calculated FRP is .38%, an increase of .28% from the current FRP in effect.

Eastern Shore states that copies of its filing has been mailed to its 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, N.E., Washington, D.C. 20426, in accordance with Sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Sections 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, protests, and interventions 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. 01-14691 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01-75-003]

Entergy Services, Inc., on behalf of the Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.; Notice of Filing

June 6, 2001.

Take notice that on May 25, 2001, Entergy Services, Inc., on behalf of the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (together Entergy), submitted a compliance filing in response to the Commission's March 28, 2001 order in the above-captioned proceedings.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 18, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions 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. 01-14758 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-1588-000]

Great Bay Power Corporation; Notice of Issuance of Order

June 6, 2001.

Great Bay Power Corporation (Great Bay) submitted for filing a rate schedule under which Great Bay will engage in wholesale electric power energy transactions at market-based rates. Great Bay also requested waiver of various Commission regulations. In particular, Great Bay requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Great Bay.

On May 14, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Great Bay should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Great Bay is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another

person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interest will be adversely affected to continued approval of Great Bay's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 13, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 285.2001(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. 01-14704 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01-86-000]

Indeck Main Energy, L.L.C., Complainant, v. ISO New England Inc., Respondent; Notice of Complaint

June 6, 2001.

Take notice that on June 5, 2001, Indeck Maine Energy, L.L.C. (Indeck Maine) tendered for filing a Complaint Requesting Fast Track Processing of its request that the Commission issue an order requiring ISO New England Inc. (ISO-NE) to dispatch all available generation before ISO-NE may impose bid caps in the ISO-NE administered markets. In addition, Indeck Maine requests that the Commission issue a preliminary order that requires ISO-NE to dispatch all units before declaring a capacity shortage until such time as the Commission issues a final order.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 15, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies for this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Answers to the complaint shall also be due on or before June 15, 2001.

Comments, protests and interventions 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. 01-14708 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-440-000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

June 6, 2001.

Take notice that on May 31, 2001, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective July 1, 2001.

First Revised Sheet No. 178
First Revised Sheet No. 179
First Revised Sheet No. 180
First Revised Sheet No. 181
Original Sheet No. 181-A

Kern River states that the purpose of this filing is to revise Section 22 of Kern River's tariff to increase the scope of the pooling services that Kern River is providing to its customers.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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, protests, and interventions 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. 01-14690 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-438-000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

June 6, 2001.

Take notice that on May 31, 2001, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of KMIGT's FERC Gas Tariff, Fourth Revised Volume Nos. 1-A and 1-B, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of July 1, 2001:

KMIGT states that it is submitting these tariff sheets to: (1) Implement a new interruptible park and loan (PAL) service under Rate Schedule PALS; and, (2) revise certain currently effective tariff sheets to incorporate the PAL service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, 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, protests, and interventions 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. 01-14692 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-436-000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

June 6, 2001.

Take notice that on May 31, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective June 1, 2001:

Thirty Sixth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of \$0.60 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14694 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-518-022]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rate

June 6, 2001.

Take notice that on June 1, 2001, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A, Sixteenth Revised Sheet No. 7, Second Revised Sheet No. 7B and Fourth Revised Sheet No. 7C. GTN requests that these tariff sheets become effective June 1, 2001.

GTN states that these sheets are being filed to reflect the implementation of four negotiated rate agreements. GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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, protests, and interventions 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. 01-14698 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-200-072]

Reliant Energy Gas Transmission Company; Notice of Negotiated Rate

June 6, 2001.

Take notice that on June 1, 2001, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective June 1, 2001:

Fifth Revised Sheet No. 8G
Original Sheet No. 8AN

REGT states that the purpose of this filing is to reflect the revision of an existing negotiated rate contract and the addition a new negotiated rate contract.

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, protests, and interventions 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. 01-14699 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01-34-002]

Southwest Power Pool, Inc.; Notice of Filing

June 6, 2001.

Take notice that on May 25, 2001, Southwest Power Pool, Inc. (SPP) submitted the compliance filing required by the Federal Energy Regulatory Commission's March 28, 2001 Order in the proceeding captioned above.

Copies of this filing were served on all parties included on the Commission's official service lists established in this proceeding, as well as on affected state commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 18, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions 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. 01-14757 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP01-444-000]

Tennessee Gas Pipeline Company;
Notice of Filing and Request for Waiver

June 6, 2001.

Take notice that on June 1, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a revised accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the revised accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any significant recoverable take-or-pay costs since its last filing on December 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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, protests, and interventions 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. 01-14686 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP01-445-000]

Trunkline LNG Company; Notice of
Compliance Filing

June 6, 2001.

Take notice that on June 1, 2001, Trunkline LNG Company (Trunkline LNG) tendered for filing a cost and revenue study.

Trunkline LNG states that the purpose of this filing is to comply with Ordering Paragraph (D) of the Commission's November 3, 1997 Order Issuing Certificate, Trunkline LNG Co., 81 FERC ¶ 61,147 (1997), as clarified by the Commission's February 27, 1998 Order Denying Rehearing, 82 FERC ¶ 61,198 (1998).

Trunkline LNG states that copies of this filing are being served on all customers, the parties to the proceeding and appropriate state regulatory agencies.

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, protests, and interventions 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. 01-14687 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. EC01-105-000]

Upper Peninsula Power Company,
American Transmission Company,
LLC; Notice of Filing

June 6, 2001.

Take notice that on May 25, 2001, Upper Peninsula Power Company (UPPCO) and American Transmission Company LLC (ATCLLC) filed an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby (i) UPPCO will transfer its transmission assets to ATCLLC in exchange for member Units, which are equity interests in ATCLLC; (ii) an UPPCO affiliate will receive and hold the ATCLLC Member Units and (iii) Wisconsin Public Service Corporation or another UPPCO affiliate will acquire ownership shares in ATCLLC's corporate manager. UPPCO also requests authorization to transfer certain indemnification and hold harmless obligations to ATCLLC pursuant to the terms of the settlement agreement accepted by the Commission on May 8, 2001 in Docket Nos. ER01-123-000, *et al.*

UPPCO and ATCLLC have requested that the Commission authorize this application no later than June 25, 2001, so that they may close on the facility transfer on June 29, 2001, in order to prevent partial income taxation on UPPCO's contribution of transmission assets that will result if the transaction were to close more than 90 days after ATCLLC's receipt of debt financing, which occurred on April 2, 2001.

A copy has been served on the member owners of ATCLLC, transmission-dependent utilities located within UPPCO's service area, Ameren Corporation, Illinois Power Company, Commonwealth Edison Company, the public service commissions of Michigan and Wisconsin and other interested parties.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 18, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will

not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14709 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00-425-003]

Williams Gas Pipelines Central, Inc.; Notice of Negotiated Rate

June 6, 2001.

Take notice that on June 1, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective June 1, 2001:

Third Revised Sheet No. 1
Sheet No. 7
Original Sheet No. 10
Sheet No. 11

Williams stated that the purpose of this filing is to reflect the new negotiated rate/non-conforming contract in its tariff as required in Section 154.112(b) of the Commission's regulations.

Williams states that copies of the revised tariff sheet is being mailed to Williams' jurisdictional 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, protests, and interventions 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. 01-14696 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01-435-000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

June 6, 2001.

Take notice that on May 31, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets to become effective July 1, 2001.

Williston Basin states that the revised tariff sheets reflect the annual reconciliation of the latest GSR cost recovery period, the elimination of the Rate Schedule IT-1 base rate unit cost, and the establishment of a new reservation charge surcharge applicable to service under Rate Schedule FT-1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rule 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, protests, and interventions 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. 01-14695 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01-1099-003, *et al.*]

Cleco Power LLC, *et al.*; Electric Rate and Corporate Regulation Filings

June 6, 2001.

Take notice that the following filings have been made with the Commission:

1. Cleco Power LLC

[Docket No. ER01-1099-003]

Take notice that on June 1, 2001, Cleco Power LLC (Cleco Power), tendered for filing its Notice of Succession pursuant to 18 CFR 35.16, effective December 31, 2000, in which it adopted, ratified, and made its own in every respect Rate Schedule 18, and supplements thereto, heretofore filed with the Commission by Cleco Utility Group Inc. (Cleco Utility).

Effective December 31, 2000, Cleco Utility was converted from a corporate form to a limited liability company form. The conversion was effectuated through a merger with an entity formed solely for purposes of the conversion, namely Cleco Power, with Cleco Power as the surviving entity. On January 29, 2001, Cleco Power filed a Notice of Succession succeeding to most tariffs, service agreements and rate schedules of Cleco Utility. On February 14, 2001, Cleco Power filed an amendment to the Notice of Succession, succeeding to several more Cleco Utility rate schedules. Rate Schedule 18 was inadvertently omitted from the Notice of Succession and the amendment to the Notice of Succession, therefore, a second Notice of Succession was submitted for filing.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket No. ER01-1470-001]

Take notice that on June 1, 2001, Puget Sound Energy, Inc. (PSE) tendered for filing a redesignated copy of the

2000–2001 Operating Procedures attached to and continuously paginated with the Pacific Northwest Coordination Agreement (PNCA). PSE states that the 2000–2001 Operating Procedures relate to service under the PNCA.

A copy of the filing was served upon the parties to the PNCA.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket Nos. ER01–1592–001, ER01–1598–001 and ER01–1706–001]

Take notice that on June 1, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521–2200, tendered for filing with the Commission service agreement designations as required by Order No. 614 and the Letter Order issued on May 10, 2001 in these dockets.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER01–1815–000]

Take notice that on May 30, 2001, Wolverine Power Supply Cooperative, Inc. tendered for filing a Notice of Withdrawal of its application to change its Rate Schedule FERC No. 4—Wholesale Service to Member Distribution Cooperatives. Wolverine also requests termination of this docket. Wolverine reserves the right to seek a rate change at a later time.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. ANP Bellingham Energy Company, LLC (successor to ANP Bellingham Energy Company); ANP Blackstone Energy Company, LLC (successor to ANP Blackstone Energy Company)

[Docket No. ER01–1967–001 and ER01–1968–001]

Take notice that on June 1, 2001, ANP Bellingham Energy Company, LLC and ANP Blackstone Energy Company, LLC tendered for filing an Amended Notice of Succession to succeed to the market-based rate tariff of ANP Bellingham Energy Company and ANP Blackstone Energy Company, effective April 24, 2001.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Pool

[Docket No. ER01–2193–000]

Take notice that on June 1, 2001, the New England Power Pool (NEPOOL)

Participants Committee tendered for filing for acceptance materials (1) to permit NEPOOL to expand its membership to include ANP Funding I, LLC, Conservation Services Group, Inc., Dominion Nuclear Marketing III, LLC, and Northeast Generation Services Company (together, the Applicants); and (2) to terminate the membership of the New York Power Authority (NYPA). The Participants Committee requests an effective date of June 1, 2001 for commencement of participation in NEPOOL by Applicants and May 1, 2001 for the termination of NYPA.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER01–2194–000]

Take notice that on June 1, 2001, New England Power Company (NEP) tendered for filing Second Revised Service Agreement for Firm Local Generation Delivery Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and ANP Bellingham Energy Company (ANP).

NEP states that this filing has been served upon ANP and regulators in the Commonwealth of Massachusetts.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Mid-Continent Area Power Pool

[Docket No. ER01–2195–000]

Take notice that on June 1, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing its Inadvertent Settlement Tariff, which obligates the control area operators in the MAPP RTC region to make payments and receive compensation for inadvertent interchange.

MAPP has served copies of this filing on all MAPP members as well as the state commissions in the MAPP region.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Rochester Gas and Electric Corporation

[Docket No. ER01–2196–000]

Take notice that on June 1, 2001 Rochester Gas and Electric Corporation

(RG&E) tendered for filing a Service Agreement between RG&E and University of Rochester (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 3.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 1, 2001 for the Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER01–2197–000]

Take notice that on June 1, 2001, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 35.13 an unexecuted Network Integration Transmission Service Agreement with Luzenac America, Inc. Open Access Transmission Tariff).

A copy of the filing was served upon Luzenac America, Inc.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Independent Scheduling Administrator Association

[Docket No. ER01–2198–000]

Take notice that on June 1, 2001, the Arizona Independent Scheduling Administrator Association (Arizona ISA), tendered for filing pursuant to Section 205 of the Federal Power Act a revised version of Original Service Agreement No. 2, the Agreement By And Among Arizona Independent Scheduling Administrator Association, Scheduling Coordinators And Arizona Public Service Company (Agreement).

The revisions reformat the Agreement so that it complies with the requirements of Order No. 614, and adds a signature page executed by Pinnacle West Marketing and Trading. There are no changes to the substantive provisions of the document. The Arizona ISA requests that the Commission make the revisions to the Agreement effective as of May 3, 2001.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company

[Docket No. ER01-2199-000]

Take notice that on June 1, 2001, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (each doing business and hereinafter collectively referred to as GPU Energy) tendered for filing two amendments to the Restated Composite Power Pooling Agreement among the GPU Energy companies (Restated Agreement). The two amendments consist of revised Schedule 1.04 (First Revised Sheets Nos. 22-25) and revised Schedule 2.05 (First Revised Sheet No. 31) of the Restated Agreement.

The Restated Agreement governs the integrated operation of the three GPU Energy companies. It is on file with the Commission as Jersey Central Power & Light Company, Rate Schedule No. 72, Metropolitan Edison Company, Rate Schedule No. 74 and Pennsylvania Electric Company, Rate Schedule No. 111.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Co.

[Docket No. ER01-2200-000]

Take notice that on June 1, 2001, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement under its FERC Electric Tariff, First Revised Volume No. 4, which is KCPL's Market-Based Rate Tariff. This Service Agreement provides for the long-term sale of capacity and energy to the City Utilities of Springfield, Missouri.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc., On behalf of the Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

[Docket No. ER01-2201-000]

Take notice that on June 1, 2001, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), tendered for filing revisions to its standard Generator Imbalance Agreement. Entergy requests an effective date of August 1, 2001 for the proposed revisions.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER01-2202-000]

Take notice that on June 1, 2001, Wisconsin Public Service Corporation tendered for filing an executed service agreement with GEN-SYS Energy under its Market-Based Rate Tariff, FERC Electric Tariff Volume No. 10.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. University Park Energy, LLC

[Docket No. ER01-2203-000]

Take notice that on June 1, 2001, University Park Energy, LLC (University Park) tendered for filing with the Federal Energy Regulatory Commission an executed service agreement with Constellation Power Source, Inc. (Constellation). The agreement is an umbrella agreement which allows Constellation to take service under University Park's FERC Electric Tariff, Original Volume No. 1. University Park respectfully requests an effective date of May 1, 2001.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Wolf Hills Energy, LLC

[Docket No. ER01-2204-000]

Take notice that on June 1, 2001, Wolf Hills Energy, LLC (Wolf Hills) tendered for filing an executed service agreement with Constellation Power Source, Inc. (Constellation). The agreement is an umbrella agreement which allows Constellation to take service under Wolf Hills' FERC Electric Tariff, Original Volume No. 1.

Wolf Hills respectfully requests an effective date of May 1, 2001.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company; Tampa Electric Company

[Docket No. ER01-2205-000]

Take notice that on June 1, 2001, Florida Power & Light Company and Tampa Electric Company tendered for filing a Request for Approval of Transmission Pricing Plan. This Transmission Pricing Plan will help facilitate the divestiture of Florida Power & Light Company and Tampa Electric Company's transmission facilities to GridFlorida LLC, the Regional Transmission Organization for Peninsular Florida.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Edison Company

[Docket No. ER01-2206-000]

Take notice that on June 1, 2001 Commonwealth Edison Company (ComEd) tendered for filing a Service Agreement for Network Integration Transmission Service (NSA) and a Network Operating Agreement (NOA) between ComEd and Dynegy Energy Services, Inc. (Dynegy). These agreements govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of May 5, 2001, and therefore, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Dynegy.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Mid-Continent Area Power Pool

[Docket No. ER01-2207-000]

Take notice that on June 1, 2001, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, tendered for filing amendments to Schedule F, FERC Electric Tariff, First Revised Volume No. 1, that reflect the adoption of the North American Electric Reliability Council transmission loading relief procedures in place of the MAPP line loading relief procedures.

Copies of this filing have been served on all MAPP members as well as the affected state commissions in the MAPP region.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER01-2208-000]

Take notice that on June 1, 2001 with Exelon Generation Company, LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Exelon Generation Company, LLC as a customer under the Tariff. DLC requests an effective date of September 1, 2001 for the Service Agreement.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Duquesne Light Company

[Docket No. ER01-2209-000]

Take notice that on June 1, 2001, Duquesne Light Company (DLC) tendered for filing a Service Agreement

dated May 31, 2001 with Exelon Generation Company, LLC under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Exelon Generation Company, LLC as a customer under the Tariff.

DLC requests an effective date of September 1, 2001 for the Service Agreement.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. IDACORP Energy Solutions, LP

[Docket No. ER01-2210-000]

Take notice that on June 1, 2001, IDACORP Energy Solutions, LP (IES) tendered for filing a letter approving its membership to the Western Systems Power Pool (WSPP). IES requests that the Commission allow its membership in the WSPP to become effective on June 2, 2001.

IES states that a copy of this filing has been provided to the WSPP Executive Committee, the Idaho Public Utilities Commission, Michael E. Small, Esq., and the members of the WSPP.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER01-2211-000]

Take notice that on June 1, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521-2200, tendered for filing service agreements entered into pursuant to Illinois Power's Open Access Transmission Tariff with The Legacy Energy Group, LLC; Central Illinois Light Company; Calpine Energy Services, L.P.; and Wabash Valley Power Association, Inc.

Illinois Power requests an effective date of June 1, 2001 for each of the agreements and states that a copy of the filing has been sent to each such customer.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. PJM Interconnection, L.L.C.

[Docket No. ER01-2212-000]

Take notice that on June 1, 2001, PJM Interconnection, L.L.C. (PJM), tendered for filing (i) an executed agreement for firm point-to-point transmission service with Axia Energy, LP (Axia); (ii) an executed agreement for non-firm point-to-point transmission service with Axia; (iii) an executed agreement for firm point-to-point transmission service with BP Energy Company (BP); (iv) an executed agreement for non-firm point-to-point transmission service with BP;

(v) an executed agreement for firm point-to-point transmission service with PECO Energy Power Team (PECO); (vi) three service agreements for network integration transmission service for Allegheny Energy Supply Company, L.L.C. (Allegheny); and (vii) three service agreements for network integration transmission service for Conectiv Energy Supply, Inc. (Conectiv).

Copies of this filing were served upon Allegheny, Axia, BP, Conectiv, PECO and the state commissions within the PJM control area.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01-2213-000]

Take notice that on June 1, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) tendered for filing Service Agreement Nos. 124 through 126 to add three (3) new Customers to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of June 1, 2001 to Borough of Hooversville, Berlin Borough and Borough of Smethport.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Entergy Services, Inc., On behalf of the Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

[Docket No. ER01-2214-000]

Take notice that on June 1, 2001, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), tendered for filing proposed revisions to its pro forma Open Access Transmission Tariff relating to ancillary services schedules 3-6.

Entergy requests an effective date of August 1, 2001 for the proposed revisions.

Comment date: June 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Curtis Palmer Hydroelectric Company, L.P.

[Docket No. EG01-220-000]

Take notice that on May 31, 2001, Curtis Palmer Hydroelectric Company, L.P., with its principal place of business at 15 Pine Street, Corinth, New York 12822, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Curtis Palmer Hydroelectric Company, L.P. is a New York limited partnership that owns a hydroelectric generation facility near Corinth, New York.

Comment date: June 27, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

29. Nordic Energy Barge #1, L.L.C., Nordic Energy Barge #2, L.L.C.

[Docket No. EG01-221-000]

Take notice that on May 30, 2001, Nordic Energy Barge #1, L.L.C. and Nordic Energy Barge #2, L.L.C. (collectively, Nordic Energy Barge LLCs), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Each of the Nordic Energy Barge LLCs will be engaged either directly or indirectly and exclusively in the business of owning and operating electric generation facilities. Specifically, each of the Nordic Energy Barge LLCs plans to own an electric generating unit to be sited in Washington or Oregon on the Columbia River, in the vicinity of Longview, Washington.

Comment date: June 27, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

30. CPV Pierce, Ltd.

[Docket No. EG01-222-000]

Take notice that on May 25, 2001, CPV Pierce, Ltd. (Applicant), c/o Competitive Power Ventures, Inc., Silver Spring Metro Plaza I, 8401 Colesville Road, Suite 504, Silver

Spring, MD 20910, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations and Section 32 of the Public Utility Holding Company Act of 1935, as amended.

Applicant, a Florida limited partnership, is a special purpose entity established to develop, construct, own and operate a nominally rated 250 MW natural gas fired combined cycle generating facility (Facility) to be located in Mulberry, Polk County, Florida. The Facility will consist of one (1) F class combustion turbine, one (1) heat recovery steam generator and a single steam turbine. The Facility as currently configured will include certain transmission interconnection facilities necessary to effect the sale of electric energy at wholesale and interconnect the Facility to the transmission grid. All of the electricity generated by the Facility will be sold exclusively at wholesale.

Comment date: June 27, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

31. CPN Pleasant Hill Operating, LLC

[Docket No. EG01-223-000]

Take notice that on May 25, 2001, CPN Pleasant Hill Operating, LLC (CPN Operating), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

CPN Operating, a Delaware limited liability company, proposes to lease a fifty-percent leasehold interest in and market at wholesale the output of an approximately 600-MW natural gas-fired combined-cycle generating facility being constructed near Pleasant Hill, Cass County, Missouri.

Comment date: June 27, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or

protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14756 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES01-35-000, et al.]

Old Dominion Electric Cooperative, et al.; Electric Rate and Corporate Regulation Filings

June 5, 2001.

Take notice that the following filings have been made with the Commission:

1. Old Dominion Electric Cooperative

[Docket No. ES01-35-000]

Take notice that on May 31, 2001, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to guarantee long-term obligations in an amount not exceeding an aggregate of \$100 million.

Old Dominion also requests a waiver of the Commission's negotiated placement and competitive bidding requirements at 18 CFR 34.2.

Comment date: June 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Old Dominion Electric Cooperative

[Docket No. ES01-36-000]

Take notice that on May 31, 2001, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to guarantee long-term obligations in an amount not exceeding an aggregate of \$700 million.

Old Dominion also requests a waiver of the Commission's negotiated placement and competitive bidding requirements at 18 CFR 34.2.

Comment date: June 18, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Utilities Company

[Docket No. ER01-1098-001]

Take notice that on May 31, 2001, Kentucky Utilities Company (KU), tendered for filing, in compliance with delegated Order dated February 27, 2001, service agreement designations of its wholesale requirements customers.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Pilot Power Group, Inc.

[Docket No. ER01-1699-002]

Take notice that on May 31, 2001, Pilot Power Group, Inc. tendered for filing an amendment to its May 10, 2001 submission by filing with the Commission the Rate Schedule applicable to its end-use customers, containing the designations requested by the Commission.

On March 28, 2001, Pilot Power Group, Inc. (Pilot) filed a Rate Schedule for purchases and sales of electricity at market-based rates together with a Rate Schedule to resell electricity at market-based rates on behalf of retail end-use customers of Pilot. By letter order dated April 30, 2001, the Commission granted Pilot's petition, and ordered Pilot to re-file with the Commission its Rate Schedule with the proper designations, within 30 days of the order. On May 10, 2001, Pilot re-filed its Rate Schedule, amended to include the proper designations.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Santa Rosa Energy LLC

[Docket No. ER01-1714-001]

Take notice that on May 31, 2001, Santa Rosa Energy LLC (Santa Rosa) tendered for filing: (1) Corrected designations to its application for market-based rates, waivers, and blanket approvals under various regulations of the Commission; and (2) request for waiver of the 120-day advance notice and filing requirement. Santa Rosa proposes that its Electric Tariff No. 1 become effective upon commencement of service of its cogeneration facility at the Santa Rosa Energy Center (the Facility), a 255 MW generation project currently being developed by Santa Rosa in Pace, Florida. The Facility is expected to be commercially operable

by approximately the second quarter of 2002.

Santa Rosa intends to sell energy, capacity, and certain ancillary services from the Facility in the wholesale power market at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Rochester Gas and Electric Corporation

[Docket No. ER01-1735-001]

Take notice that on May 31, 2001, Rochester Gas and Electric Corporation, tendered for filing in compliance with the order issued on April 30, 2001 in this proceeding. This filing makes certain modifications to RG&E's Market Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 3, to comply with Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER01-1853-001]

Take notice that on May 31, 2001, Carolina Power & Light Company (CP&L) tendered for filing a revised Appendix K (Monthly Facility Fee) to the executed Facility Interconnection and Operating Agreement with Lumberton Power, LLC (Lumberton). CP&L requests waiver of the Commission's notice requirements in order for the revised Appendix K to become effective on April 24, 2001.

Copies of the filing were served upon Lumberton and the North Carolina Public Utilities Commission.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER01-1859-001]

Take notice that on May 31, 2001, Carolina Power & Light Company (CP&L) tendered for filing a revised Appendix K (Monthly Facility Fee) to the executed Facility Interconnection and Operating Agreement with Elizabethtown Power, LLC (Elizabethtown). CP&L requests waiver of the Commission's notice requirements in order for the revised Appendix K to become effective on April 24, 2001.

Copies of the filing were served upon Elizabethtown and the North Carolina Public Utilities Commission.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Company Services, Inc.

[Docket No. ER01-2165-000]

Take notice that on May 30, 2001, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Balancing Service Agreement by and between Exelon Generation Company LLC (Exelon) and Southern Companies (the Service Agreement) under Southern Companies' Generator Balancing Service Tariff (FERC Electric Tariff, First Revised Volume No. 9).

The Service Agreement supplies Exelon with unscheduled capacity and energy in connection with sales from Tenaska Georgia Partners, L.P.'s electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement (No. 5) is dated as of May 1, 2001, and shall terminate upon twelve months prior written notice of either party.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER01-2166-000]

Take notice that on May 30, 2001, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement between Georgia Power and Duke Energy Murray, LLC (DENA Murray) (the Agreement), as a service agreement under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) and is designated as Service Agreement No. 377. The Agreement provides the general terms and conditions for the interconnection and parallel operation of DENA Murray's electric generating facility located near Chatsworth, Murray County, Georgia.

The Agreement terminates forty (40) years from the effective date unless terminated earlier by mutual written agreement.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Western Systems Coordinating Council

[Docket No. ER01-2167-000]

Take notice that on May 30, 2001, the Western Systems Coordinating Council (WSCC) tendered for filing with the Commission an amendment to the Reliability Criteria Agreement under the WSCC's Reliability Management System. The amendment (a) modifies the time period under the Operating Transfer Capability to twenty minutes (for stability limited paths), and (b) permits the Reliability Compliance Committee to request additional information as part of its review of initial determinations of noncompliance.

The WSCC requests that the Commission make such amendment effective June 1, 2001.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Alcoa Power Generating Inc.

[Docket No. ER01-2168-000]

Take notice that on May 30, 2001, Alcoa Power Generating Inc. (APGI) tendered for filing a service agreement between Southern Indiana Gas and Electric Company (Southern Indiana) and APGI under APGI's Market Rate Tariff. This Tariff was accepted for filing by the Commission on July 13, 1999, in Docket No. ER99-2932-000.

The service agreement with Southern Indiana is proposed to be effective May 1, 2001.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Exelon Generation Company, LLC

[Docket No. ER01-2169-000]

Take notice that on May 30, 2001, Exelon Generation Company, LLC (Exelon Generation) tendered for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a service agreement for wholesale power sales transactions between Exelon Generation and GEN-SYS Energy under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER01-2170-000]

Take notice that on May 30, 2001, Consumers Energy Company (Consumers) tendered for filing a Service Agreement with Dynegy Power Marketing, Inc., (Customer) under Consumers FERC Electric Tariff No. 9

for Market Based Sales. Consumers requested that the Agreement be allowed to become effective May 15, 2001.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company

[Docket No. ER01-2171-000]

Take notice that on May 30, 2001, Commonwealth Edison Company (ComEd) tendered for filing three Non-Firm Transmission Service Agreements with EnergyUSA-TPC Corp. (TPC), Ameren Energy, Inc. (AME) and Conoco Gas & Power Marketing, a Division of Conoco, Inc. (CONC) and three Short-Term Firm Transmission Service Agreements with TPC, AME and CONC under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd also submitted for filing an updated Index of Customers reflecting the name change for current customer Southern Company Energy Marketing renamed Mirant Americas Energy Marketing (MAEM).

ComEd requests an effective date of May 1, 2001 for the service agreements and accordingly requests waiver of the Commission's notice requirements. Copies of the filing were served on TPC, AME, CONC and MAEM.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Southern Company Services, Inc.

[Docket No. ER01-2172-000]

Take notice that on May 30, 2001, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies) tendered for filing the Generator Balancing Service Agreement by and between Coral Power Company LLC (Coral Power) and Southern Companies (the Service Agreement) under Southern Companies' Generator Balancing Service Tariff (FERC Electric Tariff, First Revised Volume No. 9).

The Service Agreement supplies Coral Power with unscheduled capacity and energy in connection with sales from Mobile Energy, LLC's electric generating facility as a replacement for unintentional differences between the facility's actual metered generation and its scheduled generation. The Service Agreement (No. 6) is dated as of May 1, 2001, and shall terminate upon twelve

months prior written notice of either party.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Company Services, Inc.

[Docket No. ER01-2173-000]

Take notice that on May 30, 2001, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Interconnection Agreement between Georgia Power and Duke Energy Sandersville, LLC (DENA Sandersville) (the Agreement), as a service agreement under Southern Operating Companies' Open Access Transmission Tariff (FERC Electric Tariff, Fourth Revised Volume No. 5) and is designated as Service Agreement No. 379.

The Agreement provides the general terms and conditions for the interconnection and parallel operation of DENA Sandersville's electric generating facility located near Sandersville, Washington County, Georgia. The Agreement terminates forty (40) years from the effective date unless terminated earlier by mutual written agreement.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER01-2174-000]

Take notice that on May 30, 2001, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and Otter Tail Power Company.

ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Otter Tail Power Company pursuant to Ameren's Open Access Transmission Tariff.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER01-2175-000]

Take notice that on May 30, 2001, Ameren Services Company (ASC) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and Ameren Energy Marketing Company (customer).

ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to customer pursuant to Ameren's Open Access Transmission Tariff.

Comment date: June 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. EnergyUSA-TPC Corp.

[Docket No. ER01-2176-000]

Take notice that on May 31, 2001, EnergyUSA-TPC Corp. (TPC), an indirect wholly owned subsidiary of NiSource, Inc., tendered for filing a Service Agreement and its FERC Electric Rate Schedule 2 (Service Agreement). TPC seeks an effective date of July 30, 2001, for the tariff sheets submitted with this filing.

TPC states that pursuant to the Service Agreement, it will be authorized to sell electric energy, from time to time, to its public utility affiliate, Northern Indiana Public Service Company (NIPSCO). The rate applicable to any such sales will be capped at the published Into-Cinergy price for the applicable time period. The Into-Cinergy rate will act as a guarantee against potential affiliate concerns. Under the terms of the proposed Service Agreement, neither TPC nor NIPSCO shall be required to undertake any sales or purchases of electric energy.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. South Carolina Electric & Gas Company

[Docket No. ER01-2177-000]

Take notice that on May 31, 2001, South Carolina Electric & Gas Company (SCE&G) tendered for filing an executed Transaction Agreement with the City of Orangeburg, South Carolina under SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of May 1, 2001, the date service commenced. Copies of this filing were served upon CEPC and the South Carolina Public Service Commission.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Rochester Gas and Electric Corporation

[Docket No. ER01-2178-000]

Take notice that on May 31, 2001 Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and Energetix, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 3.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 1, 2001 for the Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Rochester Gas and Electric Corporation

[Docket No. ER01-2179-000]

Take notice that on May 31, 2001 Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and Monroe County (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 3.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 1, 2001 for the Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Rochester Gas and Electric Corporation

[Docket No. ER01-2180-000]

Take notice that on May 31, 2001 Rochester Gas and Electric Corporation (RG&E) tendered for filing a Service Agreement between RG&E and TXU Energy Services (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Schedule, Original Volume 3.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 1, 2001 for the Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. American Electric Power Service Corporation

[Docket No. ER01-2181-000]

Take notice that on May 31, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing executed Firm and Non-Firm Transmission Service Agreements for Calpine Energy Services, L.P. Firm and Non-Firm Transmission Service Agreements for Exelon Generation Company, LLC, an ERCOTT Regional Transmission Service Agreement for NRG Power Marketing, Inc., and Long-Term Firm Point to Point Transmission Service Agreement Specifications for AEPSC's Merchant Organization Power Marketing and Trading Division and

Consumers Energy Company. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after May 1, 2001.

AEPSC also requests immediate termination of firm and non-firm service agreements executed October 1, 1998 and January 1, 1997, by Michigan Electric Coordinated Systems (MECS) under AEP Companies' FERC Electric Tariff Original Volume No. 4. MECS requested the termination of the service agreements while announcing the termination, effective March 31, 2001, of the joint electric power purchases and sales function that MECS was conducting for Consumers Energy Company and The Detroit Edison Company.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. American Electric Power Service Corporation

[Docket No. ER01-2182-000]

Take notice that on May 31, 2001, the American Electric Power Service Corporation (AEPSC) tendered for filing a blanket service with Tex-La Electric Cooperative of Texas, Inc. (Tex-La) by the AEP Companies under their Power Sales Tariffs (Power Sales Tariffs). The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER98-542-000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies).

AEPSC respectfully requests waiver of notice to permit this service agreement to be made effective on or prior to April 23, 2001.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Central Vermont Public Service Corporation

[Docket No. ER01-2183-000]

Take notice that on May 31, 2001, Central Vermont Public Service Corporation, tendered for filing the Actual 2000 Cost Report required under Paragraph Q-1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS-2 Rate Schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Actual 2000 Cost Report supports a refund to the Customer in the amount of \$879,079, including interest, as provided by t RS-2 Rate Schedule.

The Actual 2000 Cost Report reflects changes to the RS-2 Rate Schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88-456-000.

Copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

28. Cleco Power LLC

[Docket No. ER01-2184-000]

Take notice that on May 31, 2001, Cleco Power LLC (Cleco) tendered for filing a Service Agreement for Sale of Power and Energy with the City of Ruston, Louisiana as a long-term service agreement under Cleco's market based rates tariff.

The Service Agreement is designated as Cleco Power LLC Service Agreement No. 25 to FERC Electric Tariff, Original Volume No. 2.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

29. Tampa Electric Company

[Docket No. ER01-2185-000]

Take notice that on May 31, 2001, Tampa Electric Company (Tampa Electric) tendered for filing a Short-Form Market-Based Wholesale Power Sales Tariff (Short-Form Tariff). The Short-Form Tariff will not replace Tampa Electric's existing market-based sales tariff, which will continue in effect for existing service agreements thereunder.

Tampa Electric requests that the Short-Form Tariff be made effective on June 1, 2001, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the customers under Tampa Electric's existing market-based sales

tariff and the Florida Public Service Commission.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

30. Hunlock Creek Energy Ventures

[Docket No. ER01-2186-000]

Take notice that on May 31, 2001, Hunlock Creek Energy Ventures (Energy Ventures) tendered for filing a Service Agreement for wholesale power sales transactions under Energy Ventures' FERC Electric Tariff Original Volume No. 1, among Energy Ventures, UGI Hunlock Development Company, Allegheny Energy Supply Hunlock Creek, LLC, UGI Development Company, and Allegheny Energy Supply Company.

Energy Ventures requests an effective date of June 1, 2001 for the Service Agreement.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Edison Company, Inc.

[Docket ER01-2187-000]

Take notice that on May 31, 2001, Commonwealth Edison Company (ComEd) tendered for filing a Service Agreement for Network Integration Transmission Service (NSA) and a Network Operating Agreement (NOA) between ComEd and Peoples Energy Services Corporation (Peoples). These agreements govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of June 1, 2001 for the NSA and NOA.

Copies of this filing were served on Peoples.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

32. Illinois Power Company

[Docket No. ER01-2188-000]

Take notice that on May 31, 2001, Illinois Power Company (Illinois Power), tendered for filing a Second Revised Service Agreement for Network Integration Transmission Service entered into with The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of May 1, 2001 for the Second Revised Service Agreement and accordingly seeks a waiver of the Commission's notice requirement. Illinois Power states that a copy of this filing has been sent to the customer.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

33. Mid-Continent Area Power Pool

[Docket No. ER01-2189-000]

Take notice that on May 31, 2001, the Mid-Continent Area Power Pool, on behalf of its public utility members, tendered for filing long-term firm, short-term firm and non-firm service agreements under MAPP Schedule F with Allegheny Energy Supply Company, LLC; Ameren Energy Marketing; American Electric Power Corporation; Black Hills Power; Calpine Energy Services, L.P.; Connectiv Energy Supply, Inc.; Conoco Gas and Power Marketing; DTE Energy Trading, Inc.; Dynegy Power Marketing Inc.; El Paso Merchant Energy, L.P.; FPL Energy Power Marketing, Inc.; Idaho Power Company d/b/a IDACORP Energy; NRG Power Marketing Inc.; Split Rock Energy; The Legacy Energy Group, LLC; Williams Energy Marketing & Trading Company; and Wisconsin Electric Power Company.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

34. Metropolitan Edison Company

[Docket No. ER01-2190-000]

Take notice that on May 31, 2001, Metropolitan Edison Company (doing business and referred to as GPU Energy) tendered for filing a Generation Facility Transmission Interconnection Agreement (Agreement) between GPU Energy and The Bentech Group of Delaware, Inc. (Bentech).

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

35. Tucson Electric Power Company

[Docket No. ER01-2191-000]

Take notice that on May 31, 2001, Tucson Electric Power Company (Tucson) tendered for filing one (1) Service Agreement for Network Integration Transmission Service dated January 10, 2001, with Arizona Electric Power Cooperative, Inc. under Tucson's Open Access Transmission Tariff. Tucson also submitted for filing an executed Network Operating Agreement.

The details of the service agreement is as follows:

(1) Service Agreement for Network Integration Transmission Service dated as of January 10, 2001, by and between Tucson Electric Power Company and Arizona Electric Power Cooperative, Inc. Service under this agreement commenced on May 1, 2001.

Comment date: June 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions 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. 01-14685 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

June 6, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11999-000.

c. *Date filed:* April 20, 2001.

d. *Applicant:* Edward Navickis.

e. *Name of Project:* Jackson Meadows Power Project.

f. *Location:* On the Middle Fork of the Yuba River in Nevada and Sierra Counties, California. Land for the transmission line is owned by Tahoe National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)-825(r).

h. *Applicant Contact*: Mr. Edward Navickis, P.O. Box 910, Penn Valley, CA 95946, (530) 432-9226.

i. *FERC Contact*: Regina Saizan, (202) 219-2673.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, 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 (11999-000) on any comments, protest, or motions filed.

The Commission's Rules of Practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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 of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) An existing intake; (2) an existing 195-foot-high, 1,530-foot-long rock gravity dam; (3) an existing 250-foot-long, 42-in-diameter steel penstock; (4) a new powerhouse containing two generating units having a total installed capacity of 2.2 MW; (5) a new 60 kVA transmission line approximately 1½ miles long; and (6) appurtenant facilities.

The project would have an annual generation of 8.7 million kWh.

l. 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 <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular

application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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 any agency does not file comments within the specified time 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 representative.

David P. Boergers,
Secretary.

[FR Doc. 01-14700 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

June 6, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 11982-000.

c. *Date Filed*: April 20, 2001.

d. *Applicant*: Symbiotics, LLC.

e. *Name of Project*: Stillhouse Hollow Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers (COE), on the Lampasas River

in Bell County, Texas. The project would occupy lands administered by the COE.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, interventions, and protests, may be electronically filed 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 and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in 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 of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Stillhouse Hollow Dam would consist of: (1) two proposed 72-inch-diameter, 100-foot-long steel penstocks; (2) a proposed powerhouse containing two generating units with a total installed capacity of 6.7 megawatts; (3) a proposed 33 kv transmission line approximately 9 miles long; and (4) appurtenant facilities.

The project would have an annual generation of 11.7 GWh.

l. 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 <http://www.ferc.fed.us/online/rims.htm> (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit—*Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit—*Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent—*A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit—*A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene—*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but

only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents—*Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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. 01–14701 Filed 6–11–01; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

June 6, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11981–000.

c. *Date Filed:* April 20, 2001.

d. *Applicant*: Symbiotics, LLC.
 e. *Name of Project*: Ferrells Bridge Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers (COE), On Cypress Creek in Marion County, Texas. The project would occupy lands administered by the COE.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–8630, (fax) (208) 745–7909, or e-mail address: npsihydro@aol.com.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, interventions, and protests, may be electronically filed 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 and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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 of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army Corps of Engineers' Ferrells Bridge Dam would consist of: (1) two proposed 108-inch-diameter, 100-foot-long steel penstocks; (2) a proposed powerhouse containing two generating units with a total installed capacity of 9 megawatts; (3) a proposed 67 kv transmission line approximately 9 miles long; and (4) appurtenant facilities.

The project would have an annual generation of 21.6 GWh.

l. 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 <http://www.ferc.fed.us/online/rims.htm> (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring a file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Base on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *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. 01–14702 Filed 6–11–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

June 6, 2001.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 11979-000.

c. *Date Filed*: April 20, 2001.

d. *Applicant*: Symbiotics, LLC.

e. *Name of Project*: Wright Patman Dam Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers (COE), on the Sulphur River in Bowie County, Texas. The project would occupy lands administered by the COE.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630, (fax) (208) 745-7909, or e-mail address:

npsihydro@aol.com.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219-2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments recommendation, interventions, and protests, may be electronically filed 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 and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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 of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army Corps of Engineers' Wright Patman Dam would consist of: (1) two proposed 144-inch-diameter 100-foot-long steel penstocks; (2) a proposed powerhouse containing two generating units with a total installed capacity of 18 megawatts; (3) a proposed 67 kv transmission line approximately 9 miles long; and (4) appurtenant facilities.

The project would have an annual generation of 45 GWh.

l. 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 <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide

whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888-First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application 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. 01-14703 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP01-395-000]

Northern Natural Gas Company; Notice of Technical Conference

June 6, 2001.

In the Commission's order issued on May 31, 2001,¹ the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, June 26, 2001, at 10:00 a.m., in a room to be designated, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,
Secretary.

[FR Doc. 01-14697 Filed 6-11-01; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION**Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested**

June 1, 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 August 13, 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 Approval No.: 3060-0630.

Title: Section 73.62 Directional

Antenna System Tolerances.

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: 750.

Estimated Hours Per Response: 4.5 hours.

Frequency of Response: On occasion.

Cost to Respondents: \$0.

Estimated Total Annual Burden: 3,375 hours.

Needs and Uses: Section 73.62(b) requires an AM station with a directional antenna system to measure and log every monitoring point at least once for each mode of directional operation within 24 hours of detection of variance of operating parameters from allowed tolerances. The data is used by station engineers to correct the operating parameters of the directional antenna. The data is also used by FCC staff in field investigations to ensure that stations are in compliance with the technical requirements of the Commission's rules.

OMB Control Number: 3060-0316.

Title: Section 76.305 Records to be maintained locally by cable system operators for public inspection.

From Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,670.

Estimated Time Per Response: 26 hours annually.

Total Annual Costs: \$2,064,140.
(4,670 cable systems × 26 hours =

121,420 hours). (121,420 × \$17 per hour for individuals tasked with recordkeeping requirements).

Needs and Uses: Section 76.305 of the Commission's rules requires cable television systems having 1,000 or more subscribers to maintain a public inspection file containing certain records. The records are used by FCC staff in field inspection/investigations, local public officials and the public to assess a cable television system's performance and to ensure that the system is in compliance with all of the Commission's applicable rules and regulations.

OMB Control Number: 3060-0332.

Title: Section 76.1706 Signal leakage logs and repair records.

From Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,080.

Estimated Time Per Response: 0.5 hours.

Total Annual Costs: \$127,008.

Needs and Uses: The requirements under this OMB control number were previously contained in section 76.614. The data are used by cable television systems and the Commission to prevent, locate and eliminate harmful interference as it occurs, to help assure safe operation of aeronautical and marine radio services and to minimize the possibility of interference to these safety-of-life services.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 01-14664 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**Network Reliability and Interoperability Council**

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fourth meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of January 6, 2000.

DATES: Tuesday, June 26, 2001 at 10:00 a.m. to 12:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W. Room TW-C305, Washington, D.C.

¹ Northern Natural Gas Co., 95 FERC ¶ 61,315 (2001).

FOR FURTHER INFORMATION CONTACT: Kent R. Nilsson at 202-418-0845 or TTY 202-418-2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to identify and recommend measures that would enhance network reliability.

The Council will receive reports on, and discuss, the progress of its focus groups: Network Reliability, Wireline Spectrum Management and Integrity, and Interoperability. The Council may also discuss such other matters as come before it at the meeting. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Kent Nilsson, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (KNILSSON@FCC.GOV) or U.S. mail (7-B452, 445 12th St. S.W., Washington, D.C. 20554). Real Audio and streaming video access to the meeting will be available at <http://www.fcc.gov/>.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 01-14663 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, this notice advises interested persons of the first meeting of the Technological Advisory Council ("Council") under its new charter, which will be held at the Federal Communications Commission in Washington, DC.

DATES: Wednesday, June 13, 2001 at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W., Room TW-C305 Washington DC 20554.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to provide a means by which a diverse

array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of this first meeting under the Council's new charter will be to organize the Council's efforts to fulfill its responsibilities under the charter. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Julius Knapp, the Council's Designated Federal Officer, before the meeting. Julius Knapp's email address is jknapp@fcc.gov. His U.S. mail address is Julius Knapp, Deputy Chief, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. Notice of this meeting was delayed because of the large number of exceptionally well qualified applicants who were nominated for membership on the Council, and the need to insure that the composition of the Council would best achieve the objectives that have been set for this Council promptly. Future meetings of the Council have been scheduled for September 20, 2001; December 5, 2001; March 20, 2002; June 12, 2002; September 18, 2002; and December 4, 2002. Additional meetings may be scheduled as necessary. Future meetings will address the topics that the Council has been asked to consider by the Commission. All meetings will be held in the Commission meeting room, Room TW-C-305, 445 12th Street, S.W., Washington, D.C. Each meeting will begin at 10:00 A.M. and continue until the business before the Council on that date has been completed. For additional information contact Kent Nilsson at knilsson@fcc.gov or 202-418-0845.

Federal Communications Commission

Magalie Roman Salas,
Secretary.

[FR Doc. 01-14662 Filed 6-11-01; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Procedures for Monitoring Bank Secrecy Act Compliance; (2) application for waiver of prohibition on acceptance of brokered deposits by adequately capitalized insured depository institutions; (3) notice of branch closure; (4) real estate lending standards; and (5) foreign branching and investment by insured state nonmember banks.

DATES: Comments must be submitted on or before August 13, 2001.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898-7453, Office of the Executive Secretary, Room F-4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898-3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Procedures for Monitoring Bank Secrecy Act Compliance.

OMB Number: 3064-0087.

Frequency of Response: On occasion.

Affected Public: Any financial institution complying with the requirements of the Bank Secrecy Act.
Estimated Number of Respondents: 5,600.

Estimated Time per Response: .5 hours.

Total Annual Burden: 2,800 hours.

General Description of Collection: 12 CFR 326 requires all insured nonmember banks to establish and maintain procedures designed to assure and monitor their compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR 103.

2. *Title:* Application for Waiver of Prohibition on Acceptance of Brokered Deposits by Adequately Capitalized Insured Depository Institutions.

OMB Number: 3064-0099.

Frequency of Response: On occasion.

Affected Public: Any insured depository institution seeking a waiver to the prohibition on the acceptance of brokered deposits.

Estimated Number of Respondents: 25.

Estimated Time per Response: 6 hours.

Total Annual Burden: 150 hours.

General Description of Collection: Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized insured depository institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well-capitalized institutions may accept, renew, or roll over brokered deposits without restriction.

3. *Title:* Notice of Branch Closure.

OMB Number: 3064-0109.

Frequency of Response: As needed.

Affected Public: Any financial institution that proposes to close a branch.

Estimated Number of Respondents: 1,364 (1,314 notice; 50 adoption).

Estimated Time per Response: 1,314—2 hours; 50—8 hours.

Total Annual Burden: 3,028 hours.

General Description of Collection: Section 42 of the Federal Deposit Insurance Act mandates that an institution that proposes to close a branch notify its primary Federal regulator no later than 90 days prior to the closing. Each insured depository institution is required to adopt policies for branch closings.

4. *Title:* Real Estate Lending Standards.

OMB Number: 3064-0112.

Frequency of Response: As needed.

Affected Public: Any financial institution engaging in real estate lending.

Estimated Number of Respondents: 5,600.

Estimated Time per Response: 20 hours.

Total Annual Burden: 112,000 hours.

General Description of Collection: Institutions will use real estate lending policies to guide their lending operations in a manner that is consistent with safe and sound banking practices and appropriate to their size, nature and scope of their operations. These policies should address certain lending considerations, including loan-to-value limits, loan administration policies, portfolio diversification standards, and documentation, approval and reporting requirements.

5. *Title:* Foreign Branching and Investment by Insured State Nonmember Banks.

OMB Number: 3064-0125.

Frequency of Response: As needed.

Affected Public: Any financial institution dealing in foreign banking.

Estimated Number of Respondents: 73.

Estimated Time per Response: Varies.

Estimated Total Annual Burden: 22,298 hours.

General Description of Collection: Section 18(d)(2) of the Federal Deposit Insurance Act, requires a nonmember bank to obtain the FDIC's consent to establish or operate a branch in a foreign country and authorizes the FDIC to impose conditions and issue regulations governing foreign branches of nonmember banks. Section 18(l) requires a nonmember bank to obtain the FDIC's consent to acquire and hold, directly or indirectly, stock or other evidences of ownership in any foreign bank or other entity.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of these information collections, including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this

notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 6th day of June, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01-14730 Filed 6-11-01; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL MARITIME COMMISSION

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—June 20, 2001.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Docket No. 98-14—Shipping Restrictions, Requirements and Practices of the Peoples Republic of China.

2. Docket No. 96-20—Port Restrictions and Requirements in the United States/Japan Trade.

3. Docket No. 94-01—Ceres Marine Terminals, Inc. v. Maryland Port Administration.

CONTACT PERSON FOR MORE INFORMATION:

Bryant L. VanBrakle, Secretary, (202) 523-5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01-14886 Filed 6-8-01; 2:23 pm]

BILLING CODE 6730-01-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. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 2001.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Iron Mound Investments, L.L.C., Steven C. Davis, Gail Davis, Ernest R. Davis, Shirley A. Davis, Ricky J. Davis, Pam Davis, Kenny R. Davis and Gina Davis*, all of Guthrie, Oklahoma, to acquire voting shares of First National Bancshares, Inc., Edmond, Oklahoma, and thereby indirectly acquire voting shares of First National Bank of Edmond, Edmond, Oklahoma.

2. *Nancy Jones, as Trustee of the Gwendolyn Jones Irrevocable Trust*, Encino, California; to acquire voting shares of First Altus Bancorp, Inc., Altus, Oklahoma, and thereby indirectly acquire voting shares of First National Bank, Altus, Oklahoma.

Board of Governors of the Federal Reserve System, June 6, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01-14670 Filed 6-11-01; 8:45 am]

BILLING CODE 6210-01-S

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 July 9, 2001.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Citigroup Inc.*, New York, New York; Citigroup Holding Company, Wilmington, Delaware, and Citicorp, New York, New York; to acquire 100 percent of the voting shares of Grupo Financiero Banamex-Accival, S.A., de C.V., Mexico City, Mexico, and Banamex USA Bancorp, Los Angeles, California ("Banamex"), and thereby indirectly acquire California Commerce Bank, Los Angeles, California, and all of the nonbanking companies of Banamex.

Board of Governors of the Federal Reserve System, June 6, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01-14669 Filed 6-11-01; 8:45 am]

BILLING CODE 6210-01-S

lists applications, but also indicates procedural and other information about the meeting.

Dated: June 8, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01-14925 Filed 6-8-01; 3:01 pm]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01112]

Clinical Immunization Safety Assessment Centers (CISA); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Clinical Immunization Safety Assessment Centers (CISA). The term "Immunization Safety" encompasses safety aspects of the vaccine administration process as well as the vaccine itself. This program addresses the following "Healthy People 2010" focus areas of Immunization and Infectious Diseases, Medical Product Safety, Public Health Infrastructure, Maternal, Infant and Child Health, Health Communication and Access to Quality Health Services.

The purpose of the program is to initiate the establishment of a national network of CISA Centers (hereforth called Centers) to improve the scientific understanding of Immunization Safety issues at the individual patient level. Because clinically significant adverse events occur rarely, they are infrequently seen in clinical trials and individual clinicians see them too infrequently to be able to manage them in a standardized fashion. In collaboration with CDC, the Centers will fill this gap by essentially creating a new medical specialty of Immunization Safety.

The Centers will develop and disseminate standardized clinical evaluation protocols to clinicians who may be required to apply them to a patient; they will provide referral and consultation services to health care providers on how to evaluate patients who may have had an adverse reaction to vaccination, which will include how to manage the adverse reaction, as well as advise on continued immunization; and they will undertake outreach and

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). The nonbanking activities will be conducted worldwide.

FEDERAL RESERVE SYSTEM

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Monday, June 18, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement that not only

educational interventions in the area of Immunization Safety.

The goals are to enhance our understanding of known serious or unusual vaccine reactions, including the pathophysiology and risk factors (including genetics) for such reactions, as well as evaluate and gain an understanding for newly hypothesized syndromes or events identified from the routine and enhanced assessment of Vaccine Adverse Event Reporting System (VAERS) case reports, in order to clarify any potential relationship with immunization.

This program will only be accomplished if there is strong and continual collaboration among the parties involved in the network and if each Center will be staffed by a group of clinical specialists in Immunization Safety. Collaboration will need to take place in the areas of expertise-sharing and clinical evaluation and assessment workload.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Title 2 United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately \$1,700,000 is available in FY 2001 to fund at least three awards. It is expected that the average award will be \$500,000, ranging from \$400,000 to \$600,000. It is expected that the awards will begin on or before September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as

evidenced by required reports and the availability of funds.

Use of Funds

Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to supplant existing support.

B. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), CDC will be responsible for the activities listed under 2. (CDC Activities) and the Recipient and CDC will both be responsible for activities listed under 3. (Coordinating Activities).

1. Recipient Activities

The following section describes the expected activities of each Center and its functioning within the CISA network. The recipient shall perform all services necessary to establish and operate a Center for Clinical Immunization Safety Assessment in accordance with the requirements described:

a. Perform or coordinate the standardized intensive clinical and laboratory assessments of patients who may have had a known serious or unusual vaccine reaction (e.g. anaphylaxis, ITP, swollen leg after DtaP vaccine), to improve the understanding of the pathophysiology and risk factors (including genetics) for the reaction.

b. Develop the necessary clinical evaluation protocols and conduct or coordinate the standardized clinical evaluation and any other follow-up studies of appropriate patients (and controls) for newly hypothesized syndromes identified from the routine and enhanced assessment of case reports from the VAERS, as necessary to clarify the potential relationship with immunizations (for examples see Addendum A.)

c. Establish the protocols and the capacity to immunize under medical supervision, for patients who have had an adverse reaction that may not contraindicate further vaccination but where there is concern. These will aid in the development of valid contraindications.

d. Serve as referral centers for clinical Immunization Safety inquiries.

e. Establish the development of clinical evaluation protocols and case definitions of adverse events possibly related to immunizations that can be disseminated for use by health care providers.

f. Establish linkages with clinical experts both regionally and nationally, who could participate in the evaluation of patients following an adverse event, and can also potentially be called upon to assist as needed with the development of clinical evaluation protocols and their implementation.

g. For case reports received by the VAERS program that refer to clinical conditions or syndromes under investigation by the Network, Center staff would manage the routine follow-up activities that would be conducted to complete missing case report information, and solicit additional clinical records that may be useful in evaluating the case. The VAERS program will assist as needed in these activities to decrease administrative workload on the network.

h. Participation and collaboration in the network of clinical centers to include but not limited to participation in weekly conference calls, electronic mail discussions, and annual meetings.

i. Funded institutions may be able to request supplemental funding for the following activities:

1. Clinical consultation service capacity for health care providers.
2. Outreach and education activities.

2. CDC Activities

- a. Provide technical assistance.
- b. Arrange first coordinating meeting.
- c. Assist in the development of any research protocols that may be developed to further investigate selected adverse events, for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

3. Coordinating Activities

a. Centers will develop joint network operating protocols/procedures including but not limited to, mechanisms for billing of clinical assessment costs, patient billing as necessary, arranging specialist referrals, and other shared or commonly delegated activities.

b. The network will jointly discuss cases, make decisions regarding the need to carry out additional case follow-ups, and then select cases for detailed clinical evaluation.

E. Content

Letter of Intent (LOI)

A non-binding LOI should be submitted for this program. It should be no more than one page. The LOI will be used to determine the number of

reviewers needed and evaluate public interest in the CISA Program. The LOI should include the name of the institution and name, title and affiliation of the principal investigator who will lead the Center. And if available, the name(s) and address(s) of the participating institution(s) that will form the infrastructure of the proposed CISA Center.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Letter Of Intent

The letter of intent should be submitted on or before July 9, 2001, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS-398 (OMB Number 0925-0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before August 8, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in 1. or 2. above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated against the following criteria by an

objective review panel appointed by CDC.

1. Understanding of the Project (10 points)

The extent to which the applicant possesses an understanding of the needs and purpose of the project will be evaluated, as demonstrated through knowledge and understanding of current research and activities being performed in this area, past studies, existing literature and both the clarity, practicality and flexibility of the proposed project plan such that it can be networked with others. The application shall demonstrate that the applicant's plan to accomplish the effort is clear, feasible and practical, including recognition of potential difficulties in performance and appropriateness and soundness of proposed solutions.

2. Methodology and Collaboration Potential (35 points)

The soundness, practicality and feasibility of the applicant's organizational plan and methodology for undertaking the project will be evaluated. Since the project will involve collaboration with other Centers performing similar work, the value of the project will be maximized if: (a) Patients do not need to travel to reach a Center, and (b) Centers have well established professional contacts outside their immediate geographic or metropolitan boundaries. Thus Centers should describe how they propose to extend their "virtual" clinical coverage area.

Additional paragraphs should address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.
2. The proposed justification when representation is limited or absent.
3. A statement as to whether the design of the study is adequate to measure differences when warranted.
4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Management Plan (20 points)

The soundness and feasibility of the applicant's proposed management plan for accomplishing the work expectations outlined in "Section D" to include identification of applicant's key personnel to be assigned to the CISA

program and clear identification of their respective roles in the management and operations of the program.

4. Experience and Capabilities (35 points)

The applicant's (including proposed staff in applicable areas) experience, qualifications, and technical ability relevant to (1) the content areas of immunizations and adverse drug and vaccine reactions; (2) conducting clinical research and publishing in peer-reviewed journals; (3) providing clinical services and external consultation services; (4) transmission of information in a timely, efficient, secure and accurate manner; (5) discussing medical conditions with health care providers and the general public; (6) retrieving medical records and medical information from within their institution and on request from external institutions; (7) receiving and storing biological specimens related to this project; (8) taking part in multi-center projects and clinical trials; and (9) undertaking collaborative projects involving geographically separated institutions and consultations to health care providers in distant locations.

5. Human Subjects (not scored)

The application should also adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects (specific research studies may be undertaken by a Center or the Network—each will be undertaken as the need is identified through the ongoing experience of reviewing vaccine safety issues by the functioning Network (and if funding is available), with the development of a formal research protocol at that time).

6. Budget (not scored)

The applicant shall describe their proposed plan for managing the resources necessary to comply with the requirements specified in "Section D". This shall include a description of the Center organization, including proposed person hours for each key individual.

H. Reporting Requirements

Provide CDC with original plus two copies of

1. semi-annual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional

Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR-1 Human Subjects Requirements
 AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
 AR-6 Patient Care
 AR-7 Executive Order 12372 Review
 AR-8 Public Health System Reporting Requirements
 AR-10 Smoke-Free Workplace Requirements
 AR-11 Healthy People 2010
 AR-12 Lobbying Restrictions
 AR-14 Accounting System Requirements
 AR-15 Proof of Non-Profit Status
 AR-22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 317(k)(1) and 2102(a) of the Public Health Service Act, (42 U.S.C. sections 241, 247b(k)(1), and 300aa-2(a)), as amended. The Catalog of Federal Domestic Assistance number is 93.185.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888 472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Mike Smiley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: 770-488-2718, Email: znr6@cdc.gov.

For program technical assistance, contact:

Dr. Robert Pless, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, MS-E61, Atlanta, GA 30333, Telephone: 404-321-0248, Email: rpless@cdc.gov.

Sharon Holmes, Program Analyst, Vaccine Safety and Development Activity, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, MS-E61, Atlanta, GA 30333, Telephone: 404-639-8582, Email: sholmes@cdc.gov.

Dated: June 6, 2001.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01-14720 Filed 6-11-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01114]

Use of Logical Observations, Identifiers, and Names (LOINC) to Standardize the Electronic Exchange of Public Health Data; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program for "Use of Logical Observations, Identifiers, and Names (LOINC) to Standardize the Electronic Exchange of Public Health Data." This program addresses the "Healthy People 2010" focus areas of Cancer.

The purpose of this program is to: (1) Promote analyzation and evaluation of the LOINC vocabulary, a set of formal names and codes for clinical variables and laboratory test names applied with other numeric, coded, or narrative text values; (2) promote assessment and implementation of additional enhancements for the current data mapping tool which is Regenstrief LOINC Mapping Assistant (RELMA) as needed; (3) assessment and promotion of educational material which can be presented in appropriate settings such as workshops and conferences to illustrate how the mapping tool and LOINC vocabulary can be used; (4) analysis and refinement of additional semantic enhancements to the code sets based on previous findings (*i.e.*, brief descriptions or names provided for each LOINC code) and evaluate the need for relationships to other code sets such as the International Classification of Disease (ICD) series or vocabularies (*i.e.*, Systematized Nomenclature of Medicine, (SNOMED)); and (5)

assessment of the need for and growth of enhancements to code set management and code set assignment (*i.e.* methods to group domain areas to identify specific needs).

B. Eligible Applicants

Assistance will be provided only to the Regenstrief Institute for Health Care, a non-profit organization. No other applications are solicited.

The LOINC vocabulary is developed and managed only by the Regenstrief Institute for Health Care. The Regenstrief Institute for Health Care's mission is to conduct research to improve health care by improving the capture, analysis, content and delivery of the information needed by patients, their health care providers and policy makers, and to conduct intervention studies designed to measure the effect of the application of this research on the efficiency and quality of health care. The vocabulary of codes is freely distributed over the Web at the Regenstrief Web site. The Regenstrief Institute grants permission, without written agreement and without license or royalty fees, to use, copy, or distribute the LOINC codes, LOINC User's Guide, and the contents of the LOINC database for any purpose, so long as a copyright notice appears on any copies of the LOINC database and User's Guide, and that certain criteria are met. The Regenstrief Institute is the only organization which maintains and develops these standard codes.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately \$100,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Assess the need for enhancement of the LOINC vocabulary. Based on the

findings, develop recommendations and implement the findings for enhancement of the LOINC vocabulary.

2. Develop recommendations and implement the findings for additional enhancements for the current data mapping tool, RELMA.

3. Assess the need for and develop educational materials that can be presented at workshops and conferences (e.g., APHA, NAACCR, and clinical laboratory meetings) to demonstrate how the mapping tool and codes are used.

4. Develop recommendations and implement the recommendations for additional semantic enhancements to the code sets.

5. Develop recommendations and implement the recommendations for enhancements for code set management and code set assignment.

6. Disseminate the findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative, not including appendices, should be no more than 20 double-spaced pages, printed on one-side, with one inch margins, and un-reduced font. Pages should be clearly numbered and a complete index to the application and any appendixes included. The original and each copy of the application should be submitted unstapled and unbound.

1. Executive Summary

Provide a clear, concise, and objectively written statement of the major objectives and components of the proposed activities.

2. Existing Resources and Needs Assessment

Describe the current activities related to the development and enhancements of the LOINC vocabulary, the mapping tool, RELMA or other necessary enhancements for LOINC code management and the need for enhancement.

3. Collaborative Relationships

Describe collaborative relationships with other agencies and organizations relevant to exchanging clinical and laboratory information electronically using a standard exchange format such as Health Level 7.

4. Operational Plan

Describe the objectives for the proposed project. The applicant should

describe the specific outcome and process objectives that will be measured, the major steps required and a projected timetable for completion that displays time-lines for the accomplishment of specific proposed activities.

5. Management and Staffing Plan

Describe how the program will be effectively managed including:

a. Management structure including the lines of authority and plans for fiscal control.

b. Qualifications and experience of the designated staff.

c. The staff positions responsible for implementation of the program.

6. Budget and Justification

Provide a detailed budget request and line-item justification of all proposed operating expenses.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161-1 (OMB Number 0920-0428). Forms are available in the application kit and at the following Internet address: <http://forms.pcs.gov>. On or before July 15, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

G. Evaluation Criteria

Application

The application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Resources and Needs Assessment: (25 points)

The extent to which the applicant describes how the current activities relating to the development of the LOINC vocabulary and the mapping tool and the identification and need for other necessary enhancements for LOINC code management and the need for enhancement.

2. Collaboration: (20 points)

The extent to which the applicant provides evidence of collaborative relationships with other agencies and organizations relevant to exchanging clinical and laboratory information electronically using a standard exchange format such as Health Level 7 and other possible methods.

3. Proposed Objectives: (30 points)

The extent to which the applicant describes the specific outcome and

process objectives for the proposed project; how they will be measured, and the major steps required to meet the objectives.

4. Operational Plan: (10 points)

The extent to which the projected timetable for completion of objectives and for meeting objectives is reasonable and realistic.

5. Project Management and Staffing Plan: (15 points)

The extent to which the applicant describes the management structure and staff positions with clear lines of authority and plans for fiscal control for proposed project staff and qualifications and experience of the proposed staff.

6. Budget: (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the proposed program objectives and activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Annual progress reports which includes:

a. A brief program description;
b. A comparison of the actual accomplishments to the goals and objectives established for the period; and

c. If established goals and objectives were not accomplished or were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR-10 Smoke-Free Workplace Requirements

AR-11 Healthy People 2010

AR-12 Lobbying Restrictions

AR-14 Accounting System

Requirements

AR-15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247b (k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov> Click on “Funding” then “Grants and Cooperative Agreements.” To obtain business management technical assistance, contact: Glynnis Taylor, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Announcement 01114, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2752, Email address: gld1@cdc.gov.

For program technical assistance, contact: Warren Williams, MPH, Health Scientist, Cancer Surveillance Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE (MS—K53), Atlanta, GA 30341–3717, Telephone number: (770) 488–3095, Email address: wwilliams1@cdc.gov.

Dated: June 6, 2001.

John L. Williams

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–14721 Filed 6–11–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01129]

Cooperative Agreement for the Development, Operation, and Evaluation of an Entertainment Education Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for development, operation, and evaluation of an entertainment education program. This program addresses the “Healthy People 2010” focus areas of Health Communications,

Physical Activity and Fitness, HIV, Sexually Transmitted Diseases, Injury and Violence Prevention, Diabetes, Immunization and Infectious Diseases and Cancer.

The overall goal of this program is to foster Hollywood leadership support for national public health priorities which include accurate depictions of science for public health action, collaborations for prevention, and promoting accurate depictions of healthy living at all stages of life.

Specific purposes include coordinating strategic placement of public health storylines and messages in entertainment programming including daytime and prime time television dramas; enhancing disease prevention and promotion efforts through entertainment programming that reaches target audiences; providing opportunities to relate the stories of prevention through entertainment programming; providing public health education and training to entertainment industry leaders and creators; recognize exemplary work of entertainment; eliciting the coordination and cooperation of other national, public, private, and voluntary agencies that engage in entertainment education and entertainment industry activities.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

C. Availability of Funds

Approximately \$300,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance. You may request equipment as direct assistance, in lieu of a portion of financial assistance.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1., below, and CDC will assist as requested with activities under 2.

1. Recipient Activities:

a. Develop and coordinate technical assistance for health storylines in TV shows.

Establish and maintain a resource guide for TV Writers and Producers which gives details of priority topics for public health storylines (e.g., tip sheets for web page, CD-ROM, or binder formats).

Target promotion of public health topics as potential storylines to appropriate audience segments. Evaluate audience demographics and match issues to audience potential of specific shows, for example, shows targeting youth of different age groups, shows reaching older adults, shows viewed primarily by women, etc.

Use resource guide to promote priority topics for public health storylines and establish partnerships with entertainment industry writers and producers. Develop and supply as requested a subject matter expert list for priority issues to serve as consultants for TV writers and producers on an as requested basis.

Serve as a point of contact for entertainment industry to develop accurate storylines on public health issues coordinating expert consultants as requested.

b. Foster additional partnerships to promote Entertainment—Education program.

Facilitate presentations of public health topics by expert consultants to other entertainment industry groups, technical advisors, and educational consultants.

Facilitate the development of a special advisory group from industry leaders to consult on best practices for improving educational outcomes through increasing the media awareness of America's youth.

Coordinate recognition of shows that successfully weave public health messages into storylines.

2. CDC Activities:

a. Provide, as requested, a list of public health priorities in terms of the scope and severity of risk and/or burden on public health.

b. As requested, facilitate contact to experts in specific health areas, as well

as health communication leaders in key public health positions.

c. Provide, as requested, technical assistance and consultation in the area of program development, implementation, and health communication campaigns.

d. Provide, as requested, technical assistance and consultation in the development of the award/recognition activity.

e. Provide, as requested, technical assistance in defining the scope of activity and requests for the youth-related activities, and all other health-topic specific initiatives.

f. Provide, as requested, technical assistance and direction in development of audience assessments using existing databases (e.g. Healthstyles Survey).

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and un-reduced font. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Application: Submit the original and two copies of PHS 5161-1 (OMB Number 0920-0428). Forms are available in the application kit and at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm

On or before July 31, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

The application will be evaluated against the following criteria (maximum 100 total points):

1. *Background, Need, and Capacity (25 percent):* The extent to which the applicant presents data and information documenting the capacity to accomplish the program, positive progress in related past or current activities or programs, and, as appropriate, need for the program. The extent to which the applicant demonstrates a three year history in conducting an Entertainment-Education program, which includes evidence of fruitful contacts with industry leaders, entertainment education scholarship and audience research.

2. *Goals and Objectives (15 percent):* The extent to which the applicant includes goals that are relevant to the purpose of the proposal and feasible to accomplish during the project period, and the extent to which these are specific and measurable. The extent to which the applicant has included objectives which are feasible to accomplish during the budget period and project period, and which address all activities necessary to accomplish the purpose of the proposal.

3. *Methods and Staffing (30 percent):* The extent to which the applicant provides: (1) a detailed description of proposed activities which are likely to achieve each objective and overall program goals, and which includes designation of responsibility for each action undertaken; (2) a reasonable and complete schedule for implementing all activities; and (3) a description of the roles of each unit, organization, or agency, and (4) evidence of qualifications, supervision, and degree of commitment of staff, organizations, and agencies involved in activities.

4. *Evaluation (10 percent):* The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform evaluation.

5. *Collaboration (20 percent):* The extent to which relationships between the program and other organizations and agencies, including entertainment advocacy, industry groups and leaders will relate to the program or conduct related activities are clear, complete, and provide for complementary or supplementary interactions. The extent to which the applicant provides

evidence of entertainment advisory capacity within an existing program.

6. *Budget and Justification (not scored):* The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

- AR-5 HIV Program Review Panel Requirements
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions
- AR-13 Prohibition on use of CDC Funds for certain Gun Control Activities
- AR-14 Accounting System Requirements
- AR-15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 311 and 1704 of the Public Health Service Act, [42 U.S.C. section 311 and 1704], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov> Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave your name and address and will be instructed to identify the Program Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: 770-488-2696, Email address: mij3@cdc.gov.

For program technical assistance, contact: Claudia Parvanta, Ph.D., Director, Division of Health Communication, Centers for Disease Control and Prevention, Mailstop D-25, 1600 Clifton Road, Atlanta, GA 30333, Telephone number: 404-639-7280, Email address: cip0@cdc.gov.

Dated: June 6, 2001.

John L. Williams,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention
(CDC).*

[FR Doc. 01-14722 Filed 6-11-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Program Announcement 98047

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements for Prevention Research Centers, Program Announcement 98047, meeting.

Times and Dates: 2 p.m.—2:30 p.m., June 25, 2001 (Open). 2:30 p.m.—4 p.m., June 25, 2001 (Closed).

Place: This above portion of this meeting will be held via teleconference. The teleconference call will originate in the National Center for Chronic Disease Prevention and Health Promotion, Prevention Research Centers Program,

Koger Center, Rhodes Building, 3005 Chamblee Tucker Rd., Atlanta, Ga 30341. Open access to the call will be available from 2—2:30 p.m. EDT, only. Interested parties may access the teleconference at 800/811-2539. The participant code is 989951.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92-463.

Matters to be Discussed: The teleconference meeting will concern the review, discussion, and evaluation of supplemental award applications received in response to Program Announcement #98047.

Times and Dates: 8:30 a.m.—9 a.m., June 26, 2001 (Open). 9 a.m.—5 p.m., June 26, 2001 (Closed). 8 a.m.—5 p.m., June 27, 2001 (Closed).

Place: Crowne Plaza Airport Hotel, 1325 Virginia Ave, Atlanta, GA 30344.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92-463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of supplemental award applications received in response to Program Announcement #98047.

Contact Person For More Information: Mike Waller, Deputy Branch Chief, Healthcare and Aging Studies Branch, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, m/s K45, Atlanta, GA., 30341. Telephone 770/488-5264, email mnw1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2001.

Carolyn J. Russell,

*Director, Management Analysis and Services
Office, CDC.*

[FR Doc. 01-14719 Filed 6-11-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Family and Child Experiences Survey (FACES)/Quality Research Center Consortium.

OMB No.: Revision of a currently approved collection (#0970-0151).

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to amend the Head Start Family and Child Experiences Survey (FACES) data collection. This study is being conducted under contract with Westat, Inc. (with Ellsworth Associates and the CDM Group as their subcontractors) (#105-96-1912) to collect information on Head Start performance measures. The current revision is intended to include 8 additional sites participating in the Head Start Quality Research Center Consortium. These Head Start program-university researcher partnerships, funded under cooperative agreements with ACYF, will be conducting evaluations of interventions designed to enhance the school readiness of Head Start children in such areas as literacy and social-emotional development, through improvements in curriculum, training, and assessment practices. This amendment will include use of subsections of the FACES instrument battery to obtain information about classroom quality and child performance both before and after the implementation of the interventions. Data from local sites can then be compared to the data available from the FACES national sample.

Respondents: Federal Government, Individuals or Households, and Not-for-profit institutions.

Annual Burden Estimates:

ESTIMATED RESPONSE BURDEN FOR RESPONDENTS TO THE QUALITY RESEARCH CENTER CONSORTIUM FACES DATA COLLECTION, 2001, 2002, 2003

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Year 1 (Fall 2001):				
Head Start Children	520	1	0.66	343
Head Start Teachers (child ratings)	40	13	0.25	130
Center Directors	8	1	1.00	8
Education Coordinators	8	1	0.75	6
Classroom Teachers	40	1	1.00	40
Year 2 (Spring 2002):				
Head Start Children	520	1	0.66	343
Head Start Teachers (child ratings)	40	13	0.25	130
Classroom Teachers	40	1	1.00	40
(Fall 2002):				
Head Start Children	800	1	0.66	528
Head Start Teachers (child ratings)	80	13	0.25	260
Center Directors	16	1	1.00	16
Education Coordinators	16	1	0.75	13
Classroom Teachers	80	1	1.00	80
Year 3 (Spring 2003):				
Head Start Children	800	1	0.66	528
Head Start Teachers (child ratings)	80	13	0.25	260
Classroom Teachers	80	1	1.0	80
Annualized Totals:				
Year 1				527
Year 2				1410
Year 3				868

Estimated Average Annual Burden Hours: 935.

Note: The 935 Estimated Average Burden Hours is based on an average of 2001, 2002, and 2003 estimated burden hours:

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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.

Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 6, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01-14668 Filed 6-11-01; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS-2001-07]

Family Violence Prevention and Services Program, National Resource Center on Domestic Violence and Four Special Issue Resource Centers; Availability of Funds for Fiscal Year 2001 and Request for Applications

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Announcement of the availability of funds and request for applications to operate the National Resource Center on Domestic Violence and four special issue resource centers.

Letter of Intent: All applicants intending to apply for this funding are encouraged to submit the non-binding letter of intent included as attachment A to the Office Community Services by

July 3, 2001. Please fax the letter to the Office of Community Services (OCS), Family Violence Prevention and Services Program at (202) 401-5718. OCS will use these letters to forecast the number of peer review panels needed to review competitive applications.

Note to All Prospective Applicants:

The current grantees operating the National Resource Center on Domestic Violence; National Health Resource Center on Domestic Violence; Resource Center on Domestic Violence: Child Protection and Custody; Resource Center on Civil and Criminal Law (Battered Women's Justice Project); and the Sacred Circle, National Resource Center to End Violence Against Native Women have indicated their intentions to re-apply for funding.

SUMMARY: The Office of Community Services (OCS) of the Administration for Children and Families (ACF) expects \$5,845,900 to be available in fiscal year FY 2001 for the award of five cooperative agreements in support of a National Resource Center on Domestic Violence (NRC), and four Special Issue Resource Centers (SIRCS). This Announcement contains all the application materials needed to apply for these grants. Please copy and use these materials provided in submitting an application under this Announcement. No additional application materials are available or are needed to submit an application. Applicants should note that cooperative

agreements to be awarded under this Program Announcement are subject to the availability of funds.

The NRC and SIRC's funded under this announcement will operate as a Domestic Violence Resource Network which strengthens the existing support systems serving battered women, their children and other victims of domestic violence; and to provide comprehensive information and resources, policy development, and technical assistance designed to enhance community response to and prevention of domestic violence.

Each resource center is required to work in partnership with community-based domestic violence programs, State domestic violence coalitions, Federal, State, and local government agencies, Indian tribal organizations, policy makers and others involved in assisting programs and victims of domestic violence in order to identify and respond to emerging issues, technical assistance requests, and increasing service demands. In addition to promoting research and providing information and technical assistance, each center within the network must provide:

- Comprehensive statistics, fact sheets, and specialized information packets addressing a range of domestic violence issues;
- Materials to support the development and replication of model programs, legislation and exemplary practices;
- Technical assistance and training to assist organizations, programs and communities to adapt available resources to meet local needs;
- A toll-free information line which allows the public to access the latest developments in research, policy, and practice;
- A customer-oriented information service reachable by fax or mail whereby programs, agencies, and professionals may receive packets, newsletters, bibliographies, policy papers and fact sheets;
- Assistance to customers in accessing AT&T translation services for persons for whom English is not the primary language;
- Collaboration opportunities with organizations and individuals representing minority and underserved populations; and
- Methods by which individuals with disabilities may access materials or service in accordance with section 307 of the Family Violence Prevention and Services Act.

Closing Dates: The closing date for submission of applications is July 27, 2001. Applications postmarked after the

closing date will be classified as late. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal service. Private metered postmarks shall not be accepted as proof of timely mailing. Detailed application submission instructions, including the address where applications must be received, are found in Part IV of this announcement.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m. EST at the Family Violence Operations Center: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Mailing Addresses: Applications should be mailed to Family Operations Center; 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; Attention: Application for Family Violence Prevention and Services Program.

Number of Copies Required: One signed original application and four copies should be submitted at time of initial submission. (OMB-0970-0062, expiration date 10/31/2001)

Acknowledgment of Receipt: An acknowledgment will be mailed to all applicants with an identification number that will be noted on the acknowledgment. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the application deadline, applicants should notify the Family Violence Operations Center by telephone at (703) 3561-7676. Applicants should also submit a mailing label for the acknowledgment.

(Note: To facilitate receipt of this acknowledgment from ACF, applicant should include a cover letter with the application to include an E-mail address and FAX number, if these items are available to the applicant.)

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. Telephone William Riley, (202) 401-5529, James Gray, (202) 401-5705, Sunni Knight, (202) 401-5319 or Shena Russell, (202) 205-5932.

For a Copy of the Announcement, Contact: Family Violence Operations Center: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; Attn: Application for Family Violence

Prevention and Services Program. (703) 351-7676.

In addition, the announcement will be accessible on the OCS website for reading or printing at: <http://www.acf.dhhs.gov/programs/ocs> under "Funding Opportunities."

Part I—General Information

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98-457, 42 U.S.C. 10401, *et seq.*) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102-295, and was amended and reauthorized for fiscal years 1996 through 2000 by Pub. L. 103-322, the Violent Crime Control and Law Enforcement Act of 1994 and by Pub. L. 104-235, the "Child Abuse Prevention and Treatment Act Amendment of 1996." The Act was most recently amended by the "Victims of Trafficking and Violence Protection Act of 2000" (Pub. L. 106-386, 10/28/2000).

B. Program Purpose

The Department is required to establish and maintain a National Resource Center (NRC) and up to seven Special Issue Resource Centers (SIRC's). (See section 308(a)(2) of the FVPSA, as amended.) On a nationwide basis, a network composed of the NRC and the SIRC's will offer resource, policy, and training assistance to Federal, State, and local government agencies, to domestic violence service providers, and to other professional and interested parties on issues pertaining to domestic violence.. The NRC will maintain a central resource library in order to collect, prepare, analyze, and disseminate information, statistics, and statistical analyses relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance. The SIRC's shall provide a specialization, on a nationwide basis, in at least one area of domestic violence service, prevention or law.

C. Eligible Applicants

Private nonprofit organizations that focus primarily on domestic violence. Applicants must have documented organizational experience in the area of domestic violence prevention and services and in the specific special-issue area(s) for which they are applying. Each applicant must have an advisory board which includes representatives from domestic violence programs in the

region who are geographically and culturally diverse. Each applicant must also demonstrate the strong support of the domestic violence advocates from across the country and the region for designation as an NRC or SIRC.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

D. Background

To comply with the mandate for an NRC, the Office of Community Services seeks to support a nationwide effort that is staffed by an expert and experienced multi-disciplinary team that can respond to requests for resource, policy, and training assistance from individuals, agencies and organizations at the Federal, State and local levels.

Because of our concerns for administrative efficiency, ACF has concluded that the most effective relationships and anticipated coordination activities between the NRC and the SIRC's will be greatly enhanced with the establishment and maintenance of four (4) SIRC's. The areas of domestic violence service, prevention, or law described in section 308 of the FVPSA clearly overlap; therefore OCS has determined that they may be combined with no loss of emphasis.

I. All SIRC's Must Carry Out the Following Responsibilities

(a) Identification, documentation and the development of innovative training curricula, materials and manuals for specific program needs;

(b) Provision of technical assistance, training and consultation to improve program administration, service delivery, and to promote the utilization of resources and state-of-the-art techniques related to domestic violence, including methods and techniques for program implementation and evaluation; and

(c) Development of a network of professionals in domestic violence and the coordination of their input and experiences to assist persons, programs or agencies requesting assistance or information.

Considered together, the NRC and the SIRC's will constitute a domestic violence resource network and will provide assistance to Federal, State and local governmental agencies, Tribal agencies, State Domestic Violence Coalitions, community-based domestic violence programs, and other organizations and individuals involved in domestic violence prevention, identification, services, and intervention. To that end, each SIRC application must address questions related to the forms and extent of the assistance needed by the field. Additionally, the application/applicant must address questions related to the efficient and shared use of current electronic capabilities, how assistance and support for the field may be best communicated and delivered, and questions relative to the state-of-the-art on prevention, identification, intervention, and services in domestic violence.

Also, the discussion of the provision of assistance and consultation in the application must take into account varying circumstances, e.g., conditions in the field, and the target populations to be addressed. Finally, the discussion of the anticipated level of responsiveness and sensitivity in the application should reflect the applicant's flexibility, proposed options for service delivery, cost, and the appropriateness of content.

The four SIRC's will provide specific leadership, resource information and materials, training, technical assistance and professional consultation in the following subject areas:

- (a) Civil and Criminal Justice—
 - (i) Criminal justice responses to domestic violence, including court-mandated abuser treatment and the development of batterer's intervention services;
 - (ii) The use of the self-defense plea by domestic violence victims and other issues that arise when domestic violence victims are accused of committing crimes, including homicide; and
 - (iii) Improving access to and the quality of legal representation for victims of domestic violence in civil litigation, including the issuance and enforcement of protection orders.
- (b) Child Protection and Custody—
 - (i) Improving the response of Child Protective Service agencies to battered mothers of abused children; and
 - (ii) Child custody issues in domestic violence cases.
- (c) Health Care and Access—
 - (i) Improving interdisciplinary health care responses; and

(ii) Improving access to health care resources for victims of domestic violence.

(d) National Resource Center to End Violence Against Native Women (Sacred Circle)—

(i) The provision of training and technical assistance to State Domestic Violence Coalitions and to Indian organizations and tribal communities; and

(ii) Preparation and development of technical assistance packages to aid in the replication of effective services, prevention efforts and training programs.

II. Areas of Responsibility for the National Resource Center on Domestic Violence

It is expected that, on a nationwide basis, the NRC shall have a knowledge building and dissemination capacity and exhibit a systematic approach to the development and the distribution of information on issues for the field in close coordination with the SIRC's. To that end, the NRC shall assume an active role in the development of work groups and conferences on emerging policy and practice issues, and publish and disseminate proceedings on the state-of-the-art in selected areas of domestic violence intervention and prevention efforts, model programs, policy development and research; identify areas where additional information and research is needed to complement policy and practice; and suggest next steps for additional data compilation, innovative demonstrations, program administration, policy and service program evaluations.

The National Resource Center Must Carry Out the Following Responsibilities

(a) Identifying emerging domestic violence issues and preparing information and policy papers addressing such issues;

(b) Identification of the need, documentation and development of innovative or exemplary practice and resource development, and assisting the field through the acquisition of a 1-800 information line and other means, in acquiring and adapting such resources to specific needs; and

(c) Maintaining a central resource library to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of family violence (particularly the prevention of repeated incidents of violence) and the provision of immediate shelter and related assistance.

E. Forms of Awards

The OCS intends to support the NRC and the SIRC's through Cooperative Agreements. A Cooperative Agreement is an award instrument of financial assistance when substantial involvement is anticipated between the awarding office and the recipient during performance of the contemplated project. The Office of Community Services will outline a plan of interaction with the grantee for implementation under the Cooperative Agreement. The respective responsibilities of the Office of Community Services and the successful applicant will be identified and incorporated into the Cooperative Agreement during pre-award negotiations. It is anticipated that OCS responsibilities will not change the project requirements for the NRC found in this Announcement. The plan under the cooperative agreement will describe the general and specific responsibilities of the grantee and the grantor as well as foreseeable joint responsibilities. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of the project.

F. Minimum Requirements for Project Design

Applicants may apply to provide NRC services or SIRC services, and may submit applications for more than one center. However, in the event that the applicant does apply for more than one center, a separate application for each center is required. Applicants must clearly indicate whether funding is being sought to support a NRC or an SIRC. When applying for the SIRC grant, the applicant must specify the topical area(s) being addressed. In order to successfully compete under this Announcement, the applicant should:

1. For the National Resource Center

(a) Outline a plan of interaction with OCS for implementation under a cooperative agreement including, as appropriate, activities involving Headquarters agency staff;

(b) Describe the immediacy of the need(s) to be addressed as an NRC, provide information on the specific services your organization has provided and currently provides, and what information and services would be provided as the NRC; describe specifically how the NRC will meet the statutory requirements in sections 307 and 308 of the Family Violence Prevention and Services Act.

(c) Present the technical approach and the specific workplans for the provision

of assistance to the field that is nationwide in scope, including the use of an advisory board and/or expert panel; a plan for continued contact with the field, including an 800 telephone number and direct mailings; a plan for the implementation and effective use of electronic communication capability with the field; and a plan for the development and use of a network of experts for the provision of direct training and consultation, including fees for service, if necessary;

(d) Describe the efforts that would be initiated to coordinate the NRC with national advocacy groups and domestic violence organizations, other related national resource centers and clearinghouses, and Federal, State and Indian Tribal agencies; identify the agencies/organizations and how the initiation of or continued coordination with them will enhance the NRC's activities and avoid a duplication of efforts;

(e) Provide a plan to determine the recommendation for and the manner in which you would implement special projects relating to policy issues, training curricula, service delivery models or other aspects of services, related to the prevention of domestic violence;

(f) Provide a plan and schedule for evaluating and reporting on the effectiveness of the project(s) 6 months after the effective date of the grant;

(g) Describe the proposed NRC staff with appropriate expertise; and

(h) Describe the administrative and organizational structure of the applicant organization, including the cost structure within which the project will operate, and the operational and organizational relationships to be established with the SIRC's that will constitute an effective national network in the domestic violence areas. Charts depicting these structures and the ensuing relationships must be included.

Project Period

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 5 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 5-year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

Budget Period and Federal Share

The FY 2001 Federal share for the National Resource Center is \$1,494,825 for the first 12-month budget period, subject to the availability of funds.

Matching Requirement

Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$600,000 in Federal funds (based on an award of \$600,000 per budget period) must include a match of at least \$200,000 (25 percent of total project cost) for a total budget of \$800,000. If approved for funding, the grantee will be held accountable for commitments of non-Federal resources, and failure to provide the required amounts will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded

It is anticipated that one National Resource Center on Domestic Violence will be funded.

2. For the Special Issue Resource Centers

(a) Describe the immediacy of the need(s) to be addressed; provide information on the specific services your organization has provided and currently provides, and what information and specific training, and technical assistance would be provided as an SIRC; describe specifically, how your organization will meet the statutory requirements of sections 307 and 308 of the Family Violence Prevention and Services Act;

(b) Demonstrate an in-depth understanding of the program/service and access/response issues of the particular SIRC(s) and the problems associated with addressing these issues;

(c) Present the technical approach and the specific workplans for the provision of training and technical assistance to the field that is nationwide in scope and utilizes the support and facilitating efforts of the NRC and a network of experts; describe a plan for continuous contact with the field, an 800 telephone number and direct mailings; and a plan for the development and use of a network of experts for the provision of direct training and consultation, including fees for service, if necessary;

(d) Describe the efforts that you currently make or plan to implement,

and the relationships that you currently have or will form, to coordinate activities with other appropriate resource centers, domestic violence advocacy organizations, public agencies, the NRC, and affiliated SIRC's in a national domestic violence network to enhance the center's activities and to avoid duplication;

(e) Provide a plan to determine the need for and to implement special projects related to training curricula, service delivery models or other aspects of the proposed SIRC topic;

(f) Provide a plan to evaluate the effectiveness of the proposed project activities within 6 months of the effective date of the grant;

(g) Describe the proposed SIRC staff with appropriate expertise; and

(h) Describe the administrative and organizational structure of the applicant organization, including the management plan, the cost structure within which the project would operate and the operational and programmatic relationships to be formed with the affiliated SIRC's and the NRC. Charts depicting the organizational structures and the ensuing relationships must be included.

Project Period

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 5 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 5-year project period will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

Budget Period and Federal Share

The FY 2001 Federal share for each of the four Special Issue Resource Centers is \$1,087,769 for the first 12-month budget period, subject to the availability of funds.

Matching Requirement

Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting \$600,000 in Federal funds (based on an award of \$600,000 per budget period) must include a match of

at least \$200,000 (25 percent of total project cost) for a total budget of \$800,000. If approved for funding, the grantee will be held accountable for commitments of non-Federal resources, and failure to provide the required amounts will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects To Be Funded

It is anticipated that four Special Issue Resource Center projects will be funded as cooperative agreements, i.e., one in each of the following subject areas: Civil and Criminal Justice, Child Protection and Custody, Health Care and Access, and Native Women.

CFDA: 93.671 Family Violence Prevention and Services; Family Violence Prevention and Services Act, as amended.

Part II—The Review Process

A. Eligible Applicants

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified. Applications from organizations that do not meet the eligibility requirements will not be considered or reviewed in the competition, and the applicant will be so informed. Only agencies and organizations, not individuals, are eligible to apply. On all applications developed jointly by more than one agency or organization, the application must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

For-profit organizations and public agencies are only eligible to participate as subgrantees or subcontractors with eligible private non-profit organizations.

Any non-profit organization that has not previously received an award from the U.S. Department of Health and Human Services must submit proof of non-profit status with its grant application. The non-profit organization can accomplish this by either making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or submitting a copy of its letter from the IRS under IRS Code Section 501(c)(3). ACF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Applications that are received and are appropriately postmarked, and are from

eligible applicants, will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions. OCS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, can be considered by OCS in making funding decisions.

In making decisions on awards, OCS may give preference to applications which focus on or demonstrate: Past experience in operating a resource center of similar nature; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and substantial involvement in the proposed project by national or community foundations.

C. Evaluation Criteria

Using the appropriate evaluation criteria below, a panel of at least three reviewers (primarily experts from outside the Federal government) will review each application. Applicants should ensure that they address each minimum requirement under the appropriate section of the Program Announcement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the appropriate evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

Review Criteria

Applications for the National Resource Center and the Special Issue Resource Centers will be evaluated against the following criteria:

1. Need for the Project (10 Points)

The extent to which the need for the project and the problems it will address have national and local significance; the applicability of the project to coordination efforts by national, State and local governmental and non-profit agencies, and its ultimate impact on domestic violence prevention services and intervention efforts, policies and practice; the relevance of other documentation as it relates to the applicant's knowledge of the need for the project; and the identification of the specific topic or program area to be served by the project. Maps and other graphic aids may be attached.

2. Goals and Objectives (10 Points)

The extent to which the specific goals and objectives have national or local significance, the clarity of the goals and objectives as they relate to the identified need for and the overall purpose of the project, and their applicability to policy and practice. The provision of a detailed discussion of the objectives and the extent to which the objectives reflect or impact the state-of-the-art relative to the problem or needs for the project.

3. Approach (30 Points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; relates each task to the objectives and identifies the key staff member who will be the lead person; provides a chart indicating the timetable for completing each task, the lead person, and the time committed; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement; and provides for projections of the accomplishments to be achieved.

The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

4. Results and Benefits (20 Points)

The extent to which the application identifies the results and benefits to be

derived, the extent to which they are consistent with the objectives of the application, the extent to which the application indicates the anticipated contributions to policy, practice, and theory, and the extent to which the proposed project costs are reasonable in view of the expected results. Applicants should identify, in specific terms, the results and benefits, for target groups and human service providers, to be derived from implementing the proposed project. Applicants should also describe how the expected results and benefits would relate to previous demonstration efforts.

5. Level of Effort: (30 Points)

Expertise, Commitment, and Support

(a) The extent to which the applicant has nationally recognized expertise in the area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as State Domestic Violence Coalitions or recognized national domestic violence groups; the extent to which the applicant's commitment exceeds the minimum statutory requirements for diversity, the provision of service to ethnic, racial, and non-English speaking minorities, older individuals, and individuals with disabilities.

Staff Background, Organizational Experience, and Competence of Staff

(b) The adequacy of the staffing pattern for the proposed project, how the individual responsibilities are linked to project tasks, and the contributions to be made by key staff. Each collaborating or cooperative organization, individual consultant, or other key individuals who will work on the project should be listed along with a description of the nature of their effort or contribution. The background and experience of the project director and key project staff and history and accomplishments of the organization; the qualifications of the project team including any experience with similar projects; the variety of skills, relevant educational background, and the ability to effectively manage the project and to coordinate with other agencies. One or two pertinent paragraphs on each key member are preferred to vitae/resumes. However, vitae/resumes may be included.

Adequacy of Resources and the Budget

(c) The adequacy of the available resources and organizational experience with regard to the scope of the tasks of the proposed project. A list of the

financial, physical, and other resources already committed to this effort by other private and public institutions and agencies, if any, and the explanation of how these organizations will participate in the day-to-day operations of the project. Letters from these agencies and organizations identifying and discussing the specifics of their commitment and participation must be included in the application. The extent to which the proposed budget is related to the level of effort required to obtain the project's objectives; and how the project's costs are reasonable in view of the anticipated results.

Collaborative Efforts

(d) The extent of the additional private sector resources that may be available to support or enhance the overall program. A discussion, in detail, and the provision of documentation for any proposed collaborative or coordinated efforts with other public or private agencies or organizations. Letters from these agencies and organizations must be included discussing their interest and/or commitment in supporting the proposed project, stating at what juncture they would become involved and the expected level of resource commitment.

Part III—Other Information and Instructions for the Development and Submission of Applications

Applicants should note that non-responsiveness to Part I section F "Minimum Requirements for Project Design" would result in a low evaluation score by the panel of expert reviewers. Applicants must clearly identify the specific resource center for which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application, which is broader and more general in concept than outlined in the project description, is less likely to score as well as one that is more clearly focused and directly responsive.

A. Available Funds

OCS intends to award five cooperative agreements (subject to the availability of funds) resulting from this Announcement during the fourth quarter of FY 2001. The size of the actual awards may vary from the estimates herein.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time

a project is approved for support, including any extensions.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon several factors, including proof of satisfactory performance and the availability of federal funds.

B. Grantee Share of Project Costs

Federal funds will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every \$3 in Federal funds received applicants must contribute at least \$1. For example, the cost breakout for a project with a total cost of \$100,000 to implement would be:

Total cost	Max. Federal request	Non-Federal share
\$100,000	\$75,000	\$25,000

The following sections contain information and instructions for submitting applications in response to this Announcement. Application forms are provided as part of this publication along with a checklist for assembling an application package. Please copy and use these forms in submitting an application. Potential applicants should read this section carefully in conjunction with the information contained within the specific resource center area under which the application is to be submitted. The resource center descriptions are in Part I.

C. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established a Single Point of Contact (SPOCs). Applicants from these twenty-seven

jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate "not applicable" if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, OCSE Office of Grants Management, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447.

A list of the Single Point of Contact for each State and Territory is included at the end of this announcement as Attachment G.

D. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104-13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information requirements beyond those approved for ACF grant applications under OMB Control Number 0970-0062. 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.

E. Deadline for Submittal of Applications

The closing date and time for submittal of applications under this

program announcement is found at the beginning of this program announcement under "CLOSING DATES."

ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to waive or extend deadline requirements rest with the Chief Grants Management Officer.

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: Family Violence Operations Center: 1815 North Myer Drive, Suite 300, Arlington, VA 22209; Attention: Application for Family Violence Prevention and Services Program.

Applications handcarried by applicants, applicant couriers, or overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the Family Violence Operations Center: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, between Monday and Friday, (excluding Federal holidays) (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of the date or time of submission and time of receipt.

Late Applications

Applications, which do not meet the criteria above, are considered late applications. The ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

ACF may extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; widespread disruption of the mails; or if ACF determines a deadline extension to be in the best interest of the Government. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

F. Instructions for Preparing the Application and Completing Application Forms

1. SF 424—The SF 424 and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies.

At the top of the Cover Page of the SF 424, enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

2. SF 424A—Budget Information—Non-Construction Programs—

With respect to the 424A, Budget Information—Non-Construction Programs, Sections A, B, C, E, and F is to be completed. Section D does not need to be completed.

In order to assist applicants in correctly completing the SF 424 and 424A, detailed instructions for completing these forms are contained on the forms themselves. See the Instructions accompanying the attached SF 424A, as well as the instructions set forth below.

Section A—Budget Summary

Lines 1–4

Column (a) Line 1—Enter OCS FVPS Program

Column (b) Line 1—Enter 93.592

Columns (c) and (d)—Not Applicable

Column (e), (f) and (g)—For lines 1 through 4, enter in appropriate amounts needed to support the project for the entire project period.

Line 5

Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in the *Code of Federal Regulations (CFR)*, Title 45, and Parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grant officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories

included under the object class other, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate, which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-federal share.

Note: Local transportation and Consultant travel costs are entered on Line 6h.

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. *Equipment* means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) \$5,000.

Note: If an applicant's current rate agreement was based on another definition for equipment, such as "tangible personal property \$500 or more", the applicant shall

use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property other than that included on line 6d.

Justification—Provide a general description of what is being purchased such as type of supplies: office, classroom, medical, etc. Include equipment costing less than \$5,000 per item.

Line 6f

Contractual—Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification—All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) currently set at \$100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Line 6g

Construction—Not applicable.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual), fees and travel

paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6i

Total Direct Charges—Enter the total of 6a through 6h.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

Line 6k

Totals—Enter the total amount of Lines 6i and 6j.

Line 7

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of *Non-Federal* resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See SF-424A, Section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the Criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8

Column (a)—Enter the project title.
Column (b)—Enter the amount of cash or donations to be made by the applicant.

Column (c)—Enter the State contribution.

Column (d)—Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Column (e)—Enter the total of columns (b), (c), and (d).

Lines 9, 10 and 11

Leave Blank

Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section F—Other Budget Information

Line 21

Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.

Line 22

Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. Project Summary Description—

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description that accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisual materials should be closed captioned). The project summary description, together with the

information on the SF 424, will constitute the project “abstract.” It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement—

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part I. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

- (a) Need for the Project;
- (b) Goals and Objectives;
- (c) Approach;
- (d) Results and Benefits; and
- (e) Level of effort.

The specific information to be included under each of these headings is described in Part II, Review Process, under Evaluation criteria. The narrative should be typed double-spaced on a single-side of an 8½” x 11” plain white paper, with 1” margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with “Need for the Project” as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½” x 11” sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement:

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project

team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications—

Applicants are required to file a SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this Application Kit and should be reproduced as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities, and Environmental Tobacco Smoke certifications.

G. The Application Package

Each application package must include an original and four copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling; please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Applicants should include a self-addressed stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within three weeks after the deadline date, please notify the Family Violence Operations Center at (703) 351-7676.

H. Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice

of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total required financial grantee participation.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR part 74 or 92.

Grantees will be required to submit semi-annual progress and semi-annual financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project.

Audit requirements are prescribed in OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations." This circular establishes uniform audit requirements for non-Federal entities that administer Federal awards. The revised circular became effective July 30, 1997 and applies to audits of fiscal years beginning after June 30, 1996. If an applicant does not request indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Public Law 101-121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and Tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) the law requires recipients and their sub-tier contractors and/or sub-grantees (1) To certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and the purpose of any agreements with lobbyists whom recipients or their sub-tier contractors or sub-grantees will pay

with profits or non-appropriated funds on or after December 22, 1989 and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

(Catalog of Federal Domestic Assistance number 93.592, Family Violence Prevention and Services)

Dated: June 7, 2001.

William D. Riley,

Program Director, Office of Community Services.

Family Violence Prevention and Services Program

List of Attachments

Attachment A Letter of Intent
Attachment B-1 Application for Federal Assistance
Attachment B-2 Budget Information—Non-Construction Programs
Attachment B-3 Assurances—Non-Construction Programs
Attachment C Certification Regarding Drug-Free Workplace Requirements
Attachment D Certification Regarding Debarment, Suspension, and other Responsibility Matters (Primary Covered Transactions)
Attachment E Certification Regarding Environmental Tobacco Smoke
Attachment F-1 Certification Regarding Lobbying
Attachment F-2 Disclosure of Lobbying Activities
Attachment G State Single Point of Contact Listing

Attachment A

Letter of Intent

*Office of Community Services,
Administration for Children and Families, 370 L'Enfant Promenade, SW.,
Washington, DC 20447.*

To Whom It May Concern: I intend to apply for funds for the National Resource Center on Domestic Violence and/or one of the Special Issue Resource Centers under the Family Violence Prevention and Services Discretionary Funds Program for the Office of Community Services.

Organization: _____
Address: _____
Name: _____
Position: _____
Date: _____
Phone: _____
FAX: _____
E-mail: _____
Resource Center for which you intend to apply: _____

Please fax to (202) 401-5718.
Please Submit By [21 Days After
Publication in **Federal Register**].

Attachment B-1, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR
FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction		Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE		State Application Identifier	
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier	
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, State, and zip code):			Name and telephone number of person to be contacted on matters involving this application (give area code)		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [][] - [][][][][][][][]			7. TYPE OF APPLICANT: (enter appropriate letter in box) [] A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____		
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) [] [] A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other(specify): _____			9. NAME OF FEDERAL AGENCY:		
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [][] - [][][][] TITLE: _____			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:		
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):					
13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:			
Start Date	Ending Date	a. Applicant		b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?			
a. Federal	\$	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____			
b. Applicant	\$	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
c. State	\$				
d. Local	\$				
e. Other	\$				
f. Program Income	\$				
g. TOTAL	\$	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No			
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.					
a. Type Name of Authorized Representative		b. Title		c. Telephone Number	
d. Signature of Authorized Representative				e. Date Signed	

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present

Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

- “New” means a new assistance award.
- “Continuation” means an extension for an additional funding/budget period for a project with a projected completion date.
- “Revision” means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment B-2, Page 1

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. Totals		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

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Previous Edition Usable

Attachment B-2, Page 2

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTAL (sum of lines 8-11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
13. Federal		\$	\$	\$	\$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				(e) Fourth
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTAL (sum of lines 16-19)	\$	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION					
21. Direct Charges:		22. Indirect Charges:			
23. Remarks:					

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Standard Form 424A (Rev. 7-97) Page

Instructions for the SF-424A Attachment B-2, Page 3

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4

Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one

sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For *new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i—Show the total of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount or program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Line 8–11 Enter amounts of non-federal resources that will be used on the grant. If

in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing

data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, and amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and

Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990 (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered

Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) relating to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Developing ACF Program Announcements

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR part 76, subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW, Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or state highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of built (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement;

consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through

implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:
Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Developing ACF Program Announcements

Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Developing ACF Program Announcements*Certification Regarding Lobbying***Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL. "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or

entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LLL. "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Organization

Date

Attachment F-2, Page 1

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance		2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award		3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____	
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known:			5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:		
6. Federal Department/Agency:			7. Federal Program Name/Description: CFDA Number, if applicable: _____		
8. Federal Action Number, if known:			9. Award Amount, if known: \$ _____		
10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):			b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):		
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Federal Use Only:				Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)	

**Instructions for Completion of SF-LLL,
Disclosure of Lobbying Activities**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the

implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include

Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example,

Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

It is estimated that in 2001 the Federal Government will outlay \$305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below. States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may

still send application materials directly to a Federal awarding agency.

Arkansas

Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682-1074, Fax: (501) 682-5206, tlcopeland@dfa.state.ar.us

California

Grants Coordination, State Clearinghouse, Office of Planning and Research, P.O. Box 3044, Room 222, Sacramento, California 95812-3044, Telephone: (916) 445-0613, Fax: (916) 323-3018, stateclearinghouse@opr.cagov

Delaware

Charles H. Hopkins, Executive Department, Office of the Budget, 540 S. Dupont Highway, 3rd Floor, Dover, Delaware 19901, Telephone: (302) 739-3323, Fax: (302) 739-5661, chopkins@state.de.us

District of Columbia

Ron Seldon, Office of Grants Management and Development, 717 14th Street, NW, Suite 1200, Washington, DC 20005, Telephone: (202) 727-1705, Fax: (202) 727-1617, ogmd-ogmd@dcd.gov

Florida

Cherie L. Trainor, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399-2100

Georgia

Georgia State Clearinghouse, 270 Washington Street, SW, Atlanta, Georgia 30334, Telephone: (404) 656-3855, Fax: (404) 656-7901, gach@mail.opb.state.ga.us Telephone: (850) 922-5438, (850) 414-5495 (direct), Fax: (850) 414-0479, cherie, trainor@dca.state.fl.us

Illinois

Virginia Bova, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3-400, Chicago, Illinois 60601, Telephone: (312) 814-6028, Fax: (312) 814-8485, vbova@commerce.state.il.us

Iowa

Steven R. McCann, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grant Avenue, Des Moines, Iowa 50309, Telephone: (515) 242-4719, Fax: (515) 242-4809, steve.mccann@ided.state.ia.us

Kentucky

Ron Cook, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Telephone: (502) 573-2382, Fax: (502) 573-2512, ron.cook@mail.state.ky.us

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287-3261, (207) 287-1461 (direct), Fax: (207) 287-6489, joyce.benson@state.me.us

Maryland

Linda Janey, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 West Preston Street, Room 1104, Baltimore, Maryland 21201-2305, Telephone: (410) 767-4490, Fax: (410) 767-4480, linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 535 Griswold, Suite 300, Detroit, Michigan 48226, Telephone: (313) 961-4266, Fax: (313) 961-4869, pfaff@semcog.org

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201-3087, Telephone: (601) 359-6762, Fax: (601) 359-6758

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, Room 915, Jefferson City, Missouri 65102, Telephone: (573) 751-4834, Fax: (573) 522-4395, pohll@mail.oa.state.mo.us

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89701, Telephone: (775) 684-0209, Fax: (775) 684-0260, hellriott@govmail.stat.nv.us

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, <Attn: Intergovernmental Review Process> Mike Blake 2-1/2 Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271-2155, Fax: (603) 271-1728, jtaylor@osp.state.nh.us

New Mexico

Ken Hughes, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827-4370, Fax: (505) 827-4948, khughes@dfa.state.nm.us

North Carolina

Jeanette Furney, Department of Administration, 1302 Mail Service Center, Raleigh, North Carolina 27699-1302, Telephone: (919) 807-2323, Fax: (919) 733-9571, jeanette.furney@ncmail.net

North Dakota

Jim Boyd, Division of Community Services, 600 East Boulevard Ave., Dept. 105, Bismarck, North Dakota 58505-0170, Telephone: (701) 328-2094, Fax: (701) 328-2308, jboyd@state.nd.us

Rhode Island

Kevin Nelson, Department of Administration, Statewide Planning Program, One Capitol Hill, Providence, Rhode Island 02908-5870, Telephone: (401) 222-2093, <Fax: (401) 222-2083, knelson@doa.state.ri.us

South Carolina

Omeagia Burgess, Budget and Control Board, Office of State Budget, 1122 Ladies Street,

12th Floor, Columbia, South Carolina
29201, Telephone: (803) 734-0494, Fax:
(803) 734-0645, aburges@budget.state.sc.us

Texas

Denise S. Francis, Director, State Grants
Team, Governor's Office of Budget and
Planning, P.O. Box 12428, Austin, Texas
78711, Telephone: (512) 305-9415, Fax:
(512) 936-2681,
dfrancis@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse,
Governor's Office of Planning and Budget,
State Capitol, Room 114, Salt Lake City,
Utah 84114 Telephone: (801) 538-1535,
Fax: (801) 538-1547,
cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director, Community
Development Division, West Virginia
Development Office, Building #6, Room
553, Charleston, West Virginia 25305,
Telephone: (304) 558-558-4010, Fax: (304)
558-3248, fcutlip@wvdo.org

Wisconsin

Jeff Smith, Section Chief, Federal/State
Relations, Wisconsin Department of
Administration, 101 East Wilson Street—
6th Floor, P.O. Box 7868, Madison,
Wisconsin 53707, Telephone: (608) 266-
0267, Fax: (608) 267-6931,
jeffrey.smith@doa.state.wi.us

Guam

Director, Bureau of Budget and Management
Research, Office of the Governor, P.O. Box
2950, Agana, Guam 96910, Telephone:
011-671-472-2285, Fax: (011-472-2825,
jer@ns.gov.gu

Puerto Rico

Jose Caballero/Mayra Silva, Puerto Rico
Planning Board, Federal Proposals Review
Office, Minillas Government Center, P.O.
Box 41119, San Juan, Puerto Rico 00940-
1119, telephone: (787) 723-6190, Fax: (787)
722-6783

North Mariana Islands

Ms. Jacoba T. Seman, Federal Programs
Coordinator, Office of Management and
Budget, Office of the Governor, Saipan, MP
96950, Telephone: (670) 664-2289, Fax:
(670) 664-2272, omb.jseman@saipan.com

Virgin Islands

Ira Mills, Director, Office of Management and
Budget, #41 Norre Gade Emanicipation
Garden Station, Second Floor, Saint
Thomas, Virgin Islands 00802, Telephone:
(340) 774-0750, Fax: (340) 776-0069,
lrmills@usvi.org

Changes to this list can be made only
after OMB is notified by a State's
officially designated representative. E-
mail messages can be sent to
grants@omb.eop.gov. If you prefer, you
may send correspondence to the
following postal address: Attn: Grants
Management, Office of Management and
Budget, New Executive Office Building,
Suite 6025, 725 17th Street, NW,
Washington, DC 20503.

Please note: Inquires about obtaining
a Federal grant should not be sent to the
OMB e-mail or postal address shown
above. The best source for this
information is the CFDA.

[FR Doc. 01-14768 Filed 6-11-01; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Web-Survey of the State-of- the-Science (SOTS) Web Site

SUMMARY: In compliance with the
requirement of Section 3506(c)(2)(A) of
the Paperwork Reduction Act of 1995,
for opportunity for public comment on
proposed data collection projects, the
National Cancer Institute (NCI), the
National Institutes of Health (NIH) will
publish periodic summaries of proposed
projects to be submitted to the Office of
Management Budget (OMB) for review
and approval.

Proposed Collection

Title: Web-Survey of the State of the
Science Web Site.

Type of Information Collection
Request: New.

Need and Use of Information

Collection: The NCI seeks to evaluate its
State-of-the-Science (SOTS) meetings
project that offers audio-visual
presentation of SOTS meetings via the
Internet. The SOTS disseminates, with
expediency and immediacy, the most
recent oncology research results to a
potentially vast audience of researchers.
The proposed data collection will
provide feedback to NCI on the value of
the Web site to those who NCI deem as
the Web site's target population (i.e.,
clinical oncology researchers unable to
attend SOTS meetings in person
because of cost or time limitations). The
first tier of respondents will consist of
researchers who have attended any one
of the three most recent State of the
Science meetings. The tier one survey
participants will be asked to provide the
names, emails, and any other contact
information for five colleagues who are
clinical research oncologists. These
oncologists will be asked only once to
provide the names and contact
information for colleagues. The second
tier of respondents will consist of the
clinical oncology researchers nominated
by the first tier respondents. It is the
second tier respondents who will be
asked to go to the Web site and
complete the Web survey. They are
asked to do this only once. Other tier
two respondents will be oncology
fellows who current and full contact
information is available in a national
register of oncology fellows. Reports
generated by the study will allow NCI
to determine the success of the SOTS
Web site (in terms of clarity of content,
ease of navigation, and usefulness of
information), and indirectly, the
potential wider use and applications of
Internet-based programs to improve the
overall cancer clinical trials systems at
NCI.

Frequency of Response: One time.

Affected Public: Individuals,
researchers.

Type of respondents	Estimated No. re- spondents	Estimated No. re- sponses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Tier One Clinical Oncology Researchers	220	1	0.0833	19
Tier Two Clinical Oncology Researchers	400	1	0.25	100
Total				119

There are no Capital Costs, Operating
Costs and/or Maintenance Costs to
reports.

Request for Comments

Written comments and/or suggestions
from the public and affected agencies
should address one or more of the
following points: (1) Whether the

proposed collection of information is
necessary for the proper performance of
the function of the agency, including
whether the information will have
practical utility; (2) the accuracy of the

agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments due date

Comments regarding this information collection are best assured of having their full effect if received on or before August 13, 2001.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Bryce Reeve, Ph.D., National Cancer Institute, Executive Plaza North, Room 4026, 6130 Executive Boulevard, Rockville, MD, 20852, non-toll free telephone (301) 594-6574, or email: reeveb@mail.nih.gov, or br117c@nih.gov.

Dated: June 5, 2001.

Reesa Nichols,

OMB Clearance Liaison.

[FR Doc. 01-14778 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture.

Type of Information Collection Request: Revision (OMB) 0925-0406, expiration 11/31/01).

Need and Use of Information Collection: The Agricultural Health Study is in its third year of follow-up data collection on a prospective cohort of 89,189 farmers, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. Follow-up is not yet complete; an additional two years of followup is being requested.

Frequency of Response: Single time reporting.

Affected Public: Individuals or households, Farms.

Type of Respondents: Private pesticide applicators and their spouses. The annual reporting burden is as follows:

Estimated Number of Respondents: 21,999.

Estimated Number of Responses per Respondent: 1.0.

Average Burden Hours Per Response: 1.66.

Estimated Total Annual Burden Hours Requested: 13,156.

The annualized cost to respondents is estimated at: \$131,544. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before August 13, 2001.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michael C.R. Alavanja, Dr. P.H., Division of Epidemiology and Genetics, National Cancer Institute, Executive Plaza South,

Suite 8000, 6120 Executive Boulevard, Rockville, MD 20852, or call non-toll free (301) 435-4720, or E-mail your request, including your address to: alavanjam@mail.nih.gov.

Dated: June 5, 2001.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 01-14785 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request The Framingham Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 2, 2001, pages 21988-21989, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The Framingham Study. **Type of Information Collection Request:** Revision of a currently approved collection (OMB NO. 0925-0216). **Need and Use of Information Collection:** The Framingham Study will conduct examinations and morbidity and mortality follow-up in original, offspring, and third generation participants for the purpose of studying the determinants of cardiovascular disease. **Frequency of Response:** The participants will be contacted annually. **Affected Public:** Individuals or households; Businesses or other for profit; Small Businesses or organizations.

Type of Respondents: Adult men and women; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows:

Estimated Number of Respondents: 2,833; *Estimated Number of Responses Per Respondent:* 3.78; *Average Burden Hours Per Response:* 0.806; and *Estimated Total Annual Burden Hours*

Requested: 8,639. The annualized cost to respondents is estimated at \$44,080, assuming respondents time at the rate of \$10 per hour for participant and \$55 per hour for physicians and other

professional health care respondents. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of Respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Participant Examination	2,133	4.69	0.836	8,376.5
Physician, hospital, nursing home staff ¹	350	1.0	0.6700	234.5
Participant's next-of-kin ¹	350	1.0	0.0800	28
Total	2,833	3.78	0.806	8,639

¹ Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Paul Sorlie, Project Officer, National Institutes of Health, Division of Epidemiology and Clinical Applications, National Heart, Lung and Blood Institute, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892, or call non-toll-free number (301) 435-0707 or E-mail your request, including your address to: Sorlie@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before July 12, 2001.

Dated: June 4, 2001.

Peter Savage,

Acting Director, Division of Epidemiology and Clinical Applications.

[FR Doc. 01-14786 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: June 26, 2001.

Closed: 12:30 PM to 4:30 PM.

Agenda: To review the 2000-2001 draft annual report and formulate recommendations for the future direction of the National Cancer Program to be submitted to the President for consideration prior to presentation to Congress.

Place: National Institutes of Health, 31 Center Drive, Building 31C, Conference Room 10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, NIH, 31 Center Drive, Building 31,

Room 4A48, Bethesda, MD 20892, (301) 496-1148.

This notice is being published less than 15 days prior to the meeting due to the scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/pcp/pcp.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 5, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14774 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section

552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL CANCER INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute Subcommittee B—Basic Sciences.

Date: July 9, 2001.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, Building 31, C Wing, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Health Scientist Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7017, Bethesda, MD 20802, 301/496-7628.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalog of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 4, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14782 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to disclosure information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: June 25-26, 2001.

Open: June 25, 2001, 8:00 am to 5:30 pm.

Agenda: Director's Report; Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentation; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Closed: June 25, 2001, 5:35 pm to Recess.

Agenda: To review and evaluate personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Open: June 26, 2001, 8:30 am to 1:00 pm.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6 Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8141, Bethesda, MD 20892, (301) 496-4218.

This notice is being published less than 15 days prior to the meeting due to the scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/bsa.htm> where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 4, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 01-14784 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

Date: June 29, 2001.

Time: 1:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892-7965, (301) 435-0814, wellstood@ncrr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14780 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: July 10, 2001.

Time: 1:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, Room 6018, 6705 Rockledge Drive, MSC 7965, Bethesda, MD 20892-7965, (301) 435-0814, wellstood@ncrr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 1, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14781 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 26-27, 2001.

Time: 8:30 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892-9606, 301-443-1513, psherida@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 5, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14777 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Special Emphasis Panel (Telephone Conference X) June 18, 2001.

Date: June 18, 2001.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Merlyn M Rodrigues, MD, PhD, MEDICAL Officers/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Association, National Institutes of Health, HHS)

Dated: June 4, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14783 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 8, 2001.

Time: 8:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435-1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 5, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14775 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Metallobiochemistry Study Section, June 14, 2001, 8:30 a.m. to June 15, 2001, 6:30 p.m., Georgetown Suites, 1000 29th St., NW., Washington, DC, 20007 which was published in the Federal Register on May 29, 2001, 66 FR 29160-29163.

The meeting will be one day only June 14, 2001. The time and location remain the same. The meeting is closed to the public.

Dated: June 5, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14776 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18-19, 2001.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tracy E. Orr, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5118, Bethesda, MD 20892, (301) 435-1259, orrrt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Experimental Virology Study Section.

Date: June 19-20, 2001.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Robert Freund, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, 301-435-1050, freundr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 19, 2001.

Time: 10:00 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435-1174, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 19, 2001.

Time: 10:00 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive,

Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435-1174, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Nursing Research Study Section.

Dates: June 20-22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435-1784.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 2.

Dates: June 20-21, 2001.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Lawrence N. Yager, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive MSC 7808, Room 4190, Bethesda, MD 20892, 301-435-0903, yagerl@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Dates: June 21-22, 2001.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120

Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lee S. Mann, PHD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435-0677.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 6.

Dates: June 21-22, 2001.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037.

Contact Person: Michael Nunn, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435-1257.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.

Dates: June 21–22, 2001.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.

Contact Person: Nancy Lamontagne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: June 21–22, 2001.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mike Radtke, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, radtkem@csr.nih.gov.

Name of Committee: Immunological Sciences Integrated Review Group, Allergy and Immunology Study Section.

Date: June 21–22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue NW, Washington, DC 20037.

Contact Person: Samuel C. Edwards, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, edwardss@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 2001.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 2001.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Nomi Byrnes, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301) 435–1217, byrnesn@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005.

Contact Person: Jay Cinque, MSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

Name of Committee: Immunological Sciences Integrated Review Group, Immunobiology Study Section.

Date: June 21–22, 2001.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 1.

Date: June 21–22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.

Date: June 21–22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Arnold Revzin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 8.

Date: June 21–22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 2001.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites Georgetown, 2505 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: Michele C. Hindi-Alexander, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7848, Bethesda, MD 20892, (301) 435–3554.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: June 21–22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

Contact Person: Rona L. Hirschberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.

Date: June 21–22, 2001.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21, 2001.

Time: 1:00 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nancy Hicks, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 22, 2001.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 10000 Baltimore Avenue, College Park, MD 20740.

Contact Person: Eugene Vigil, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine,

93.306; 93.333, Clinical Research, 93.333, 93.337, 93-393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 7, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-14779 Filed 6-11-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4560-FA-20]

Announcement of Funding Award—FY 2000 Healthy Homes Initiative

AGENCY: Office of the Secretary—Office of Healthy Homes and Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development

Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of the Healthy Homes Initiative Notice of Funding Availability (NOFA). This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT:

Ellen Taylor, Department of Housing and Urban Development, 451, Seventh Street, SW, Washington, DC, 20410, telephone (202) 755-1785, ext. 116. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Healthy Homes Initiative Program is authorized by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000, Public Law. 106-74, approved October 20, 1999, 113 Stat. 1047.

The Healthy Homes Initiative Program provides funds to develop, demonstrate

and promote cost effective, preventive measures to correct multiple safety and health hazards in the home environment which produce serious diseases and injuries in children. On February 24, 2000 (65 FR 9577), HUD published a Notice of Funding Availability (NOFA) announcing the availability of approximately \$6.5 million in Fiscal Year 2000 funds for the Healthy Homes Initiative Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded eight grantees for the Healthy Homes Initiative Program.

The Catalog of Federal Domestic Assistance number for this program is 14.901.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the awards as follows:

Awardee	Address	Amount of grant
Esperanza Community Housing Corporation	2337 South Figueroa Street Los Angeles, CA 90007	\$999,499.00
Child Abuse Prevention Council of Sacramento, Inc.	8795 Folsom Blvd.—Suite 103 Sacramento, CA 95826	1,500,000.00
Northeast Denver Housing Center	Healthy Homes Initiative 1735 Gaylord Street Denver, CO 80206.	931,635.00
President & Fellows of Harvard College	Harvard School of Public Health, Office For Sponsored Research, 677 Huntington Avenue, Harvard, MD 02115.	1,200,000.00
Children's Health Environmental Coalition	P.O. Box 1540, Princeton, NJ 08542	471,480.00
Erie County Department of Health	Environmental Health Healthy Neighborhoods Program, 499 Franklin Street, Buffalo, NY 14202.	918,752.00
Opportunity Council	Housing Services, 314 East Holly, Bellingham, WA 98225 ..	354,192.00
Board of Regents of the University of Wisconsin System	School of Pharmacy, 750 University Avenue, 400 A.W. Peterson Building, Madison, WI 53706.	1,200,847.00

Dated: June 4, 2001.

David E. Jacobs,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 01-14666 Filed 6-11-01; 8:45 am]

BILLING CODE 4210-70-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4674-C-02]

Notice of Funding Availability; Tribal Colleges and Universities Program; Fiscal Year 2001; Correction

AGENCY: Office of the Assistant Secretary for Policy Development and Research.

ACTION: Notice of funding availability (NOFA) for fiscal year 2001; correction.

SUMMARY: On May 11, 2001 (66 FR 24236), the Department published a notice that announced the availability of

Fiscal Year (FY) 2001 funding for its new Tribal Colleges and Universities Program. This document corrects the definition of "eligible applicant" in paragraph (B) section III (Program Description; Eligible Applicants; Eligible Activities), by requiring that applicants meet the statutory definition of TCU in Title III of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105-244) rather than Title V of the same Act.

DATES: The application due date for this program remains as published in the **Federal Register** on May 11, 2001.

FOR FURTHER INFORMATION CONTACT: Please contact the office or individual identified in the notice published in the **Federal Register** on May 11, 2001 for further information.

SUPPLEMENTARY INFORMATION: On May 11, 2001 (66 FR 24236), the Department published a notice that announced the availability of Fiscal Year (FY) 2001

funding for its new Tribal Colleges and Universities Program. In defining the term "eligible applicants", HUD incorrectly stated that only tribal colleges and universities that meet the definition of a TCU as defined by Title V of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105-244) would be eligible for funding under this program. Through this document, HUD corrects the citation for eligibility from Title V of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105-244) to Title III of the same Act.

Accordingly, FR Doc. 01-11957, a Notice of Funding Availability for the Tribal Colleges and Universities Program Fiscal Year 2001, published in the **Federal Register** on May 11, 2001 at 66 FR 24236, is corrected as follows:

• On page 24236, first column, the third paragraph under the **SUMMARY** section of the notice is corrected to read as follows:

Eligible Applicants: Only tribal colleges and universities that meet the definition of a TCU established in Title III of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105-244) enacted October 7, 1998).

- On page 24236, third column, the first sentence of paragraph (B), Section III, (Program Description; Eligible Activities; Eligible Applicants) is revised to read:

(B) Eligible Applicants. Only if your institution is a nonprofit institution of higher education and meets the statutory definition of a TCU in Title III of the 1998 Amendments to the Higher Education Act of 1965 (P.L. 105-244) are you eligible to apply.

Dated: May 24, 2001.

Lawrence L. Thompson,

General, Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 01-14667 Filed 6-11-01; 8:45 am]

BILLING CODE 4210-62-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Request for Information and Recommendations on Species To Consider for Changes to the CITES Appendices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: In order to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Parties to the Treaty periodically meet to review which species in international trade should be regulated, and other aspects of implementation of the treaty. We have been informed that the twelfth meeting of the Conference of the Parties to CITES (COP12) will be held in November 2002, in Santiago, Chile. We are, therefore, soliciting recommendations for amending Appendices I and II of CITES at COP12. We invite information and comment from the public on animal and plant species that should be considered as candidates for U.S. proposals to amend CITES Appendix I or II. Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendix II. We are also seeking information and comment from the public on the biological and trade status of selected species identified at the end of this notice.

DATES: We will consider all information and comments received by August 13, 2001.

ADDRESSES: Send correspondence concerning this request pertaining to species amendments to: Chief, Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203-1610, or via E-mail to: fw9ia-dsa@fws.gov. Comments and materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Division of Scientific Authority, phone 703-358-1708, fax 703-358-2276, E-mail: fw9ia_dsa@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, (hereinafter referred to as CITES or the Convention), is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These species are listed in the Appendices to CITES. You may obtain copies of the list of CITES species, and the text of the treaty, from the Division of Scientific Authority at the above address, from our web site <http://international.fws.gov/>, or from the official CITES Secretariat web site at <http://www.cites.org/>.

Currently 152 countries, including the United States, are Parties (i.e., a country that has acceded to the treaty) to the Convention. The treaty states that a biennial meeting of the Conference of the Parties will be held to consider amendments to the list of species in Appendices I and II, review issues pertaining to CITES implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II (species proposals), resolutions, decisions, discussion papers, and agenda items for consideration at biennial meetings of the Conference of the Parties. The text of any proposal must be submitted to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all

Parties no later than 30 days before the meeting.

This is the first in a series of **Federal Register** notices that, together with announced public meetings, provide an opportunity for the public to participate in the development of the United States negotiating positions for the twelfth regular meeting of the Conference of the Parties to CITES (COP12). Our regulations governing this public process are found in 50 CFR 23.31-23.39. We have been informed that COP12 will be held in November 2002, in Santiago, Chile.

Request for Information and Comments

One of the purposes of this first notice is to solicit information that will help us identify species that the United States should propose as candidates for addition, removal, or reclassification in the CITES Appendices, or to identify issues warranting attention by the CITES Nomenclature Committee. This request is not limited to species occurring in the United States. Any Party may submit proposals concerning animal or plant species occurring in the wild anywhere in the world. We encourage the submission of information on species for possible inclusion in the Appendices if these species are subject to international trade that may be detrimentally impacting the status of the species. Complete proposals are not being requested at this time, but are always welcome. Rather, we are asking interested persons to submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of domestic as well as international trade in the species, especially trend information. Any other relevant information can also be provided. References are appreciated.

The term "species" is defined in CITES as "any species, sub-species, or geographically separate population thereof." Each species for which trade is controlled is included in one of three Appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in other

CITES-listed species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species at ports of entry. Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation and for which it needs the cooperation of other Parties to control trade. Since species are listed in Appendix III unilaterally by any country, we are not seeking input on possible U.S. Appendix-III listings in this Notice.

CITES specifies that international trade in any readily recognizable part or derivative of animals listed in Appendix I or II, or plants listed in Appendix I, is subject to the same conditions that apply to trade in the whole organism. With certain standard exclusions formally approved by the Parties, the same applies to the readily recognizable parts and derivatives of most plant species listed in Appendix II. Parts and derivatives usually not included (i.e., not regulated) for Appendix-II plants are: Seeds, spores, pollen (including pollinia), and seedling or tissue cultures obtained in vitro and transported in sterile containers. You may refer to 50 CFR 23.23(d), and the October 6, 1995, **Federal Register** (60 FR 52450) and February 22, 1996, **Federal Register** (61 FR 6793) for further exceptions and limitations.

In 1994, the CITES Parties adopted criteria for inclusion of species in Appendices I and II (in Resolution Conf. 9.24). These criteria apply to all listing proposals and are available from the CITES Secretariat web site (<http://www.cites.org/>), or upon request from the Division of Scientific Authority (see **ADDRESSES** section above). Resolution Conf. 9.24 also established a format for complete proposals.

What Information Should Be Submitted?

In response to this Notice, to provide us information on species subject to international trade for possible proposals to amend the Appendices, please include as much of the following

information as possible in your submission:

- (1) Scientific name and common name;
- (2) Population size estimates (including references if available);
- (3) Population trend information;
- (4) Threats to species status (other than from trade);
- (5) Level/trend of international trade (as specific as possible but without a request for new searches of Service records);
- (6) Level/trend in total take from the wild (as specific as reasonable); and
- (7) Short summary statement clearly presenting the rationale for inclusion in or delisting from one of the Appendices, including which of the criteria in Resolution Conf. 9.24 are met.

If you wish to submit more complete proposals for us to consider, please consult Resolution Conf. 9.24 for the format for proposals and a detailed explanation of each of the categories. Proposals to transfer a species from Appendix I to Appendix II, or to remove a species from Appendix II, must also be in accordance with the precautionary measures described in Annex 4 of Resolution Conf. 9.24. If you have information and comments on species that are potential candidates for CITES proposals, we encourage you to contact our Division of Scientific Authority.

What Will We Do With the Information We Receive?

One important function of the CITES Scientific Authority of each country is the monitoring of international trade in plant and animal species, and ongoing scientific assessments of the impact of that trade on species. For native U.S. species, we monitor trade and export permits we authorize, to be assured that trade remains sustainable (for Appendix-II species). We also work closely with our States, to be assured that species are correctly listed in the CITES Appendices (or not listed, if a listing is not warranted). We actively seek information about U.S. and foreign species subject to international trade. The information submitted will help us monitor trade and its impact, as well as help us decide if we should submit or co-sponsor a proposal to amend the CITES Appendices. However, there may

be species that qualify for CITES listing for which we decide not to submit a proposal to COP12. Our decision will be based on a number of factors, including scientific and trade information, whether or not the species is native to the United States and, for foreign species, whether or not a proposal is supported or co-sponsored by at least one range country for the species. We will consult range countries for foreign species, and for species we share with other countries, subsequent to receiving and analyzing the information provided by the public. The lists that follow include species that we are considering based on our monitoring efforts since COP11. Proposals for some of the species on this list were submitted or co-sponsored by the United States at COP11, but were not adopted for a number of reasons. We encourage the submission by the public of any new scientific or trade information on these species so that we can decide if we will re-submit proposals for them (or not). Including a species here does not mean that we will necessarily submit a proposal for it. For native U.S. species, we will share information provided to us with the States, to assist them with their management of the species, and to enable a productive State-Federal dialogue on whether or not CITES listing would assist the States in the conservation of these species.

There may be species which meet the criteria for CITES Appendix I or II but do not appear in the lists below because of inadequate or anecdotal information in our records. We will continue to consult with other Federal and State agencies, academia, the public, and other countries to obtain information on additional species that may qualify for CITES listing and will report our findings in subsequent **Federal Register** notices prior to COP12.

What Species Are We Considering for Proposals, and for Which Species Are We Requesting Additional Information?

Animals

We solicit information on the biological and trade status of the following taxa, and whether or not they meet the CITES criteria for listing in Appendix II:

Species or taxon	Geographic scope	Rationale
<i>Poecilotheria</i> spp. (Eastern Hemisphere tarantulas)	India, Sri Lanka	Over-harvest for international pet trade. Proposed at COP 11.
<i>Rhincodon typus</i> (whale shark)	Globally, in tropical and sub-tropical waters.	Vulnerable life history; unsustainable harvest rates for international fin markets. Proposed at COP 11.
<i>Crotalus horridus</i> (timber rattlesnake)	U.S.A.	Possible over-harvest for skin and pet trades. Proposed at COP 11, but withdrawn.
<i>Crotalus adamanteus</i> (eastern diamondback rattlesnake)	U.S.A.	Potential for periodic over-harvest for skin trade.

Species or taxon	Geographic scope	Rationale
<i>Lampropeltis zonata</i> (California mountain kingsnake)	U.S.A.	Possible over-harvest for pet trade; similarity of appearance issues.
<i>Clemmys guttata</i> (spotted turtle)	U.S.A.	Possible over-harvest for pet trade and export. Proposed at COP 11, but not adopted.
<i>Apalone spinifera</i> , <i>A. mutica</i> , <i>A. ferox</i> (North American softshell turtles).	U.S.A.	Possible over-harvest for international food trade.
Asian freshwater turtles and tortoises (e.g., <i>Carettochelys insculpta</i> , <i>Chinemys</i> spp., <i>Chitra</i> spp., <i>Heosemys</i> spp., <i>Mauremys</i> spp., <i>Amyda cartilagina</i> , <i>Kachuga</i> spp., <i>Orlitia borneensis</i> , <i>Pyxidea mouhotii</i> , <i>Chelodina</i> spp., <i>Pelochelys</i> spp.).	Asia	Over-harvest for international food and pet trades, and similarity of appearance issues.

We solicit information on the biological and trade status of the following species, and whether or not it meets the CITES criteria for removal from Appendix II:

Species	Geographic scope	Rationale
<i>Cnemidophorus hyperythrus</i> (orange-throated whiptail lizard).	U.S.A.	Little international trade and threat to species in the wild.

We solicit information on the biological and trade status of the following taxa, and whether or not they meet the CITES criteria for transfer to or listing in Appendix I:

Species or taxon	Geographic scope	Rationale
Asian freshwater turtles and tortoises (e.g., <i>Callagur borneensis</i> , <i>Chelodina mccordi</i> , <i>Chitra chitra</i> , <i>Cuora</i> spp., <i>Geochelone platynota</i> , <i>Heosemys yuwonoi</i> , <i>Manouria</i> spp.).	Asia	Over-harvest for international food and pet trades, and similarity of appearance issues.
<i>Chamaeleo</i> (= <i>Calumma</i>) <i>parsonii</i> (Parson's chameleon).	Madagascar	Possible over-harvest for international pet trade.
<i>Pyxis</i> spp. (Madagascar spider tortoises) and <i>Erymnochelys madagascariensis</i> (Madagascar big-headed turtle).	Madagascar	Over-harvest for international pet trade.
<i>Corucia zebrata</i> (Solomon Island skink)	Solomon Islands	Over-harvest for international pet trade.
<i>Uromastyx</i> spp. (spiny-tailed lizards)	Africa	Over-harvest of some species for international pet trade.
<i>Cacatua sulphurea</i> (lesser sulphur-crested cockatoo)	Indonesia	Over-harvest for international pet trade, and lack of development of a management plan for sustainable use.
<i>Manis crassicaudata</i> , <i>M. javanica</i> , <i>M. pentadactyla</i> (Asian pangolins).	South and Southeast Asia	Over-harvest for international skin and medicinal trade.
<i>Tursiops truncatus ponticus</i> (bottlenose dolphin)	Black Sea/Sea of Azov population.	Over-harvest, pollution, habitat degradation.
<i>Moschus</i> spp. (musk deer)	Asia (Russian Federation, China, Korea, Mongolia, Himalayan countries).	Over-harvest for international perfume and medicinal trade.
<i>Saiga tatarica</i> (saiga)	Asia (Russian Federation and Kazakhstan).	Over-exploitation for meat and horns.

Plants

We are seeking additional information on the biological and trade status of the following North American cacti, and whether they qualify for transfer to Appendix I due to possible unsustainable trade in individual species or seeds collected from the wild:

Species	Geographic scope	Current status
<i>Sclerocactus nyensis</i>	U.S.A. (Arizona)	Appendix II.
<i>Sclerocactus parviflorus</i>	U.S.A. (Nevada)	Appendix II.
<i>Sclerocactus sileri</i>	U.S.A. (Arizona)	Appendix II.
<i>Sclerocactus spinosior</i> ssp. <i>blainei</i>	U.S.A. (Nevada, Utah)	Appendix II.

At COP11 the following plant species were proposed by Switzerland on behalf of the Plants Committee for transfer from Appendix I to II or for removal from Appendix II. However, these

proposals were not adopted due to lack of consensus regarding the proposed actions. We are seeking additional information on the biological and trade status of the following taxa, and

whether they qualify for transfer to Appendix II or for removal from Appendix II.

Species	Geographic scope	Current status
<i>Dudleya traskiae</i> (Santa Barbara Dudleya)	U.S.A. (California)	Appendix I.
<i>Lewisia maguirei</i> (Maguire's bitter-root)	U.S.A. (Nevada)	Appendix II.
<i>Lewisia serrata</i> (Saw-toothed Lewisia)	U.S.A. (California)	Appendix II.
<i>Sclerocactus mariposensis</i>	U.S.A. (Texas)	Appendix I.
<i>Shortia galacifolia</i> (O'conee-Bells)	U.S.A. (Appalachian Mountains)	Appendix II.

We are seeking additional biological and trade information on the following taxa native to the United States, and whether or not they meet the CITES criteria for listing in Appendix II:

Species or taxon	Geographic scope	Rationale
<i>Cimicifuga</i> (= <i>Actaea</i>) <i>racemosa</i> , <i>C.</i> (= <i>Actaea</i>) <i>americana</i> (black cohosh)	U.S.A. (Eastern states)	Suspected over-harvest for export.
<i>Echinacea</i> spp. (coneflower)	U.S.A. (Eastern and Midwestern states)	Suspected over-harvest for export.
<i>Olneya tesota</i> (ironwood)	U.S.A. (Arizona and California), Mexico	Suspected unsustainable harvest in Mexico for import to the United States.
<i>Sanguinaria canadensis</i> (bloodroot)	U.S.A. (Eastern states)	Suspected over-harvest for export.

We are soliciting additional information on the following species native to the United States and Canada

that are used in the floral and horticulture markets. In particular, we solicit information on the biological and

trade status of these taxa, and whether or not they meet the CITES criteria for listing in Appendix II:

Species	Geographic scope
<i>Antitrichia curtipendula</i> (hanging moss)	U.S.A. and Canada (Oregon, Washington, Alaska, and British Columbia).
<i>Eurhynchium oreganum</i> (= <i>Kindbergia oregana</i>) (Oregon beaked moss)	U.S.A. and Canada (Oregon, Washington, and British Columbia).
<i>Hypnum curvifolium</i> , <i>H. impogens</i> (log moss)	U.S.A. (Eastern states).
<i>Isoetecium myosuroides</i> (Cat-tail moss)	U.S.A. and Canada (Oregon, Washington, Alaska, and British Columbia).
<i>Metaneckera menziesii</i> (Menzies' neckera)	U.S.A. and Canada (Oregon, Washington, Alaska, and British Columbia).
<i>Neckera douglasii</i> (Douglas' neckera)	U.S.A. and Canada (Oregon, Washington, and British Columbia).
<i>Rhytidiadelphus loreus</i> (lanky moss), <i>R. riquetruis</i> (cat's tail moss)	U.S.A. and Canada (Oregon, Washington, Alaska and British Columbia).
<i>Thuidium delicatulum</i> (log moss)	U.S.A. (Eastern states).

We are soliciting additional information on the following species native to the United States and Canada that are used in the herbal medicinal market. In particular, we solicit information on the biological and trade status of these taxa, and whether or not they meet the CITES criteria for listing in Appendix II.

Species	Geographic scope
<i>Caulophyllum thalictroides</i> (blue cohosh)	U.S.A. and Canada (New Brunswick).
<i>Dioscorea villosa</i> (wild yam)	North and Central America.
<i>Drosera</i> spp. (sundews)	U.S.A. and Canada.
<i>Ligusticum porteri</i> (osha)	U.S.A. (Western states).
<i>Rhamnus</i> (= <i>Frangula</i>) <i>purshiana</i> (cascara sagrada)	U.S.A. and Canada (Western states and B.C.).
<i>Tricholoma magnivelare</i> (American matsutake mushroom)	U.S.A. (California, Oregon, and Washington).
<i>Trillium erectum</i> (Beth root)	U.S.A. (Eastern states).
<i>Usnea</i> sp. (tree lichen)	U.S.A.

We are seeking additional information on the following species not native to the United States. In particular, we solicit information on the biological and trade status of these taxa, and whether or not they meet the CITES criteria for listing in Appendix II.

Species	Geographic scope
<i>Guaiacum coulteri</i> (Guayacan, used for timber)	Mexico.
<i>Taxus chinensis</i> , <i>Taxus celebica</i> , <i>Taxus cuspidata</i> , <i>Taxus fuana</i> , <i>Taxus yunnanensis</i> (a tree, used medicinally)	Eurasia.
<i>Uncaria guianensis</i> and <i>Uncaria tomentosa</i> (cat's claw, a medicinal plant)	Peru.

We also welcome information and comment from the public on tree species. Many trees are traded in large volumes and have high value and may, therefore, be of conservation concern.

Future Actions

The next regular meeting of the Conference of the Parties (COP12) is expected to be held in November 2002 in Chile, and we have developed a

tentative schedule to prepare for it. Any proposals to amend Appendix I or II must be submitted by the United States to the CITES Secretariat 150 days prior to the start of COP12 (i.e., in June 2002).

We are initiating this request for status and trade information on species with ample time to seek greater involvement of State wildlife and natural resource agencies and the public in the review process. Thus, after this initial request for species to consider, the State animal and plant conservation agencies will be asked for specific status and management information on those native species that warrant further consideration. After review of any information received, we will make some preliminary decisions and will seek assistance in developing more complete proposals during the summer and fall of 2001.

We plan to publish a **Federal Register** notice in December 2001 to announce tentative species proposals to be submitted by the United States and to solicit further information and comments on them, as well as to provide summary comments on information provided in response to this notice. In January 2002, we plan to hold a public meeting to allow for additional input. We will consult all CITES Parties within the geographic range of species we are considering proposing for amendments to the Appendices by March 2002, so that final proposals will have the benefit of their consideration and comments. This is consistent with CITES Resolution Conf. 8.21. Another **Federal Register** notice in July 2002 will announce our final decisions and those species proposals submitted by the United States to the CITES Secretariat.

Through a series of additional notices in advance of COP12, we will solicit recommendations for possible agenda items and resolutions designed to improve the implementation of the Convention, inform the public about preliminary and final negotiating positions on resolutions and amendments to the Appendices proposed by other Parties for consideration at COP12, and explain how observer status is obtained for non-governmental organizations that plan to attend. We will also publish announcements of public meetings expected to be held in January 2002 and August 2002, to receive public input on U.S. positions regarding COP12 issues.

Authors: This notice was prepared by staff of the Division of Scientific Authority.

Dated: May 22, 2001.

Marshall P. Jones, Jr.,
Acting Director.

[FR Doc. 01-14807 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-55-U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan/Draft Environmental Impact Statement for Big Cypress National Preserve, Florida

SUMMARY: In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing a General Management Plan/Draft Environmental Impact Statement for the Addition lands portion of Big Cypress National Preserve in Collier County, Florida, and is initiating the scoping process for this document.

DATES: Open houses will be held on the following dates:

1. July 30, 2001, 3:30–7:30 p.m.,
Everglades City, Florida
2. July 31, 2001, 3:30–7:30 p.m., Naples,
Florida
3. August 1, 2001, 3:30–7:30 p.m.,
Seminole Reservation, Florida
4. August 2, 2001, 3:30–7:30 p.m.,
Miami, Florida

Comments on this scoping process should be received by August 17, 2001. A General Management Plan/Draft Environmental Impact Statement should be available for review by January 2003.

ADDRESSES: The public meeting locations are:

1. Everglades City School, 415 School
Drive, Everglades City, Florida, 34139
2. The Conservancy of Southwest
Florida, 1450 Merihue Drive, Naples,
Florida, 34102
3. Frank Billie Center, Seminole Tribe of
Florida Reservation, CR 833, Florida,
33440
4. Miami-Dade County Fair and
Exposition, 10901 Coral Way, Miami,
Florida, 33165–2398

Send requests to be placed on the mailing list to Susan Kaynor, EIS Coordinator, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida, 34141.

FOR FURTHER INFORMATION CONTACT: Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida, 34141, telephone 941–695–2000.

SUPPLEMENTARY INFORMATION: The Addition Lands General Management Plan/Draft Environmental Impact Statement (GMP/DEIS) is needed to address how the National Park Service can protect its resources and values, provide for recreational and other opportunities, and ensure public safety in the Addition Lands. Big Cypress National Preserve was established in 1974. In 1988, 147,280 acres, known as

the Addition, were added to the Preserve, increasing the Preserve by 30%. The current management plan for the Preserve does not address the lands in the Addition and the complex visitor management and resource issues and needs of this area. In the GMP/DEIS and its accompanying public involvement process, the National Park Service will formulate and evaluate the environmental impacts of a reasonable range of alternatives that will provide protection for resources and values at Big Cypress National Preserve.

A public scoping newsletter will be mailed in June 2001 to invite public participation in the scoping process and to describe the planning process. The general public and affected or interested parties are encouraged to provide comments and suggestions, and to identify issues and other reasonable alternatives that should be addressed in the General Management Plan/Draft Environmental Impact Statement.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish for 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.

Dated: April 25, 2001.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 01-14792 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Tallgrass Prairie National Preserve; Notice of Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for a meeting of the Tallgrass Prairie National Preserve Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463).

DATE, TIME, AND ADDRESS: Wednesday, June 27, 2001; 9:00 a.m. until business and public comments are complete; Bazaar Schoolhouse, State Highway 177, Bazaar, Kansas.

This business meeting is open to the public. Space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. An agenda will be available from the Superintendent 1 week prior to the meeting. Attendees are encouraged to participate in these meetings. If you would like to address the committee, please contact the Superintendent by June 22, 2001, at the address or telephone number listed below requesting that your name be added to the agenda. Depending on the number of requests, the Superintendent has the right to limit the amount of time each participant is allowed to address this committee.

FOR FURTHER INFORMATION CONTACT: Steve Miller, Superintendent, Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, Kansas 66845; or telephone him at 620-273-6034.

SUPPLEMENTARY INFORMATION: The Tallgrass Prairie National Preserve was established by Public Law 104-333, dated November 12, 1996.

Dated: May 29, 2001.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 01-14788 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-70-P

Court, Sarasota, 01000683

Missouri

Bates County
Bates County Courthouse, 1 North Delaware, Butler, 01000684

South Dakota

Hanson County
Saint Peter's Grotto, 0.5 mi N of Chicago and North Western Railroad Tracks, Farmer, 01000686

Wisconsin

Brown County
Holy Cross Church and Convent, 3001 Bay Settlement Rd., Green Bay, 01000685

In order to preserve the following resource the comment period for the following resource has been shortened to three (3) days:
A request for a MOVE has been made for the following resource:

Iowa

Polk County
Vail, Mrs. Marian D.-Prof. Charles Noyes Kinney House (Drake University and Related Properties in Des Moines, Iowa, 1881-1918 MPS) 1318 27th St., Des Moines, 88001340

[FR Doc. 01-14789 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-70-P

West, 11200 SW 8th Street, Miami, Florida 33199.

2. Naples—The Conservancy of Southwest Florida, 1450 Merihue Drive, Naples, Florida 33440.

Send requests to be placed on the mailing list to Susan Kaynor, EIS Coordinator, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida 34141, telephone 941-695-2000.

SUPPLEMENTARY INFORMATION: The Oil and Gas Management Plan/Draft Environmental Impact Statement is needed to address the issues of how the National Park Service can protect its resources and values, ensure public safety, and minimize conflicts with visitors and park management while recognizing the rights of private mineral owners to develop their oil and gas resources. In the Oil and Gas Management Plan/Draft Environmental Impact Statement and its accompanying public involvement process, the National Park Service will formulate and evaluate the environmental impacts of a reasonable range of alternatives that will provide protection for resources and values at Big Cypress National Preserve while allowing for exploration and development of the private mineral estate. Distinct management issues include identifying which park resources and values are most sensitive to oil and gas exploration and development disturbances, defining impact mitigation requirements to protect such resources and values, establishing reasonable performance standards and providing pertinent information to oil and gas owners and operators that will facilitate operations planning.

A public scoping newsletter will be mailed in May 2001 to invite public participation in the scoping process and to describe the planning process. The general public and affected or interested parties are encouraged to provide comments and suggestions, and to identify issues and other reasonable alternatives that should be addressed in the Oil and Gas Management Plan/Draft Environmental Impact Statement.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish for 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

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 26, 2001.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 27, 2001.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

California

Orange County

Ebell Society of Santa Ana Valley, 625 N. French St., Santa Ana, 01000682

Florida

Sarasota County

Appleby Building, 501-513 Kumquat

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Oil and Gas Management Plan/Draft Environmental Impact Statement for Big Cypress National Preserve, Florida

SUMMARY: In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Oil and Gas Management Plan/Draft Environmental Impact Statement for Big Cypress National Preserve in Collier, Miami-Dade and Monroe Counties, Florida, and is initiating the scoping process for this document.

DATES: Open houses will be held on the following dates:

July 12, 2001, 3:30 to 7:30 p.m., Miami, Florida,

July 11, 2001, 3:30 to 7:30 p.m., Naples, Florida.

Comments on this scoping process should be received by July 27, 2001. An Oil and Gas Management Plan/Draft Environmental Impact Statement should be available for review by Fall 2002.

ADDRESSES: The meeting locations are:

1. Miami—Florida International University, Graham Center Ballroom

organizations nor businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION: Please contact the Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, Florida 34141, telephone 941-695-2000 with any comments you may have or for information.

Dated: May 3, 2001.

W. Thomas Brown,

Regional Director, Southeast Region.

[FR Doc. 01-14791 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

Appalachian National Scenic Trail— Notice of Realty Action

AGENCY: National Park Service, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces a proposed exchange of federally owned lands for privately-owned lands both located in Botetourt County, Commonwealth of Virginia.

I. The following described interest in Federally-owned land was acquired by the National Park Service and has been determined to be suitable for disposal by exchange. The authority for this exchange is Section 5(b) of the Land and Water Conservation Fund Act Amendments in Public Law 90-401, approved July 15, 1968, and Section 7(f) of the National Trails System Act, Public Law 90-543, as amended.

The selected interest in Federal land is within the boundaries of the Appalachian National Scenic Trail. The land has been surveyed for cultural resources and endangered and threatened species. These reports are available upon request.

Fee ownership of the following Federally-owned property is to be exchanged: Tract 475-33 is a 4.54 acre portion of 49.00 acres acquired (475-28) by the United States of America by deed recorded in Book 549, Page 397, in the Clerk's Office of the Circuit Court of Botetourt County, Commonwealth of Virginia. The tract is partially located within a 100-foot wide Appalachian Electric Company utility easement. Conveyance of the land by the United States will be done by Quitclaim Deed and will include a provision that the conveyance will not affect any and all access to the remainder as conveyed to the United States of America by the aforesaid deed.

II. In exchange for the land described in Paragraph I above, the United States of America will acquire a 3.33-acre

portion of a parcel of land currently owned by Marvin L. Harris, *et ux.*, lying within the boundaries of the Appalachian National Scenic Trail. All right, title and interest in Tract 475-31 is to be conveyed to the United States. This land will be administered by the National Park Service as a part of the Appalachian National Scenic Trail upon completion of the exchange. This exchange of real property will provide permanent protection for the Appalachian Trail. The exchange will also provide additional property to the landowner whose current property line is just 75 feet from their house.

The land to be acquired by the United States of America is described as follows: Tract 475-31 is a 3.33-acre portion of 22.50 acres acquired by Marvin L. Harris, *et ux.*, by deed from William E. Goad, *et ux.*, recorded in Book 481, Page 448, in the Clerk's Office of the Circuit Court of Botetourt County, Commonwealth of Virginia. Conveyance of the fee simple title, will be done by a General Warranty Deed.

The value of the properties exchanged shall be determined by a current fair market value appraisal and if they are not approximately equal, the values shall be equalized by payment of cash as circumstances require.

Detailed information concerning this exchange including precise legal descriptions, Land Protection Plan and cultural reports, are available at the Appalachian Trail Land Acquisition Field Office, 1314 Edwin Miller Boulevard, P.O. Box 908, Martinsburg, West Virginia 25402.

For a period of 45 days from the date of this notice, interested parties may submit written comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION, CONTACT: Chief, Acquisition Division, National Park Service, Appalachian Trail Land Acquisition Field Office, P.O. Box 908, Martinsburg, WV 25402-0908, 304-263-4943.

Dated: May 18, 2001.

Pamela Underhill,

Park Manager, Appalachian National Scenic Trail.

[FR Doc. 01-14790 Filed 6-11-01; 8:45 am]

BILLING CODE 4510-70-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Department Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States v. Ameron International Corp., Jotun A/S, and The Valspar Corporation*, Civil Action No. S01-CV-1544 was lodged with the United States District Court for the District of Maryland on May 29, 2001. This Consent Decree resolves claims of the United States' against Ameron International Corp., Jotun A/S, Jotun Marine Coatings, and The Valspar Corporation ("Settling Defendants") under Section 107(a) of the Comprehensive Environment Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred at the Ainsworth Paint and Chemical Superfund Site in Baltimore, Maryland, Pennsylvania. The Consent Decree requires the Settling Defendants to pay a total of \$799,500 in past response costs.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Acting Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States v. Ameron International, Jotun A/S, and The Valspar Corporation*, DOJ #90-11-3-06454.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Maryland, 101 West Lombard Street, 6225 U.S. Courthouse, Baltimore, MD 21201 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. A copy of the proposed Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC. 20044-7611. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction cost payable to the "Consent Decree Library" in the amount of \$6.50, and please reference *United States v. Ameron International Corp., Jotun A/S, and The*

Valspar Corporation, DOJ No. 90-11-2-06454.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, Department of Justice.

[FR Doc. 01-14714 Filed 6-11-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States v. Richard Scott Johnson et al.* Civil Action No. 1-00-0575-22, was lodged on May 22, 2001, with the United States District Court for South Carolina. The proposed Consent Decree would resolve certain claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended brought against Richard Scott Johnson, Stiles M. Harper, Grover Bowers Jr., Union Carbide Corporation, Olin Corporation, ExxonMobil Corporation, USX Corporation, formerly U.S. Steel, Viad Corporation, CSX Transportation, Inc., Hercules Incorporated, NOR-AM Chemical Company, and Schwerman Trucking Company (collectively "Settling Defendants") to recover response costs incurred by the Environmental Protection Agency in connection with the release of a hazardous substances at the U.S. Steel Agrichem Old Blue Chemical Superfund Site ("Site") in Fairfax, Allendale County, South Carolina. The United States alleges that Settling Defendants are liable as persons who own and operate or formerly owned and operated a portion of the site at the time of disposal of a hazardous substance, or as persons who arranged for the disposal of a hazardous substances at the Site at the time of the release of hazardous substance or as a current owner of a portion of the Site. Under the proposed Consent Decree, the Settling Defendants will pay \$976,000.00 to the Hazardous Substances Superfund to reimburse the United States for response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington,

DC 20530, and should refer to *United States v. Richard Scott Johnson, et al.*, Civil Action No. 1-00-0575-22 (D.S.C.), DOJ Ref. #90-11-3-07057/1.

The Consent Decree may be examined at the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA 30303 and the United States Attorney's Office for the District of South Carolina, Federal Building & U.S. Courthouse, District of South Carolina, 1441 Main Street, Suite 500, Columbia South Carolina, 29201 c/o Assistant U.S. Attorney R. Emery Clark. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of \$12.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01-14715 Filed 6-11-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Membership of the 2001 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 2001 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT:

Joanne W. Simms, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514-6788.

Department of Justice, 2001 Senior Executive Service Performance Review Board Members

Office of the Solicitor General

Lawrence G. Wallace, Deputy Solicitor General

Office of Legal Counsel

Paul P. Colborn, Special Counsel

Daniel L. Koffsky, Special Counsel

Office of Professional Responsibility

Judith B. Wish, Deputy Counsel on Professional Responsibility

Office of Intelligence Policy and Review

James A. Baker, Deputy Counsel on for Intelligence Operations

Robert O. Davis, Deputy Counsel for Intelligence Policy

Office of Policy Development

Kevin R. Jones, Deputy Assistant Attorney General

Office of Information and Privacy

Daniel J. Metcalfe, Director (Policy and Litigation)

Antitrust Division

Kenneth Heyer, Chief, Competition Policy Section

Thomas D. King Executive Officer
Gail Kursh, Chief, Health Care Task Force

Anthony V. Nanni, Chief, Litigation I Section

Civil Division

Felix V. Baxter, Director, Federal Programs Branch

Joyce R. Branda, Deputy Director, Commercial Litigation Branch

Vito J. Dipietro, Director, Commercial Litigation Branch

John L. Euler, Deputy Director, Torts Branch

J. Patrick Glynn, Director, Torts Branch

Thomas W. Hussey, Director, Office of Immigration Litigation

William G. Kanter, Deputy Director, Appellate Staff

Sheila M. Lieber, Deputy Director, Field Programs Branch

Sandra P. Spooner, Deputy Director, Commercial Litigation Branch

Civil Rights Division

James S. Angus, Counsel to the Assistant Attorney General

Jeremiah Glassman, Chief, Educational Opportunities Section

Albert N. Moskowitz, Chief, Criminal Section

John L. Wodatch, Chief, Disability rights Section

Criminal Division

Joseph E. Gangloff, Principal Deputy Chief, Public Integrity Section

Terry R. Lord, Chief, Child Exploitation & Obscenity Section

Lee J. Radek, Chief, Public Integrity Section

Thomas G. Snow, Deputy Director, Office of International Affairs

Patty M. Stemler, Chief Appellate Section

Environment and Natural Resources Division

Bruce S. Gelber, Chief, Environmental Enforcement Section
K. Jack Haugrud, Chief, General Litigation Section
Pauline H. Milus, Chief, Policy, Legislation and Special Litigation Section
Walker B. Smith, Deputy Chief, Environmental Enforcement Section

Justice Management Division

Benjamin F. Burrell, Director, Facilities and Administrative Services Staff
Linda A. Cinciotta, Director, Office of Attorney Personnel Management
Blane K. Dessy, Director Library Staff
James W. Johnston, Director Procurement Services Staff
Joanne W. Simms, Director Personnel Staff

Tax Division

Stephen J. Csontos, Senior Legislative Counsel
Rosemary E. Paguni, Chief, Criminal Enforcement Section, Northern Region
Robert S. Watkins, Chief, Civil Trail Section, Central Region
Joseph E. Young, Executive Officer

Bureau of Prisons

Robin L. Beusse, Chief, Budget Development Administration Division
Michael W. Garrett, Senior Deputy Assistant Director, Program Review Division
John C. Hardwick, Deputy Assistant Director, Information, Policy, and Public Affairs
James B. Jones, Senior Deputy Assistant Director, Administration Division
Bruce K. Sasser, Assistant Director, Administration Division
Salvador Seanez, Jr., Assistant Director, Community Corrections and Detention

Immigration and Naturalization Service

John P. Chase, Director of Internal Audit
Joseph D. Cuddihy, Assistant Deputy Executive Associate Commissioner for Immigration Services Division
David R. Howell, Associate Commissioner, Policy and Planning
Catherine J. Kasch, Assistant Commissioner, Human Resources and Development
Anthony S. Tangeman, Deputy Executive Associate Commissioner for Detention and Removals
William R. Yates, Deputy Executive Associate Commissioner for Immigration Services Division

United States Marshals Service

Joseph B. Enders, Assistant Director for Business Services

Office of Justice Programs

Gary N. Silver, Director, Office of Administration

Executive Office for Immigration Review

Jack E. Perkins, Chief Administrative Hearing Officer

Executive Office for United States Attorneys

David W. Downs, Deputy Director for Operations

Executive Office for United States Trustees

Jeffrey M. Miller, Associate Director

Valerie M. Willis,

Executive Secretary, Senior Executive Resources Board.

[FR Doc. 01-14716 Filed 6-11-01; 8:45 am]

BILLING CODE 4410-AR-M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

[OJP (BJA)-1322]

Announcement of the Availability of the State Criminal Alien Assistance Program for FY 2001

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the Bureau of Justice Assistance (BJA) State Criminal Alien Assistance Program (SCAAP) funding for FY2001.

DATES: Applicant account registration through a new Internet-based system begins on June 5, 2001 and continues until July 2, 2001. Submission of applications begins on June 5, 2001 and ends on July 16, 2001.

ADDRESSES: Bureau of Justice Assistance, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For SCAAP program guidance and technical assistance, please log on to the Bureau of Justice Assistance Home Page at: <http://www.ojp.usdoj.gov/BJA> and select "SCAAP" or call the Office of Justice Programs Grants Management System Hotline at 1-888-549-9901, Option #4. For general information about on-line application procedures for other solicitations, please call the U.S. Department of Justice Response Center at 1-800-421-6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets

Act of 1968, Sections 201-03, as amended, 42 U.S.C. §§ 3721-23 (1994).

Background

SCAAP provides Federal assistance to state and local governments for costs incurred for the imprisonment of undocumented criminal aliens, who are charged or convicted of one felony or two misdemeanor offenses. Potential applicants may no longer submit hard copy application forms and diskettes. For FY2001, state and local governments apply for payment via a paperless, electronic, end-to-end distributive, Internet-based web-site application. BJA anticipates providing over 420 payments of varying amounts from a FY2001 funding total of \$551,000,000.

Potential applicants with questions should call the Office of Justice Programs Grants Management System Hotline at 1-888-549-9901, Option #4. For access to program guidance and the on-line application, connect to <http://www.ojp.usdoj.gov/BJA> and select "SCAAP."

Richard Ward,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 01-14684 Filed 6-11-01; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. S-777A]

Announcement of Public Forums on Ergonomics

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Scheduling of public forums; request for comments.

SUMMARY: The Department of Labor is scheduling several public forums around the country to discuss possible approaches to addressing ergonomic hazards in the workplace. Interested persons may submit written comments in response to the three specific questions raised in this notice, and they are invited to speak on these questions at the public forums.

DATES: *Written comments.* Written comments must be postmarked by August 3, 2001. If you are submitting documentary evidence that has been previously submitted in the OSHA ergonomics rulemaking docket (Docket S-777), please reference the Exhibit Number rather than providing an additional copy.

Forums. The forum in the Washington, DC, area is scheduled to begin at 9:30 a.m., July 16, 2001, and will run for one and one-half days. It will be followed by a one-day forum on July 20, 2001, in Chicago, Illinois and a one-day forum on July 24, 2001, in California. The location of the Washington, DC, area forum and the time and location for the regional forums will be announced later in the **Federal Register**.

Notice of intention to speak at the forums. Written intention to speak at the forums must be postmarked by June 29, 2001. Facsimile or electronic notices of intention to speak at the forums must be received by June 29, 2001. If possible, please include an e-mail address or fax number in your notice, so we may contact you about scheduling. When submitting a notice of intention to speak, please indicate whether you intend to speak at the forum in Washington, DC, Chicago, Illinois, or California. In addition, if you are requesting more than 10 minutes for your presentation, please indicate the amount of time that you are requesting and the questions you intend to address. The amount of time allotted to each speaker will depend on the number of persons who wish to speak at each location.

ADDRESSES: Written comments and notices of intention to speak at a forum may be submitted by mail, facsimile, or electronic means:

Written comments:

Mail: Submit three copies of written comments to: OSHA Docket Office, Docket No. S-777A, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210, telephone (202) 693-2350.

Facsimile: If your written comments are 10 pages or fewer, you may fax them to the Docket Office. The OSHA Docket Office fax number is (202) 693-1648.

Electronic: You may submit comments electronically through OSHA's Homepage at www.osha.gov. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

Notice of intention to speak:

Mail: You may submit notices of intention to speak at a forum, by mail, to: Ms. Veneta Chatmon, OSHA Office

of Public Affairs, Docket No. S-777A, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3647, Washington, DC 20210, telephone: (202) 693-1999.

Facsimile: You may fax your notice of intention to speak at a forum to Ms. Chatmon at (202) 693-1634.

Electronic: You also may electronically submit your notice of intention to speak at a forum through OSHA's Homepage at www.osha.gov.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, OSHA Office of Public Affairs, telephone (202) 693-1999, or visit the OSHA Homepage at www.osha.gov.

Prevention: The approach should emphasize the prevention of injuries before they occur.

SUPPLEMENTARY INFORMATION: With this notice, the Department announces the beginning of its initiative to create a new and comprehensive approach to ergonomics that is appropriate to the 21st Century workforce. In testimony before Congress, Secretary of Labor Elaine L. Chao has set forth the following principles that the Department will use to guide its development of this new framework:

Prevention: The approach should, emphasize the prevention of injuries, before they occur.

Sound Science: The approach should be based on the best available science and research.

Incentive Driven: The approach should focus on cooperation between OSHA and employers.

Flexibility: The approach should take account of the varying capabilities and characteristics of different businesses and workers.

Feasibility: Future actions must recognize the costs of compliance to small businesses.

Clarity: Any approach must include short, simple and common sense instructions.

Secretary Chao has met with many representatives from business, labor, and the public health community, as well as with members of Congress, to discuss possible approaches to addressing ergonomics injuries. As a result of those meetings, the Secretary has determined that consensus has not been reached on several very basic questions. In addition, the National Academy of Sciences has issued a new report on ergonomic injuries noting that, "no single strategy is or will be effective for all types of industry." Before designing a plan to address ergonomics injuries, the Department will hold three public forums to provide members of the public the opportunity to provide

additional information on these questions. The Secretary encourages all interested parties, particularly small business owners and employees of small businesses, to participate.

Following the forums, the Department will review the information obtained during this process, along with other information, and develop a comprehensive plan for addressing ergonomics injuries in the workplace. The Secretary intends to identify a course of action in September.

Forum Plans: The forums will consider the three questions listed below.

Question 1: What is an ergonomics injury? The Department of Labor is interested in establishing an accepted definition that the Occupational Safety and Health Administration, employers and their employees can understand and apply.

Question 2: How can the Occupational Safety and Health Administration, employers and employees determine whether an ergonomics injury was caused by work-related activities or non-work-related activities; and, if the ergonomics injury was caused by a combination of the two, what is the appropriate response?

Question 3: What are the most useful and cost-effective types of government involvement to address workplace ergonomics injuries (e.g., rulemaking, guidelines, "best practices," publications/conferences, technical assistance, consultations, partnerships or combinations of such approaches)? The agency particularly invites comment on the advantages and disadvantages of each approach or combination of approaches.

This notice was prepared under the direction of R. Davis Layne, Acting Assistant Secretary for Occupational Safety and Health. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657).

Issued at Washington, DC, this 7th day of June, 2001.

R. Davis Layne,

Acting Assistant Secretary of Labor.

[FR Doc. 01-14740 Filed 6-11-01; 8:45 am]

BILLING CODE 4510-26-P

LEGAL SERVICES CORPORATION

Freedom of Information Act—General Notice of Organization, Function, Rules of Procedure, and Substantive Rules

AGENCY: Legal Services Corporation.

ACTION: General notice of the organization, function, rules of

procedure, and substantive rules of the Legal Services Corporation.

SUMMARY: This notice is being published by LSC in accordance with 5 U.S.C. § 552(a)(1) and for the guidance and interest of the public.

FOR FURTHER INFORMATION CONTACT: Lisa Zurmuhlen, Administrative Officer and FOIA Liaison, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002-4250; 202/336-8922 (phone); 202/336-8952 (fax); lzurmuhlen@lsc.gov.

SUPPLEMENTARY INFORMATION: In accordance with section (a)(1) of the Freedom of Information Act ("FOIA") 5 U.S.C. 552, LSC publishes in the **Federal Register**, for the guidance and interest of the public, the following general information concerning LSC:

(a) A description of the organization of the Corporation and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which LSC's functions are channeled and determined;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations; and

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by LSC.

I. Description of LSC

LSC is a private, non-profit corporation, headquartered in Washington D.C. and established by Congress in 1974 to assure equal access to justice under the law for all Americans. LSC is headed by a bipartisan Board of Directors appointed by the President and confirmed by the Senate. LSC does not provide legal services directly to indigent clients; rather it provides grants to independent local programs chosen through a system of competition. Currently, LSC funds 197 legal aid programs. Together these programs serve every county and congressional district in the nation, as well as the U.S. territories. In 2000, LSC grantees handled more than one million civil cases. The most common types of cases handled by LSC-funded programs involve family law, housing, employment, government benefits, and consumer issues. LSC-funded programs do not handle criminal cases, nor do they accept fee-generating cases that private attorneys are willing to accept

on a contingency basis. LSC recipients are also prohibited from claiming or collecting attorney's fees and engaging in class actions, rulemaking, lobbying, litigation on behalf of prisoners, representation in drug-related public housing evictions, and representation of certain categories of aliens.

II. Organization

LSC consists of five major components: the Office of the President, the Office of Administration, the Office of Legal Affairs, the Office of Program Performance, and the Office of Governmental Relations and Public Affairs. In addition to these primary offices there is the Office of Inspector General. While the Office of Inspector General exists as part of LSC, the Office functions independently from the rest of the LSC components, with the Inspector General appointed directly by the LSC Board of Directors. The major functions and responsibilities of each of these components is described below.

Office of the President

The Office of the President is responsible for the implementation of Board policy and oversight of the Corporation's operations.

Office of Administration

The Office of Administration is comprised of the Office of Compliance and Enforcement, Office of Human Resources, Office of Financial and Administrative Services and Office of Information Technology.

The Office of Compliance and Enforcement (OCE) is responsible for ensuring that LSC grantees are complying with the laws, regulations, terms and conditions applicable to them as a condition of receipt of Federal funds. OCE conducts investigations and audits of grantees, responds to inquiries and complaints relating to grantee compliance with applicable law and regulations, processes requests for prior approvals and Private Attorney Involvement and fund balance waivers, and approves subgrant agreements.

The Office of Human Resources (OHR) develops and administers human resources policies, procedures, and strategies; and to provide advisory services on human resource issues to management and staff.

The Office of Financial and Administrative Services is comprised of the Office of the Comptroller and the Administrative Services Division. The Office of Comptroller maintains the efficiency of the Corporation's financial system and the integrity of its accounts, oversees procedures that generate all of the Corporation's financial transactions,

and provides accounting and financial information to the LSC Board of Directors, the President and Office Directors. In addition to cash management, accounts payable, payroll, grants administration and other routine financial transactions, the Office of Comptroller generates annual and periodic financial reports and assists with the accumulation of data for LSC's Budget Request to Congress. The Administrative Services Division (ASD) provides day-to-day administrative support services to facilitate efficient operations of LSC.

The mission of the Office of Information Technology (OIT) is to develop, implement and maintain a networked computer environment, featuring a well defined integrated information system for LSC.

Office of Legal Affairs

The Office of Legal Affairs (OLA) serves as in-house counsel and chief legal advisor to the Corporation and performs the duties of Secretary of the Corporation. The General Counsel carries out traditional "lawyer" functions, including negotiating, drafting and reviewing legal instruments such as contracts, settlement agreements, releases, applications for funding, and grant documents, as well as representing LSC's interests in litigation, directly or through retention and oversight of outside counsel. OLA provides legal advice to the Corporation's Board of Directors and President, as well as to the various offices in the Corporation. Furthermore, the General Counsel is responsible for interpreting statutory requirements and drafting implementing regulations for consideration by the Board.

Office of Program Performance

The Office of Program Performance (OPP) is charged with the design and administration of the competitive grants process, the encouragement of competition, and the development and implementation of strategies to improve program quality. Program improvement efforts include identification of areas of weakness and follow-up for individual recipients, identification and sharing of innovations and "best practices" among recipients and others in the legal services delivery system, as well as broader strategies for improvement of the delivery system.

Under the OPP is the Office of Information Management (OIM), which is responsible for gathering and disseminating information about LSC grantees and the delivery of legal services. This responsibility includes the development of Internet-based

applications for obtaining information about the delivery of legal services by LSC grantees, the identification and collection of information about the civil legal needs of eligible clients, and the sharing of that information with LSC staff, grantee staff, and other interested parties.

Office of Government Relations and Public Affairs

The Office of Governmental Relations and Public Affairs is responsible for managing LSC's communications and requests for information from Congress, the Executive Branch, the media, and the general public. The office coordinates the production of LSC's Fact Book and Annual Report.

Office of the Inspector General

The Office of the Inspector General (OIG) has two principal missions: to assist management in identifying ways to promote efficiency and effectiveness in the activities and operations of LSC and its grantees; and to prevent and detect fraud and abuse. The OIG's primary tool for achieving these missions is fact-finding through financial, performance and other types of audits and reviews, as well as investigations into allegations of wrongdoing. Its fact-finding activities enable the OIG to develop recommendations to LSC and grantee management for actions or changes that will correct problems, better safeguard the integrity of funds, improve procedures or otherwise increase efficiency or effectiveness.

III. Availability of Information

As an independent Corporation created by public law, LSC is governed by statute. The LSC Act and regulations provide guidance on the operation and responsibilities of LSC and its grantees. The Act can be found at 42 U.S.C. 2996 *et. seq.* and the regulations at 45 CFR part 1600 *et. seq.* Furthermore, both the Act and regulations are posted at LSC's website, which is given below. LSC is further subject to restrictions contained in its annual appropriations legislation. The current Appropriations Act for FY 2001 is located at Pub. L. 106-553, 114 Stat. 2762 (2000). In addition to the LSC Act, regulations, and appropriations legislation, other rules and instructions, governing LSC and its recipients, may be found in the Corporation's Program Letters, Audit Guide, Property Manual and formal legal opinions issued by the OLA. These documents are available to the public either online or upon request.

The LSC Act subjects the Corporation to both the Government in the Sunshine Act (5 U.S.C. 552b) and the Freedom of

Information Act (5 U.S.C. 552). LSC's implementing regulations provide that meetings of the Board of Directors and of committees of the Board will be open to the public, except that certain meetings or portions thereof may be closed to public as provided by law and regulation. See 45 C.F.R. 1622.3 and 1622.5. LSC's FOIA regulations require that the Corporation make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. 45 C.F.R. 1602.3. Thus, LSC maintains a public reading room at its offices and any person has the right to request LSC records in writing. The Corporation must release requested records to the requester unless they are protected from disclosure by the Freedom of Information Act (FOIA). Requests for records must be made in writing, with the envelope and the letter or the e-mail request clearly marked "Freedom of Information Request." All such requests should be addressed to LSC's Office of Legal Affairs, 750 First Street, NE, Washington, DC, 20002. In addition, LSC maintains a "FOIA electronic reading room." For further information on this electronic reading room, please visit LSC online at <http://www.lsc.gov>.

Other information regarding LSC's staff, location, functions, rules of procedure, substantive rules, statements of general policy or how the public may obtain information, make submissions or requests will also be found on the LSC website, as will links to legal services providers across the country. In addition, information about the OIG can be found at <http://www.oig.lsc.gov>.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 01-14627 Filed 6-11-01; 8:45 am]

BILLING CODE 7050-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-9027]

License No. SMC-1562 Cabot Corporation's Revere Site; Environmental Assessment and Finding of No Significant Impact Related to Approval of Site Decommissioning Plan

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Finding of No Significant Impact; Notice of Opportunity for Hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to approve

Cabot Corporation's (Cabot's or the licensee's), Decommissioning Plan (DP) for its Revere, Pennsylvania, site and amend NRC Source Material License SMC-1562 to remove the Revere site from the license. Cabot is authorized to store up to 91,000 kilograms (100 tons) of elemental, natural uranium and thorium, in any form, at its Reading and Revere, Pennsylvania, sites. This proposed action pertains only to the Revere site; the Revere site will be removed, and the Reading site will remain on the license. The Revere site (Revere) is located approximately 60 kilometers (36 miles) north of Philadelphia and about 26 kilometers (16 miles) southeast of Allentown, Pennsylvania. The NRC staff has evaluated Cabot's request and has developed an Environmental Assessment (EA) to support the review of Cabot's proposed DP and license amendment request, in accordance with the requirements of 10 CFR part 51. Based on staff evaluation, the conclusion of the EA is a Finding of No Significant Impact (FONSI) on human health nor the environment for the proposed licensing action.

FOR FURTHER INFORMATION, CONTACT: Mr. Theodore Smith, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7-F27, Washington, DC 20555. Telephone (301) 415-6721.

SUPPLEMENTARY INFORMATION:

Background

The Kawecki Chemical Company—Penn Rare Division (Cabot's predecessor), was first licensed to store uranium and thorium at the Revere site in October 1969, by NRC's predecessor, the Atomic Energy Commission. The license was amended in June 1970, authorizing the licensee [then known as Kawecki Beryllium Industries (KBI)] to process up to 1,800 kilograms (4,000 pounds) of ore concentrates containing up to 2 percent natural thorium and 1.5 percent natural uranium.

The uranium and thorium were contained in pyrochlore-bearing ores purchased for production of columbium and tantalum. The end product from the licensee's process was purified columbium and tantalum used for manufacturing high-strength metals and electronic components. At the Revere site, columbite and pyrochlore ores were blended with aluminum and iron powder. The mixture was ignited in a crucible wherein the aluminum reduced the columbium oxide in the ore by a thermite process. The iron alloyed to

form ferrocolumbium, while the spent aluminum and other oxides, and the uranium and thorium from the ore, were melted into process slag. The thorium- and uranium-bearing slag was stored on site in four different locations. Processing of source material-bearing ores ceased in 1978, although the license was not changed until December 1983, when it was amended to authorize only possession of uranium and thorium at Revere. KBI maintained the Revere site for source material possession-only, with no activity until 1987, at which time Cabot Corporation became the licensee of record through acquisition of KBI.

In 1988, Cabot began onsite decommissioning activities for Revere, including site characterization, determination of slag leach rates, surface gamma measurements, and radiological analysis of surface and subsurface samples. Contaminated areas were remediated in a series of clean-up actions and site surveys in the early 1990s. The first site DP submitted to NRC in August 1996, was replaced in November 1997 by a DP that analyzed the site in accordance with current license termination requirements. This DP was amended in March 2001, in response to additional questions from NRC staff.

In the March 2001 DP, the licensee demonstrated that the Revere site is in compliance with requirements for license termination with no further remediation. The DP (as amended in April 2001) and accompanying Radiological Assessment assert that residual radioactivity distinguishable from background at Revere meets the unrestricted release criteria established in 10 CFR 20.1402 of the License Termination Rule (LTR). The LTR requires that the total effective dose equivalent to an average member of the critical group, as determined by licensee analysis and NRC review, does not exceed 0.25 millisieverts per year (mSv/yr) [25 millirem (mrem/yr)], from all exposure pathways, and that the residual radioactivity has been reduced to levels that are as low as is reasonably achievable (ALARA). Although Cabot's Revere site is a Site Decommissioning Management Plan (SDMP) site, Cabot decided to demonstrate compliance with the newer LTR requirements and not the SDMP action criteria.

Site production records, quality assurance documents, and inspection reports indicate that a total of about 23,000 kilograms (50,000 pounds) of uranium and thorium-bearing ores were stored and processed at the Revere site. Subsurface contamination reports and remediation reports indicate a total

contaminated volume (clean slag, soil and building debris intermixed with contaminated slag) of 23,186 cubic meters (m^3) [818,700 cubic feet (ft^3)] at the site. Cabot later revised the volume estimate to be 15,180 m^3 (536,010 ft^3) by using the minimum values for each area in the reports. Cabot estimated the average concentration of the contaminated volume to be 0.052 Becquerels per gram (Bq/g) [picocuries per gram (0.14 pCi/g)] for total thorium and 0.013 Bq/g (0.34 pCi/g) for total uranium using a volume of 23,186 m^3 , although it considered concentrations based on the minimum reported volume, which would be approximately 50 percent more.

Summary of the EA

The NRC staff performed an assessment of the environmental impacts associated with implementation of Cabot's DP for the Revere site, in accordance with 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." In conducting its appraisal, the NRC staff considered the following information: (1) Cabot's Revere Site DP, as amended; (2) Cabot's Revere Site Radiological Assessment, as amended; (3) previous environmental evaluations of the Revere site; (4) data contained in environmental monitoring and survey reports; (5) the results of NRC staff site visits and inspections of the Revere facility; and (6) consultations with the Pennsylvania Department of Environmental Protection (PADEP). The results of the staff's appraisal, a FONSI, are documented in an EA. The safety aspects for the proposed action are discussed separately in a Safety Evaluation Report (SER).

Conclusions

The NRC staff has evaluated the actual and potential impacts associated with implementation of the DP and removing Revere from Cabot's license and has determined that the amendment to Source Material License SMC-1562 will: (1) Be consistent with the requirements of the LTR and Part 40, "Domestic Licensing of Source Material", (2) not be inimical to public health and safety; and (3) not have detrimental impacts on the environment. The following statements summarize the conclusions of the staff's EA, and support the FONSI:

1. In the most bounding scenario analyzed by staff, which conservatively estimated the potential dose to an average member of the critical group within 1000 years after license termination, the largest calculated dose was 0.2 mSv/yr (20 mrem/yr), and the

dose is ALARA, which meets the LTR. (For comparison purposes, under 10 CFR 20.1301(a), the NRC's dose limit to any member of the public from licensed activities may not exceed 1.0 mSv/yr (100 mrem/yr).

2. There are no impacts on cultural and historic areas, and further evaluation of cultural and historical resource concerns is not warranted.

3. There are no impacts on endangered nor threatened species nor habitat, and further evaluation of endangered and threatened species concerns is not warranted.

4. There are no disproportionately high and adverse effects nor impacts on minority and low-income populations, and further evaluation of environmental justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1-50, Revision 1, is not warranted.

Proposed Action

The NRC is proposing to remove the Revere site from Cabot's source materials license without further remediation, since it meets the LTR unrestricted release requirements of 0.25 mSv/yr (25 mrem/yr) and ALARA.

The Need for Proposed Action

NRC regulation 10 CFR 40.42 (the "Timeliness Rule") requires licensees to decommission their facilities when licensed activities cease, and to request termination of their radioactive materials licenses. The purpose of the Timeliness Rule is to reduce the potential risk to the public and environment that may result from delayed decommissioning of inactive facilities and sites. The purpose of this action is to remove Revere from Cabot's source material license, and the SDMP list because Cabot no longer uses source materials at the site. The site would no longer be subject to NRC regulatory oversight.

Alternatives to Proposed Action

There are two alternatives to the proposed action of allowing unrestricted release of the site and removing it from the license: (1) No action; and (2) to excavate and transport the contaminated material directly to a licensed disposal facility. The no-action alternative is not acceptable because it will result in violation of NRC's Timeliness Rule.

The second alternative is not cost-effective, as demonstrated by the licensee's cost estimate, for additional site remediation, of approximately 9 million dollars (in 1996 dollars), with no significant increase in public health

or safety or protection of the environment.

Environmental Impacts of Proposed Action

There are no impacts associated with the proposed action, as no further remediation activities will be conducted at the Revere site. Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either denial of the licensee's request, or additional site remediation. Additionally, in the SER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for license termination, specified in 10 CFR part 20, Subpart E, and has no basis for denial of the proposed action. Therefore, the staff concludes that the proposed alternative is appropriate.

Agencies and Individuals Consulted

NRC staff prepared the EA. No other sources were used beyond those referenced in the EA.

NRC staff provided a draft of the EA to the PADEP for review. By letter dated April 26, 2001, PADEP concurred with NRC's conclusion that the requirements for radiological unrestricted release have been met.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed amendment to NRC Source Material License SMC-1562. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room in NRC's One White Flint North Headquarters building, located at 11555 Rockville Pike (first floor), Rockville, Maryland; and in the Agency-wide Documents Access and Management System (ADAMS) Public Electronic Reading Room at Web address <<http://www.nrc.gov/ADAMS/index.html>>.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of the Commission's Rules of Practice for

Domestic Licensing Proceedings and Issuance of Orders.

Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with 10 CFR 2.1205(d), a request for a hearing must be filed within thirty (30) days from the date of publication of the **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff. In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Cabot Corporation, P.O. Box 1608, County Line Road, Boyertown, PA 19512-1608;

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that are the subject matters of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(d).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in part 2, subpart L.

Dated at Rockville, Maryland, this 4th day of June 2001.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01-14754 Filed 6-11-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Docket No. 50-309

Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR-36, issued to Maine Yankee Atomic Power Company (MYAPC or the licensee), for the Maine Yankee Atomic Power Station (MYAPS), a permanently shutdown nuclear reactor facility located in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

ACTION: The proposed action would exempt the MYAPS Independent Spent Fuel Storage Installation (ISFSI) from some requirements of 10 CFR 72.212(b)(5) to "protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth" in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage." The proposed action is in accordance with the licensee's application for exemption dated January 4, 2001, as supplemented by letters dated March 12 and April 4, 2001.

The Need for the Proposed Action

MYAPS was shut down in December 1996. On August 7, 1997, the licensee informed the Commission that it had decided to permanently cease operations at Maine Yankee Atomic Power Station and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82(a)(2), the certifications in the letter modified the facility operating license to permanently withdraw MYAPC's authority to operate the reactor and to load fuel into the reactor vessel. The MYAPS spent nuclear fuel is currently being stored in the spent fuel pool, which is protected by a physical protection system meeting the requirements of 10 CFR 73.55, with exemptions as previously issued by the NRC. To complete the plant site decommissioning process, the spent fuel will be removed from the spent fuel pool and transferred to an onsite ISFSI for interim storage. Under the

provisions of 10 CFR part 20, subpart K, General License for Storage of Spent Fuel at Power Reactor Sites, as specified in 10 CFR 72.212(b)(5), MYAPS is required to meet the physical protection requirements of 10 CFR 73.55 for an ISFSI at a reactor site. However, MYAPC has proposed to be exempted from the requirements of 10 CFR 72.212(b)(5) to "protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth" in 10 CFR 73.55 (with certain exceptions provided by 10 CFR 72.212(b)(5)). Instead, MYAPC has proposed alternative approaches to meet the provisions of portions of 10 CFR 73.55 related to the security organization, physical barriers, access requirements, detection aids, requirements, communications, and response requirements. The alternative measures for protection against radiological sabotage would meet the same high assurance objectives and the general performance requirements of 10 CFR 73.55 related to spent fuel storage at an ISFSI.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that granting an exemption from the requirements of 10 CFR 72.212(b)(5) to protect the spent fuel against the design basis threat of radiological sabotage in accordance with the requirements of 10 CFR 75.55, thereby enabling MYAPC to implement alternative provisions of 10 CFR 73.55, would not have a significant impact on the environment.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to Operation of Maine Yankee Atomic Power Station (July 1972).

Agencies and Persons Contacted

In accordance with its stated policy, on April 19, 2001, the staff consulted with Mr. Patrick Dostie of the State of Maine, Department of Human Services, Division of Health Engineering, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated January 4, 2001, March 12, 2001, and April 4, 2001, which may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. 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).

Dated at Rockville, Maryland, this 5th day of June 2001.

For the Nuclear Regulatory Commission.

Michael K. Webb,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-14753 Filed 6-11-01; 8:45 am]

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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 May 21, 2001 through June 1, 2001. The last biweekly notice was published on May 30, 2001 (66 FR 29349).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of 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 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 July 13, 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: Rulemaking and Adjudications 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. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic

Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdrc@nrc.gov.

**AmerGen Energy Company, LLC, et al.,
Docket No. 50-219, Oyster Creek
Nuclear Generating Station, Ocean
County, New Jersey**

Date of amendment request: April 6, 2001.

Description of amendment request: The existing Oyster Creek Technical Specification (TS) Section 4.7.B.5 requires capacity testing of the Station Batteries and the Diesel Generator Starting Batteries at least once per 24 months during a plant shutdown. The proposed amendment request will allow the 24-month capacity test for the Diesel Generator Starting Batteries to be performed during plant shutdowns or during the 24-month on-line Diesel Generator inspection (TS 4.7.A.3). The proposed revision to Section 4.7.B.5.b also reflects this change in specified frequency.

Additionally, TS 4.7.A.5 is revised to delete the statement that the battery capacity test need not be performed if the installed batteries were replaced during the previous Diesel Generator on-line biennial inspection. This exception is no longer necessary because the battery capacity testing is not restricted to refueling outages based on the proposed change to Section 4.7.B.5.

TS 4.7.B.5.a is revised to delete the phrase “* * * to be considered operable” because all of the specified surveillances constitute operability criteria. The title of Section 4.7.B is revised to identify applicability to the Diesel Generating Starting Batteries. These additional proposed revisions are considered administrative changes, which clarify the existing TS.

TS 4.7 Bases is also revised to reflect the above specification changes. Section 4.7 Bases contained on page 4.7-3 are being relocated to Bases page 4.7-4. This relocation of the Bases is a purely administrative change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The change to allow the batteries to be tested during the 24-month Diesel Generator inspection outage does not increase the probability of occurrence of an accident previously evaluated. No change is being made to equipment, equipment operation, or equipment requirements. If a Diesel Generator battery were to fail during the 24-month inspection, the availability of the Diesel Generator will not be affected because the Diesel Generator will already be out of service for the inspection. The change will allow the Diesel Generator out of service time during refueling outages to be reduced or eliminated, thereby reducing risk.

The change to allow the batteries to be tested during the 24-month Diesel Generator inspection outage does not increase the consequences of an accident previously evaluated. No change is being made to equipment, equipment operation, or equipment requirements. If a Diesel Generator battery were to fail during the 24-month inspection, the consequences of the battery failing are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to allow the batteries to be tested during the 24-month Diesel Generator inspection outage does not create the possibility of a new or different kind of accident from any previously evaluated. Moving the testing will not create a new possible failure type, it will only move the detection of a battery failure from the refueling outage to the 24-month Diesel Generator inspection outage.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The change to allow the batteries to be tested during the 24-month Diesel Generator inspection outage does not reduce a margin of safety. Since the Diesel Generator will already be out of service for the 24-month inspection, the margin of safety for the Diesel Generator 24-month inspection outage will not be affected. The change will allow the Diesel Generator out of service time during the refueling outage to be reduced or eliminated, thereby increasing the margin of safety during the refueling outage.

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: Kevin P. Gallen, Morgan, Lewis & Bockius, LLP, 1800 M Street, NW., Washington, DC 20036-5869.

NRC Section Chief: Richard P. Correia, Acting.

**AmerGen Energy Company, LLC,
Docket No. 50-289, Three Mile Island
Nuclear Station, Unit 1, Dauphin
County, Pennsylvania**

Date of amendment request: January 23, 2001.

Description of amendment request: The proposed amendment revises the requirements for containment integrity associated with the personnel and emergency air locks and other penetrations during fuel movement and refueling operations to allow these penetrations to remain open. One door in each of the emergency and personnel air locks must be capable of being closed and each penetration providing direct access from the containment atmosphere to the outside atmosphere shall be capable of being closed by an isolation valve, blind flange, or manual valve. The supporting revised design basis fuel handling accident inside containment analysis will also incorporate alternative source term methodology in accordance with Title 10 of the Code of Federal Regulations (10 CFR) Section 50.67 and Regulatory Guide 1.183, “Alternative Radiological Source Terms For Evaluating Design Basis Accidents At Nuclear Power Reactors,” July 2000. Technical Specification (TS) 3.8.7 is also revised to provide equivalent isolation methods for other penetrations consistent with Babcock & Wilcox Owner's Group (BWOG) Standard Technical Specifications (STs), Section 3.9.3.c.1, NUREG-1430, April 1995. TS 3.8.11 is added to specify the requirement to maintain at least 23 feet of water over the top of the reactor vessel flange and the actions required if this level is not maintained. TS Bases 3.8 is revised to provide a description of the plant conditions under which the personnel and emergency air locks and other penetrations including those consistent with the BWOG STs, Section 3.9., may be open during fuel movement, and the administrative controls that would be in place. The surveillance requirements of TS 4.4.1.3 are also revised to identify the exception allowed by TS 3.8.6 under which both doors of the personnel and emergency air locks can be open.

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 operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed change would allow the personnel and emergency air lock doors and other penetrations to remain open during fuel loading and refueling operations. These penetrations were previously closed during this time period in order to prevent the escape of radioactive material in the event of a fuel handling accident inside containment (FHA). These penetrations are not initiators of any accident. The probability of a FHA is unaffected by the position of these penetrations.

The new FHA analysis utilizing an Alternative Source Term with an open containment demonstrates that the maximum doses are well within the acceptance criteria specified in 10 CFR 50.67 and Regulatory Guide 1.183. In the event of a fuel handling accident, actual control room and offsite doses will be less than analyzed values because containment integrity will be restored following an evacuation of containment. As noted above, with the Alternative Source Term implementation, the acceptance criteria are also being revised. A direct comparison of the new Alternative Source Term dose consequences with the existing licensing basis FHA source term dose consequences is not practical due to the significant differences in methodology and assumptions.

However, a comparison of the previous thyroid and whole body dose results for the postulated TMI Unit 1 FHA Inside Containment documented in the TMI Unit 1UFSAR [updated final safety analysis report] Chapter 14 with the new dose results expressed in terms of Total Effective Dose Equivalent (TEDE), using the guidance in Regulatory Guide 1.183 Footnote 7, indicates that the new doses are not significantly higher than the previous dose results. The revised Alternative Source Term calculated doses remain well within the allowable acceptance criteria.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed change does not involve the addition or modification of any plant equipment. Also, the proposed change would not alter the design or method of operation of the plant beyond the standard functional capabilities of the equipment. The proposed change involves a change to the Technical Specifications that would allow the personnel and emergency air lock doors and other penetrations to be open during fuel loading and refueling operations within the containment. Having these doors and penetrations open does not create the possibility of a new accident. Administrative provisions will be made to ensure the

capability to close the containment in the event of a FHA inside containment.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: This proposed change has the potential for an increased postulated accident dose due to a FHA Inside Containment; However, the analysis demonstrates that the resultant doses are well within the appropriate acceptance criteria. The margin of safety, as defined by 10 CFR 50.67 and Regulatory Guide 1.183, has been maintained. The offsite and control room doses due to a FHA with an open containment have been evaluated with conservative assumptions, which ensure the calculation bounds the postulated accident dose. Closing at least one door in each of the personnel and emergency air locks following the evacuation of the containment and closure of other open penetrations would reduce the control room and offsite doses in the event of a FHA inside containment and provides additional margin to the calculated doses.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Richard P. Correia, Acting.

**AmerGen Energy Company, LLC,
Docket No. 50-289, Three Mile Island
Nuclear Station, Unit 1, Dauphin
County, Pennsylvania**

Date of amendment request: January 29, 2001.

Description of amendment request: The proposed amendment revises the Technical Specifications (TSs) to remove the note from TS 4.5.4.1 that restricts the applicability of the specified engineered safeguards feature (ESF) systems leakage rate limit of 15 gallons per hour to the current operating Cycle 13 and establish this value as the permanent TS limit. This limit had previously been approved with the issuance of Amendment No. 215 on August 24, 1999, for Cycle 13 only. The proposed amendment also would implement a full scope alternative source term for Three Mile Island Nuclear Station, Unit 1, in accordance

with Title 10 of the Code of Federal Regulations (10 CFR) Section 50.67 and the guidance contained in Regulatory Guide 1.183.

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 permanent Technical Specification limit on ESF Systems leak rate is identical with the existing licensing basis value and is conservatively reevaluated for the limiting design basis Maximum Hypothetical Accident (MHA) using alternative source term methodology. Implementation of the alternative source term in accordance with Regulatory Guide 1.183 does not affect the design or operation of the facility, and therefore, does not significantly increase the probability of an accident previously evaluated. Based on the results of this reanalysis, it has been demonstrated that with the requested Technical Specification change, the offsite and control room dose consequences for this limiting event remain within the allowable dose criteria specified in 10 CFR 50.67 and Regulatory Guide 1.183.

Therefore, the proposed change does 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.

The proposed permanent Technical Specification limit on ESF leak rate and implementation of the alternative source term in accordance with Regulatory Guide 1.183 does not affect the design, functional performance, or operation of the facility or of any equipment within the facility. Modifications supporting the proposed change have been evaluated and determined not to create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does 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.

The proposed change involves implementation of the alternative source term in accordance with 10 CFR 50.67 and Regulatory Guide 1.183, and maintains the current Technical Specification limit on ESF Systems leak rate. The reanalysis of the limiting design basis MHA has been performed using conservative methodologies as specified in Regulatory Guide 1.183. Margin has been maintained to ensure that

the accident analysis dose consequences bound the postulated event scenarios. The calculated offsite and control room dose consequences for this limiting event are within the acceptance criteria as specified in 10 CFR 50.67 and Regulatory Guide 1.183.

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: Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23-1, Philadelphia, PA 19103.

NRC Section Chief: Richard P. Correia, Acting.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 8, 2001.

Description of amendment request: The proposed amendment would revise the frequency of the Technical Specification (TS) surveillance requirement to check the movement of the control rods. Specifically, the frequency listed for this requirement in TS Table 4.1-3, "Frequencies for Equipment Tests," would be changed from "every 31 days" to "quarterly" during reactor critical operations.

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 change to the frequency of performance of surveillance does not result in any hardware changes or nor does it change the response of control rods in performing their specified function. Therefore the change cannot affect the probability of occurrence of previously evaluated accidents.

The proposed frequency has been determined to be adequate to assure the reliability of reactor trip based on the conclusions in NUREG 1366 ["Improvements to Technical Specification Surveillance Requirements"] and the recommendations of GL [Generic Letter] 93-05 ["Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation"].

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.

The proposed change does not introduce a new failure mechanism or a new or different type of accident than those previously evaluated since there are no physical changes being made to the facility. Performance of the surveillance on the revised frequency will not have an adverse affect on the ability of the control rods to perform their intended function. The proposed change does not degrade the reliability of systems, structures, or components or create a new accident initiator or precursor. Therefore, the change does 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.

The proposed reduction in surveillance testing reduces the risk for causing dropped rods or reactor trips. This results in a slight improvement in the margin of safety by decreasing challenges to reactor components and safety systems.

The proposed surveillance frequency, as supported by the industry experience described in NUREG-1366, continues to provide the required assurance of control rod operability, such that safety margins established through the design and facility license, including the Technical Specifications, remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment is expected to result in a slight net improvement in [a] margin of safety. Hence the proposed change 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 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: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: Richard P. Correia, Acting.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 10, 2001.

Description of amendment request: The proposed amendment would remove Technical Specification (TS) surveillance requirement (SR) 4.6.A.4

that requires each emergency diesel generator (EDG) to be given a thorough inspection at least annually following the manufacturer's recommendations. The requirement for the EDG inspection will be relocated to the Updated Final Safety Analysis Report and will be in accordance with the licensee controlled maintenance program. The inspection period required by the maintenance program will also be changed to specify that it will be "in accordance with the manufacturer's recommendations."

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.

There is no change to the design, function, or capability of the EDGs as a result of this change. Hence there is no change in the probability of occurrence of an accident previously evaluated.

The change does not affect the ability of the EDGs to mitigate the consequences of any accident previously evaluated; including the loss of coolant accident coupled with loss of offsite power. To the contrary, this change is structured to enhance the availability and reliability of the EDGs by tailoring the actual EDG maintenance program to the EDGs' operational history and experience. In addition, the surveillance testing requirements of TS Surveillance Requirements 4.6.A.1, 2 & 3 have not changed and are adequate to verify the operability of the EDG system. And, the Maintenance Rule Program at IP2 [Indian Point Unit 2] has established specific performance criteria for the EDGs. These performance criteria, and requirements to ensure the criteria are met, are not affected by this change.

The deletion of the surveillance requirement and controlling EDG maintenance using a licensee-controlled maintenance program does not alter or prevent the ability of the EDGs to perform their intended functions.

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.

The EDG is not an accident initiator. The proposed change does not involve any physical design change or operational change. Thus a new failure mode is not introduced. In addition, the proposed change has been evaluated to not degrade the reliability of any existing system, structure, or component. Therefore, the proposed

change does not create a new accident initiator or precursor, or 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.

As a result of this change, there are no changes to IP2's design or to the IP2 TS safety limits, limiting safety system settings, or limiting conditions [for] operation. A single SR is replaced by a performance-based maintenance program.

The substitution of the performance-based maintenance program for the prescriptive SR is expected to increase the availability of the EDGs because the amount of time the EDGs are out-of-service for on-line maintenance will decrease. Reducing the number of plant operating hours that the unit is exposed to an out-of-service EDG improves rather than reduces the margin of safety. The substitution of the performance-based maintenance program for the prescriptive SR is expected to improve the reliability of the EDGs by minimizing the possibility of adverse results that may result from intrusive maintenance activities. The expected reliability improvement improves rather than reduces [a] margin of safety.

The transfer of control of EDG maintenance from the TS to a licensee-controlled EDG maintenance program is an administrative change. But the change is structured so that maintenance program changes must be evaluated using the 10 CFR 50.59 process. Use of the 10 CFR 50.59 process assures that future changes to the EDG maintenance program cannot significantly increase the likelihood of a malfunction of the EDGs. And use of the 10 CFR 50.59 process, instead of the license amendment process, allows Con Edison to optimize EDG maintenance in a timely manner to meet the intent of 10 CFR 50.65.

The proposed changes do not adversely affect the EDG's ability to function when required to mitigate any accident or licensing basis event. 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 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: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: Richard P. Correia, Acting.

**Dominion Nuclear Connecticut, Inc.,
Docket No. 50-336, Millstone Nuclear
Power Station, Unit No. 2, New London
County, Connecticut**

Date of amendment request: April 11, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification definitions 1.12, "Core Alteration;" 3.9.1, "Refueling Operations—Boron Concentration;" 3.9.2, "Refueling Operations—Instrumentation;" and 3.9.11, "Refueling Operations—Water Level—Reactor Vessel." The Bases for these Technical Specifications would also be modified to reflect the proposed changes to these definitions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes associated with the definition for Core Alteration and LCO [limiting condition for operation], applicability, action requirements and surveillance requirements of Sections 3.9.1, 3.9.2 and 3.9.11 will not cause an accident to occur and will not result in any change in operation of the associated accident mitigation equipment. The design basis accidents (fuel handling and boron dilution event) remain the same postulated events described in the Millstone Unit No. 2 Final Safety

Analysis Report (FSAR). Therefore, the proposed changes will not increase the probability of an accident previously evaluated.

The proposed LCO and Applicability changes are consistent with the design basis accident analyses of record. This will ensure that the accident mitigation equipment functions and associated equipment are available for accident mitigation as assumed in the associated accident analyses. The proposed surveillance requirement changes will continue to provide reasonable assurance of equipment operability. As a result, the accident assumptions and mitigation methods will not be adversely affected by the changes. Therefore, the proposed changes will not result in [an] increase in the consequences of accident[s] previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not impact any system or component that could cause an accident. The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The response of the plant and the operators following an accident will not be different. In addition, the proposed changes do not introduce any new

failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed LCO and Applicability changes are consistent with the design basis accident analyses of record. The proposed surveillance requirement changes will continue to provide assurance of equipment operability. The proposed changes do not involve any changes in the accident analyses, therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.
NRC Section Chief: James W. Clifford.

**Dominion Nuclear Connecticut, Inc.,
Docket No. 50-336, Millstone Nuclear
Power Station, Unit No. 2, New London
County, Connecticut**

Date of amendment request: April 23, 2001.

Description of amendment request: The proposed amendment would remove the surveillance requirement to perform inspections of the Emergency Diesel Generators (EDGs) during shutdown conditions from Technical Specifications; although, inspections of the EDGs would continue to be performed in accordance with procedures prepared in conjunction with the recommendations of the manufacturer.

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 has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis which is based on the representations made by the licensee in the April 23, 2001 application, is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The Technical Specification change is associated with the surveillance requirement to perform inspections of the EDGs during shutdown conditions. The proposed change will remove this surveillance requirement from Technical Specifications; although, inspections of the EDGs will continue to

be performed in accordance with procedures prepared in conjunction with the recommendations of the manufacturer.

Removal of the EDG inspection surveillance requirement from Technical Specifications does not verify operability or EDG functions assumed in the safety analysis. EDG inspections, which are maintenance activities that can be adequately controlled by plant procedures, will still be performed in accordance with the recommendations of the manufacturer. This will provide continued assurance the EDGs will be available when required.

The proposed Technical Specification change will have no adverse effect on plant operation or the operation of accident mitigation equipment, and will not impact the availability of accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the equipment covered by this specification change is not an accident initiator and cannot cause an accident. Therefore, the proposed Technical Specification change will not result in an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not impact any system or component which could cause an accident. The proposed change will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed change will not alter the way any structure, system, or component functions, and will not alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The proposed change does not introduce any new failure modes. Also, the response of the plant and the operators following an accident will not be different as a result of this change. In addition, the accident mitigation equipment affected by the proposed change is not an accident initiator. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis.

Therefore, there will be no reduction in a margin of safety.

Based on the NRC staff's analysis, 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: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 2, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to not require the moderator temperature coefficient (MTC) determination in TS 4.1.1.4.2.c if the results of the MTC determinations required in TSs 4.1.1.4.2.a and 4.1.1.4.2.b are within a certain tolerance of the corresponding design values.

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 operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Under the proposed change, compliance with the TS[s] is maintained by measuring the beginning[-]of[-]cycle [(BOC)] temperature coefficients.

This change does not require a modification to any of the assumptions used in the input to the safety analyses. The assumptions were based on the current range of MTC allowed by TSs. The proposed change does not include a revision to the TS allowed range of MTC.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change does not result in changing plant operation or any TS limits. The MTC will continue to be acceptably verified within specified limits. As described in the Combustion Engineering topical report, if the BOC MTC measurements are within the specified tolerance when compared to the design value, then the EOC [end-of-cycle] value is expected to fall within the design margin.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

This change does not modify the range of allowed temperature coefficients. The surveillance program consisting of BOC measurements, of plant parameter monitoring, and of explicit EOC predictions will ensure that the MTC remains within the range of acceptable values.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, 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 amendment request: April 27, 2001.

Description of amendment request: The proposed amendment would revise TS 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," which requires the inspection of each reactor coolant pump (RCP) flywheel in general conformance with the recommendations of Regulatory Position C.4.b of NRC Regulatory Guide (RG) 1.14, Revision 1, "Reactor Coolant Pump Flywheel Integrity," dated August 1975. The proposed change revises TS 5.5.7 to provide an exception to the recommendations of Regulatory Position C.4.b which would allow either a qualified in-place ultrasonic volumetric examination (UT) over the volume from the inner bore of the flywheel to the circle of one-half the outer radius or a surface examination (i.e., magnetic particle testing (MT) and/or liquid penetrant testing (PT)) of exposed surfaces of the removed flywheel to be conducted at approximately 10-year intervals. The proposed change is in accordance with the NRC approved Improved Standard TS Generic Change Traveler TSTF-237, Revision 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:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

An integral part of the Reactor Coolant System (RCS) in a Pressurized Water Reactor (PWR) is the Reactor Coolant Pump (RCP). The RCP ensures an adequate cooling flow rate by circulating large volumes of the primary coolant water at high temperature and pressure through the RCS. Following an assumed loss of power to the RCP motor, the flywheel, in conjunction with the impeller and motor assembly, provide sufficient rotational inertia to assure adequate core cooling flow during RCP coastdown.

Westinghouse Electric Corporation Topical Report WCAP-14535A, "Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination," dated November 1996, provides the technical basis for the elimination of inspection requirements for RCP flywheels for all domestic Westinghouse plants. In the Safety Evaluation for WCAP-14535A, dated September 1996, the NRC stated that the evaluation methodology described in WCAP-14535A is appropriate and the criteria are in accordance with the design criteria of RG 1.14. RCP flywheel inspections have been performed for 20 years with no indications of service induced flaws. Flywheel integrity evaluations show a very high flaw tolerance for the RCP flywheels. Crack extension over a 60-year service life is negligible. Structural reliability studies have shown that eliminating inspections after 10 years of plant life will not significantly change the probability of failure.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not alter or prevent the ability of structures, systems, and components (SSC) from performing their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Braidwood and Byron Stations' Updated Final Safety Analysis Report (UFSAR). The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Braidwood and Byron Stations' UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind accident from any accident previously evaluated?

The proposed change does not modify the design or function of the RCP flywheels. Based upon the results of WCAP-14535A, no new failure mechanisms will be introduced by the revised RCP Flywheel Inspection Program. As presented in WCAP-14535A, detailed stress analysis and risk assessments

have been performed that indicate that there would be no change in the probability of failure for RCP flywheels if all inspections were eliminated. Flywheel integrity evaluations show that RCP flywheels exhibit a very high tolerance for the presence of flaws.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

There is no significant mechanism for in-service degradation of the flywheels since they are isolated from the primary coolant environment. Additionally WCAP-14535A analyses have shown there is no significant deformation of the flywheels even at maximum overspeed conditions. Likewise, the results of RCP flywheel inspections performed throughout the industry and at the Braidwood Station and the Byron Station identified no indications that would affect flywheel integrity.

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 requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

**Exelon Generation Company, LLC,
Docket Nos. 50-373 and 50-374,
LaSalle County Station, Units 1 and 2,
LaSalle County, Illinois**

Date of amendment request: April 16, 2001.

Description of amendment request: The proposed amendments would change the reference in Technical Specification 5.5.6, "Pre-Stressed Concrete Containment Tendon Surveillance Program," from Regulatory Guide 1.35, "Inservice Inspection of UngROUTED Tendons in Prestressed Concrete Containments," Revision 3, 1989, to a reference to Subsection IWL, "Requirements of Class CC Concrete Components of Light-Water Cooled Power Plants," of Section XI, "Inservice Inspection," of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, and to delete the applicability of Surveillance Requirement (SR) 3.0.2 to TS Section 5.5.6. SR 3.0.2 allows the surveillance to be performed within 1.25 times the interval specified in the surveillance's frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to Technical Specifications (TS) Section 5.5.6, "Pre-Stressed Concrete Containment Tendon Surveillance Program," change the reference in TS Section 5.5.6 from Regulatory Guide (RG) 1.35, "Inservice Inspection of UngROUTED Tendons in Prestressed Concrete Containments," Revision 3, 1989, to a reference to Subsection IWL, "Requirements of Class CC Concrete Components of Light-Water Cooled Power Plants," of Section XI, "Inservice Inspection," of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, and to delete the applicability of Surveillance Requirement (SR) 3.0.2 to TS Section 5.5.6. SR 3.0.2 allows the surveillance to be performed within 1.25 times the interval specified in the surveillance's frequency. The proposed changes do not significantly effect the Tendon Surveillance Program, inspection frequencies, and acceptance criteria which provide the requirements for the performance of the primary containment tendon inspections at LaSalle County Station, Unit 1 and Unit 2.

The performance of a primary containment tendon inspection is not a precursor to any accident previously evaluated. Thus, the proposed changes to the performance of a primary containment tendon inspection do not have any effect on the probability of an accident previously evaluated.

The performance of primary containment tendon inspections does provide assurance that the primary containment will perform as designed. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of an accident from any accident previously evaluated?

The proposed changes to TS Section 5.5.6, provide assurance that the primary containment will perform as designed and do not introduce any new modes of primary containment operation of failure mechanisms.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

On August 8, 1996, the NRC published a final rule in the **Federal Register** (i.e., 61 **Federal Register** 41303) to amend 10 CFR 50.55a, "Codes and standards," to incorporate by reference Subsection IWL of Section XI, of the ASME B&PV Code. Subsection IWL of Section XI, of the ASME

B&PV Code, provides rules for the inservice inspection and repair of the reinforced concrete and post tensioning systems of Class CC components. LaSalle County Station, Unit 1 and Unit 2, primary containments are Class CC components. The amended 10 CFR 50.55a required incorporation of Subsection IWL of Section XI, of the ASME B&PV Code, into inspection programs by September 9, 2001. We have developed an inspection program to implement Subsection IWL of Section XI, of the ASME B&PV Code. The proposed TS changes support this program.

The revised Tendon Surveillance Program, inspection frequencies, and acceptance criteria developed to implement Subsection IWL of Section XI, of the ASME B&PV Code, as required by 10 CFR 50.55a, provide acceptable requirements to perform inspections of the tendons in the LaSalle County Station, Unit 1 and Unit 2, primary containments. Thus, the proposed change to TS Section 5.5.6 will continue to ensure the integrity of the Unit 1 and Unit 2 primary containment tendons as required by the current TS.

Thus, the proposed changes do 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 19 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, PSEG Nuclear LLC, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for Amendments: April 3, 2001.

Description of amendment request: The proposed amendment would revise the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, technical specifications (TSs) in accordance with Technical Specification Task Force (TSTF) item TSTF-258, Revision 4. This TSTF has been previously reviewed and approved by the NRC as generically applicable to nuclear plants with improved standard TSs, such as PBAPS. The proposed amendment revises TS Section 5.0, "Administrative Controls," to delete details of staffing requirements, eliminate specific details for working hour limits, clarify requirements for the Shift Technical Advisor position, add regulatory definitions for Senior Reactor Operators and Reactor Operators, revise the

Radioactive Effluents Control Program to be consistent with the intent of Title 10 of the Code of Federal Regulations (10 CFR) Part 20, delete periodic reporting requirements for main stream relief valve openings, and revise radiological control requirements for radiation areas to be consistent with those specified in 10 CFR 20.1601(c).

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 TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative in nature and do not impact the operation, physical configuration, or function of plant equipment or systems. The changes do not impact the initiators or assumptions of analyzed events, nor do they impact mitigation of accidents or transient events. Therefore, these proposed changes do not increase the probability of occurrence or consequences of an accident previously evaluated.

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 TS changes are administrative in nature and do not alter plant configuration, require that new equipment be installed, alter assumptions made about accidents previously evaluated, or impact the operation or function of plant equipment. The proposed changes do not introduce any new modes of plant operation or make any changes to system setpoints. Therefore, these proposed changes do not create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative in nature and do not involve physical changes to plant structures, systems, or components (SSCs), or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. The proposed changes do not involve a change to any safety limits, limiting safety system settings, limiting conditions for operation, or design parameters for any SSC. The proposed changes do not impact any safety analysis assumptions and do not involve a change in initial conditions, system response times, or other parameters affecting any accident analysis. Therefore, these changes do not involve any 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: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

FirstEnergy Nuclear Operating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: April 4, 2001.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) Section 1.7, Definitions—Reportable Events, and TS 6.6, Reportable Event Action, from the Davis-Besse Nuclear Power Station Operating License, and revise TS 6.5.3, Technical Review and Control—Activities, and TS Bases 4.0.3, Applicability. These changes are being proposed to delete TS requirements already required by Title 10 of the Code of Federal Regulations Part 50 (10 CFR 50), update the TS Bases to reflect recent changes made to 10 CFR 50.73, revise the approval authorizations for procedures, plant modifications, tests and experiments, and reflect recent changes made to 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to delete Technical Specification (TS) 1.7, Definitions—Reportable Event, and TS 6.6, Reportable Event Action, from the Davis-Besse Nuclear Power Station (DBNPS) Operating License; and revise TS Bases 4.0.3, Applicability. Reportable Events are addressed by 10 CFR 50.73 and it is not necessary for the TS to include items already required by federal regulation. The proposed changes to TS Bases 4.0.3 would make these Bases consistent with the recent revision to 10 CFR 50.73. The proposed changes to the TS Index reflect the deletion of TS 1.7 and TS 6.6, Reportable Event Action, and are administrative changes.

The proposed changes to TS 6.5.3, Technical Review and Control—Activities, provide for the approval of activities affecting nuclear safety by personnel authorized by procedure. These changes continue to implement the DBNPS Quality Assurance

Program commitments. Qualification requirements for individuals performing reviews of activities affecting nuclear safety are not affected. Accordingly, there is no increase in the probability of an accident.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The proposed changes do not alter any existing accident scenarios, or involve a modification or change in operation of any plant systems, structures, or components.

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative in-nature and do not reduce or adversely affect the capabilities of any plant structures, systems or components to perform their nuclear safety functions.

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 E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

**Indiana Michigan Power Company,
Docket Nos. 50-315 and 50-316, Donald
C. Cook Nuclear Plant, Units 1 and 2,
Berrien County, Michigan**

Date of amendment requests: May 15, 2001.

Description of amendment requests: The proposed amendments would replace the current Technical Specification (TS) requirement to establish containment integrity within 8 hours if less than the specified minimum complement of A.C. or D.C. busses and equipment is operable in Modes 5 and 6. The proposed TS would require immediate suspension of operations involving core alterations, positive reactivity changes, and movement of irradiated fuel assemblies, and immediately initiate actions to restore the required busses and equipment to operable status, and to immediately declare the associated required residual heat removal loop(s) inoperable. The current Action

requirement presents a scheduling and administrative burden during outages and extended shutdowns. In the addition, the proposed amendment would add options to the TS to allow containment penetration closure methods that are equivalent to those that are currently required during core alterations or movement of irradiated fuel in containment, and allow unisolation of some penetrations under administrative control. The additional options will allow flexibility in scheduling outage activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The determination that the criteria set forth in 10 CFR 50.92 are met for this amendment request is indicated below.

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Probability of Occurrence of an Accident Previously Evaluated

The proposed changes to Action statements for T/S 3/4.8.2.2 and T/S 3/4.8.2.4 will eliminate current compensatory requirements that can only mitigate the consequences of accidents. The current requirements will be replaced with requirements that include measures to reduce the likelihood of accidents and assist in responding to malfunctions. The proposed requirements to immediately suspend operations involving core alterations, positive reactivity changes, and movement of irradiated fuel assemblies provide assurance that the applicable accidents, fuel handling and shutdown dilution accidents, will not occur by requiring cessation of activities that may cause them. The proposed requirements to immediately initiate actions to restore the required busses and equipment to operable status and to immediately declare associated required RHR loop(s) inoperable provide assurance operators can take timely corrective action for malfunctions that may lead to a dilution accident, and will take appropriate corrective actions for RHR malfunctions. Therefore, there is no adverse effect on accident initiators or precursors.

The proposed change to the Applicability requirements for T/S 3/4.8.2.2 and T/S 3/4.8.2.4 expands the conditions under which the T/S are invoked. The proposed change will assure that the electrical power is available for mitigation of a fuel handling accident, regardless of the operational mode of the plant. The proposed change only involves accident mitigation capabilities and does not affect any accident initiators or precursors.

The proposed changes to the LCO for T/S 3/4.9.4 will provide additional options for assuring closure of containment penetrations during core alterations or movement of irradiated fuel in containment. Containment

closure provides only mitigation for the consequences of a fuel handling accident and does not affect the initiators or precursors of the accident.

The proposed change to the Surveillance requirements for T/S 3/4.9.4 allows the LCO to define the penetration status that is to be periodically verified. The effect of the proposed Surveillance change is bounded by the effect of the proposed LCO change as described above. Therefore, the proposed Surveillance change does not adversely affect any accident initiators or precursors.

Consequences of an Accident Previously Evaluated

The proposed changes to the Action requirements for T/S 3/4.8.2.2 and T/S 3/4.8.2.4 provide assurance that fuel handling and dilution accidents will not occur and that timely and appropriate responses can and will be taken for malfunctions, thereby reducing the likelihood that radioactive material will be released.

The proposed change to the Applicability requirements for Unit 1 T/S 3/4.8.2.2 and T/S 3/4.8.2.4 provides assurance that electrical power is available for mitigation of a fuel handling accident (FHA), regardless of the operational mode of the plant. Since the current Applicability requirement only provides this assurance in Modes 5 and 6, the proposed change will not increase the consequences of the accident.

The additional options provided by the proposed changes to the LCO for T/S 3/4.9.4 will mitigate the consequences of a fuel handling accident in containment as effectively as those specified by the current LCO. Additionally, the consequences of a FHA in containment determined by the accident analyses will not increase since the analyses do not credit mitigation by closure of containment penetrations.

The proposed change to the Surveillance requirements for T/S 3/4.9.4 only reflects the change proposed for the LCO. The effect of the proposed Surveillance change is bounded by the effect of the proposed LCO change as described above. Therefore, the proposed Surveillance change does not adversely affect the consequences of an accident.

The proposed changes to the Bases for the above identified T/S only provide explanatory information regarding the intent of the specifications and how they are to be implemented. The proposed Bases changes do not alter requirements of the associated T/S. Therefore, the effect of the Bases changes on accident initiators and precursors and on the consequences of an accident is bounded by the effect of the associated Action or LCO change as described above. The format changes do not alter any requirements.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to Action statements for T/S 3/4.8.2.2 and T/S 3/4.8.2.4 to eliminate requirements to establish containment integrity does not affect existing, or create new, accident initiators or precursors because only existing passive

accident mitigation features are involved. Implementation of the proposed new requirements to suspend operations involving core alterations, positive reactivity changes, and movement of irradiated fuel assemblies does not affect existing, or create new, accident initiators or precursors because these activities do not require the operation of existing equipment in a new or different manner, or involve the operation of new or different equipment. Implementation of the proposed new requirements to initiate actions to restore the required busses and equipment to operable status and to declare associated required RHR loop(s) inoperable does not affect or create new accident initiators or precursors because these activities are currently required by existing procedures and other T/S.

The proposed change to the Applicability requirements for T/S 3/4.8.2.2 and T/S 3/4.8.2.4 does not affect or create new accident initiators or precursors because it only expands the conditions under which the T/S are invoked.

The proposed changes to the LCO for T/S 3/4.9.4 to provide additional options for assuring closure of containment penetrations during core alterations or movement of irradiated fuel in containment does not affect or create new accident initiators or precursors because the changes involve only containment penetrations which are passive accident mitigation measures.

The proposed change to the Surveillance requirements for T/S 3/4.9.4 allows the LCO to define the penetration status that is to be periodically verified. The effect of the proposed Surveillance change is bounded by the effect of the proposed LCO change as described above. Therefore, the proposed Surveillance change does not affect or create new accident initiators or precursors.

The proposed changes to the Bases for the above identified T/S only provide explanatory information regarding the intent of the specifications and how they are to be implemented. The proposed Bases changes do not alter requirements of the associated T/S. Therefore, the effect of the Bases changes on accident initiators or precursors is bounded by the effect of the associated Action or LCO change as described above. The format changes do not alter any requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margins of safety pertinent to the proposed changes to Action statements for T/S 3/4.8.2.2 and T/S 3/4.8.2.4 are those associated with a FHA, a shutdown dilution event, and a RHR system malfunction. The applicable margin of safety for a FHA is that defined by the off site dose analyses for the accident. Since the analyses do not credit mitigation by the containment, the margin of safety is unaffected. The applicable margin of safety for a shutdown dilution event is the time available for operators to take action to preclude violating shutdown margin requirements. The proposed new Action requirements to immediately suspend

operations involving positive reactivity changes, and to immediately initiate actions to restore the required electrical busses and equipment to operable status, would not decrease the margin of safety for a shutdown dilution event. The applicable margin of safety for a RHR system malfunction is the time available for operators to take action to restore decay heat removal capabilities. The proposed new actions requirements to immediately initiate actions to restore the required electrical busses and equipment to operable status and to immediately declare associated required RHR loop(s) inoperable would not decrease the margin of safety for a RHR system malfunction.

The margin of safety pertinent to the proposed changes to LCO for T/S 3/4.9.4 is that associated with a FHA. The applicable margin of safety for a FHA is that defined by the off site dose analyses for the accident. Since the analyses do not credit mitigation by the containment, the margin of safety is unaffected.

There is no margin of safety pertinent to the proposed changes to associated Applicability requirements, Surveillance requirements, and Bases for the above identified T/S. The format changes do not alter any requirements.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power Company (I&M)] has concluded that the proposed amendment involves no significant hazards consideration.

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 requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: Claudia M. Craig.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: February 28, 2001.

Description of amendment request: The proposed amendment would change the Technical Specification (TS) to incorporate laboratory testing recommendations of Generic Letter 99-02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," June 3, 1999.

The proposed charcoal testing changes and explicit reference to American Society for Testing and Materials (ASTM) D3803-1989 nuclear-grade activated charcoal test protocol do not affect engineered safety feature (ESF) ventilation system operation or performance, reliability, actuation

setpoints, or accident mitigation capabilities. The proposed changes also do not affect the operation and performance of any other equipment important to safety at Cooper Nuclear Station (CNS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed charcoal testing changes and explicit reference to ASTM D3803-1989 nuclear-grade activated charcoal test protocol do not affect ESF ventilation system operation or performance, reliability, actuation setpoints, or accident mitigation capabilities. The proposed changes also do not affect the operation and performance of any other equipment important to safety at CNS. ASTM D3803-1989 is a more accurate and demanding test which ensures that the charcoal filter efficiencies assumed in the CNS accident dose analysis are maintained. The proposed changes involve ESF ventilation system charcoal testing only and do not affect accident initiators. Therefore the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the Updated Safety Analysis Report (USAR), as revised by the Design Basis Accident (DBA) radiological assessment calculational methodology revisions submitted to the U. S. Nuclear Regulatory Commission (NRC) under Reference 2.

2. Does not create the possibility for a new or different kind of accident from any accident previously evaluated.

The charcoal testing changes, and explicit reference to ASTM D3803-1989 nuclear-grade activated charcoal test protocol, do not affect ESF ventilation system operation or performance, or the operation and performance of any other equipment important to safety at CNS. The proposed changes clarify and explicitly identify the testing of the ESF ventilation system charcoal samples. No new or different accident scenarios, transient precursors, failure mechanisms, plant operating modes, or limiting single failures are introduced as a result of these changes. Therefore, the possibility of a new or different kind of accident from that previously evaluated in the USAR, as revised by the DBA radiological assessment calculational methodology revision submitted to the NRC under Reference 2, is not created by this change.

3. Does not create a significant reduction in the margin of safety.

The required performance of the ESF ventilation systems following a DBA is not impacted by utilizing a more demanding protocol for charcoal testing. Thus, the margin of safety assumed in the CNS accident analysis, as revised by the DBA radiological assessment calculational methodology revision submitted to the NRC

under Reference 2, is maintained. Revising the TS to clarify charcoal testing methodology and explicitly referencing the charcoal absorber testing being performed does not affect ESF ventilation system performance or operation, or the operation and performance of any other equipment important to safety at CNS. Therefore, these changes do 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: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499.

NRC Section Chief: Robert A. Gramm.

**Nuclear Management Company, LLC,
Docket No. 50-305, Kewaunee Nuclear
Power Plant, Kewaunee County,
Wisconsin**

Date of amendment request: May 25, 2001.

Description of amendment request: The proposed amendment would change the Kewaunee Nuclear Power Plant Technical Specification 4.2 to remove the steam generator tube alternate repair criteria, because these alternate repair criteria, as approved, are not compatible with the replacement steam generators scheduled to be installed in the fall of 2001. In addition, the proposed amendment would make administrative changes revising the phrasing of text without altering technical content.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the technical specification within limits of the bounding accident analyses cannot change the probability of an accident previously evaluated or the currently licensed radiological consequence predicted by the analyses of record. Removal of an allowance for alternate repair criteria defaults to the more conservative repair criteria of plugging degraded tubes. Thus, nothing in this proposal will cause an increase in the probability or consequence of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of alternate repair criteria from [Technical Specification] TS leaves in its

place the more conservative, more restrictive criteria for plugging degraded steam generator tubes. Plugging degraded steam generator tubes is a currently licensed repair methodology for [Kewaunee Nuclear Power Plant] KNPP, is consistent with current plant design bases, and does not adversely affect any fission product barrier, nor does it alter the safety function of safety significant systems, structures and components or their roles in accident prevention or mitigation. Currently, licensed design basis accident and transient analyses of record bound the effect of plugging tubes. Thus, this proposal does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety.

The proposed change does not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operation are determined. It places TS 4.2 in a more conservative configuration than that previously approved for use by the [Nuclear Regulatory Commission] NRC. It conforms to plant design bases, is consistent with current safety analyses, and limits actual plant operation within analyzed and licensed boundaries. Removal of reference to use of alternate repair criteria from TS 4.2 and its Bases leaves existing and more conservative criteria in place. Thus, changes proposed by this request 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: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497.

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: May 18, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete a redundant requirement for valving out a control rod drive, revise control rod accumulator operability requirements, add the option to hydraulically isolate control rod drives, and correct an inconsistency in core monitoring describing when source range monitors are required to be operable.

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.

Deleting the paragraph which specifies one specific pattern of control rod inoperability does not degrade the safe operation of the plant as inoperable control rods must still be analyzed to meet shutdown requirements.

Revising the operability requirements for control rod accumulators from "a nine-rod square array" to: "provided that no other control rod within two control rod cells in any direction has a:" is a clarification. No technical requirements are changed, therefore, the probability or consequences of previous evaluations of accidents have not been affected. This change will assure conformance with the Banked Position Withdrawal Sequence (BPWS) analysis documented in General Electric (GE) report NEDO-21231. No changes in plant equipment will occur.

The proposed change adds the option to hydraulically isolate the drive to prevent inadvertent drive withdrawal and not consider the accumulator inoperable. This provides a method of isolating a control rod drive with an inoperable accumulator in addition to electrical isolation when the control rod is fully inserted. A statement on when an inoperable accumulator is allowed is being relocated so that it also applies during refueling. Since in refueling, the plant is already shutdown, the accumulators are not required. As such, this change does not increase the probability or consequences of an accident previously evaluated.

A qualifier is being added that source range monitors (SRMs) only need to be functionally tested when there are more than two fuel assemblies present in any reactor quadrant. Criticality is not considered possible with two or less fuel bundles in each quadrant and adjacent to an SRM. Since this change will only allow bypassing SRM functional checks when two fuel bundles or less are present in each quadrant, this change cannot result in an inadvertent criticality. This proposed change would reduce surveillance testing to that time when the instrument is required to be operable and provide consistency between specifications.

The proposed Technical Specification changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. The proposed amendment does not introduce new failure modes. Based on the above justification, 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.

This change does not degrade the safe operation of the plant as inoperable control rods must still be analyzed to meet existing shutdown reactivity requirements. It will assure conformance with the Banked Position Withdrawal Sequence analysis documented in General Electric report NEDO-21231. No changes in plant equipment will occur.

Adding hydraulic isolation will not create the possibility of a new or different kind of

accident from any accident previously analyzed.

Since this change will only allow bypassing SRM functional checks with two fuel bundles or less present in each quadrant, this change cannot result in an inadvertent criticality.

The proposed Technical Specification changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. The proposed amendment does not introduce new failure modes. Based on the above justification, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Revising the control rod operability requirement does not degrade the safe operation of the plant.

Hydraulic isolation provides a method of isolating the drive in addition to the current electrical isolation. Both methods disarm the control rod drive and preclude the possibility of inadvertent drive withdrawal during subsequent operations. Adding applicability during refueling has little impact on safety as the drive is required to be fully inserted prior to isolation. As such, they do not involve a significant reduction in the margin of safety.

Since this change will only allow bypassing SRM functional checks with two fuel bundles or less present in each quadrant, this change cannot result in an inadvertent criticality.

Based on the above justification, the proposed Technical Specification change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: May 4, 2001.

Description of amendment requests: The proposed amendments delete requirements from the Technical Specifications (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG-0737, "Clarification of TMI [Three Mile

Island] Action Plan Requirements," and Regulatory Guide 1.97,

"Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident."

Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated May 4, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI-2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI-2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI-2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact

to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI-2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PPL Susquehanna, LLC, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: August 8, 2000.

Description of amendment request: The proposed change would add a new condition and associated required actions to Technical Specification (TS) 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)." The new condition and actions address the unique containment isolation features of the hydrogen-oxygen (H_2O_2) analyzer penetrations. The containment isolation barriers for the H_2O_2 analyzer penetrations consist of two PCIVs in series and a closed piping system outside primary containment. Editorial changes necessary to accommodate the addition of the proposed requirements were also proposed.

The licensee also requested approval for a proposed exception to the Susquehanna Steam Electric Station Final Safety Analysis Report commitments regarding conformance of the design of closed systems to the criteria of Section 6.2.4 of NUREG-75/087, Revision 1, 1975 (Standard Review Plan). The exception is related to the boundary valves between the H_2O_2 analyzer and the post-accident sampling system (PASS) and is necessary to permit the use of the H_2O_2 analyzer piping system outside primary containment as a redundant containment isolation barrier.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change adds a condition to LCO 3.6.1.3 to address the unique design of the H_2O_2 analyzer penetration. The H_2O_2 analyzer penetration isolation design requires that both PCIVs and the closed system be operable in order to support the single failure criteria and containment integrity. As part of the proposed change, an exemption [exception] to NUREG-75/087 guidance on closed systems for having all closed system boundary valves to be powered from a Class 1E power source is being requested. The proposed changes to Technical Specifications and Technical Specification Bases have no impact upon the safety functions of the H_2O_2 Analyzer PCIVs and closed system. The safety functions of these components are to maintain primary containment integrity by limiting leakage following an accident to within that assumed in the DBA [design-basis accident] LOCA [loss of coolant accident] Dose Analysis and to open to permit use of the H_2O_2 Analyzer systems post accident. The H_2O_2 Analyzer PCIVs and closed system will be maintained and leak rate tested in accordance with the Leakage Rate Test Program, thereby assuring that leakage from these components is maintained within the required limits. The design of these components is such that they meet the applicable design requirements with the exception of the PASS closed system boundary valves discussed above. However, the potential for a consequential failure of these valves has been evaluated and determined to be not credible. Thus, the proposed changes have no impact upon the H_2O_2 Analyzer PCIVs and closed system to perform their containment isolation function. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed change to the Technical Specifications does not impact upon the safety function of the H_2O_2 Analyzer PCIVs and closed system. The safety functions of these components are to maintain primary containment integrity by limiting leakage following an accident to within that assumed in the DBA LOCA Dose Analysis and to open to permit use of the H_2O_2 Analyzer systems post accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the safety function of any plant system or component, and does not have any impact on

plant operation. The proposed change does not involve a significant reduction in the margin of safety as currently defined in the bases of the applicable Technical Specification section. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, Inc., 2 North Ninth St., GENTW3, Allentown, PA 18101-1179.

NRC Acting Section Chief: Richard Correia.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: May 21, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications to eliminate the response time testing requirements for the reactor protector system (RPS) signals of reactor high steam dome pressure and reactor vessel water level low.

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:

Southern Nuclear Operating Company (SNC) has reviewed the proposed Technical Specifications changes described above and determined they do not involve a significant hazards consideration based on the following:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of the proposed changes is to eliminate response time testing requirements for select components in the RPS. However, because of the continued application of other existing Technical Specifications requirements, such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response time of the RPS will be maintained within the acceptance limits assumed in plant safety analyses. This will assure successful mitigation of an initiating event. The proposed Technical Specifications changes do not affect the capability of the associated systems to perform their intended function

within their required response time. The BWR Owners' Group (BWROG) has documented an evaluation in NEDO-32291, Supplement 1, "System Analyses for the Elimination of Selected Response Time Testing Requirements", which was submitted to the NRC for review and approval as a Topical Report in December 1997. The BWROG submitted additional information to the staff in Addendum 1 to NEDO 32291, Supplement 1 in November, 1998. Subsequently, the NRC approved the Topical Report by a Safety Evaluation Report (SER) issued in June, 1999.

This evaluation demonstrates that response time testing is redundant to the other Technical Specifications requirements listed in the proceeding paragraph. These other tests are sufficient to identify failure modes or degradation in instrument response time and ensure operation of the associated systems within acceptance limits. Furthermore, Addendum 1 to NEDO 32291, Supplement 1 clearly demonstrates defense-in-depth, such that from a realistic basis, there is no safety significance even if instrumentation loop response times are significantly longer than the loop bounding response times.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed Technical Specifications changes do not affect the capability of the RPS to perform its intended function within the acceptance limits assumed in plant safety analyses. Periodic surveillance of these RPS instrument loop components will continue and may be used to detect degradation that could cause the response time characteristic to exceed the BRT [bouncing response time] allowance.

3. The proposed changes do not involve a significant reduction in the margin of safety. The current Technical Specifications response times are based on the maximum allowable values assumed in the plant safety analyses, which conservatively establish the margin of safety. As described above, the proposed Technical Specifications changes do not affect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analyses. Plant and system responses to an initiating event will remain in compliance with the assumptions of the safety analyses; therefore, the margin of safety is not affected.

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: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: May 23, 2001.

Description of amendment request:

The proposed amendment would change the Safety Limit Minimum Critical Power Ratios (SLMCPR) in Technical Specification (TS) 2.1.1.2 to reflect the results of a cycle-specific calculation.

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 Technical Specification changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised SLMCPRs for Plant Hatch Unit 2 Cycle 17 for incorporation into the TS, and their use to determine cycle-specific thermal limits, have been performed using NRC-approved methods and procedures. The procedures incorporate cycle-specific parameters and reduced power distribution uncertainties in the determination of the value for SLMCPRs. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient. The basis of the MCPR Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

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 result only from a cycle-specific application of NRC-approved methods to the Unit 2 Cycle 17 core reload. These changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS bases will remain the same. Cycle-specific SLMCPRs are calculated using NRC-approved methods and procedures which are in accordance with the current fuel design and licensing criteria. The SLMCPRs remain high enough to ensure that greater than

99.9% of all fuel rods in the core are expected to avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes 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: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: April 27, 2001.

Description of amendment request:

The proposed amendments would revise Technical Specification 3.3.6, "Containment Ventilation Isolation Instrumentation," to relax the slave relay test frequency from every 92 days to every 18 months.

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 results of WCAP-13878 demonstrate that slave relays are highly reliable. WCAP-13878 also provides guidance to assure that slave relays remain highly reliable. The aging assessment concludes that the age/temperature-related degradation of all ND [normally deenergized] relays, and NE [normally energized] relays produced after 1992, is sufficiently slow such that a refueling frequency surveillance interval will not significantly increase the probability of slave relay failures. Finally, the evaluation of the auxiliary relays actuated during slave relay testing has concluded that based on the tests of the auxiliary relays performed during other equipment testing, reasonable assurance is provided that failures will be identified if the associated slave relays are tested on a refueling frequency.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an 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 do not alter the performance of the CVI [containment

ventilation isolation] systems assumed in the plant safety analysis. Changing the interval for periodically verifying CVI slave relays (assuring equipment operability) will not create any new accident initiators or scenarios.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for VEGP [Vogtle Electric Generating Plant].

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not affect the total CVI response assumed in the safety analysis since the reliability of the slave relays will not be significantly affected by the decreased surveillance frequency.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above safety evaluation, VEGP concludes that the changes proposed by this submittal satisfy the no significant hazards consideration standards of 10 CFR 50.92(c) and, accordingly, a no significant hazards finding 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: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308-2216.

NRC Section Chief: Richard L. Emch, Jr.

**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 change will delete Condition 2.G, "Reporting to the Commission," and Technical Specification 6.6.1.a, "Reportable Event 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:

Pursuant to 10 CFR 50.92, it has been determined that this request involves no significant hazards considerations. The determination of no significant hazards was made by applying the Nuclear Regulatory Commission established standards contained in 10 CFR 50.92. These standards assure that any changes to the operation of South Texas Project in accordance with this request consider the following:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, this request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves administrative changes only.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, these proposed changes will not impact the margin of safety.

Conclusion: Based upon the analysis provided herein, the proposed amendments will not increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a reduction in a margin of safety. Therefore, the proposed amendments meet the requirements of 10 CFR 50.92 and do not involve a significant hazards consideration.

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.

**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: February 12, 2001.

Description of amendment request:
The proposed amendment will revise Technical Specifications surveillance requirement 4.4.6.2.2.e, which refers to American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code Section XI, paragraph IWB-3427(b) as a requirement for demonstrating that each Reactor Coolant System Pressure Isolation Valve specified in TS Table 3.4-1 is operable. Part 10 of the ASME Operations and Maintenance (OM) Standards, OMA-1988, is currently the applicable code for these valves and does not have these requirements.

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:

Pursuant to 10 CFR 50.91, this analysis provides a determination that the proposed change to the Technical Specifications described previously does not involve any significant hazards consideration as defined in 10 CFR 50.92.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This Technical Specification change only affects trending of valve leakage rate test results to anticipate the expected leakage rate performance of Reactor Coolant System pressure isolation valves. Redundant pressure isolation valves are included in the plant to ensure continued protection of lower pressure systems from exposure to the higher pressure of the Reactor Coolant System in the event that excessive leakage develops in an isolation valve. In addition, leakage rate tests of Reactor Coolant System pressure isolation valves will continue to be performed with no change in the accepted amount of leakage or frequency. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The limiting event associated with these valves is a Loss of Coolant Accident. This has already been reviewed as part of the South Texas Project Updated Final Safety Analysis Report. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change only removes a requirement for trending of pressure isolation valve leakage rates. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There is no change in the design of the plant associated with this proposed license

amendment. The only impact of this change is in the prediction of when a particular pressure isolation valve may have a leakage rate higher than what is allowed. Adverse test results will be addressed under the corrective action program and by application of the Maintenance Rule. Engineering analysis of test results can take into account special circumstances associated with a test that would affect the conclusions.

Leakage rate test measurements of South Texas Project Reactor Coolant System isolation valves will continue to be taken pursuant to the surveillance requirements of Technical Specification 4.4.6.2.2, which is consistent with the requirements of code OMa-1988, paragraph 4.2.2.3.e for analysis of leakage rates. Code OMa-1988, paragraph 6.3, requires records of tests, including analysis of deviations in test values. 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 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.

**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: February 28, 2001.

Description of amendment request: The proposed amendment will revise the Technical Specifications (TS) to eliminate periodic response time testing requirements on selected sensors and selected protection channels, and will modify TS Section 1.0 Definitions for "ENGINEERED SAFETY FEATURE (ESF) RESPONSE TIME" and "REACTOR TRIP SYSTEM (RTS) RESPONSE TIME" to provide for verification of response time for selected components. Surveillances 4.3.1.2 and 4.3.2.2 will be modified consistent with the new definitions. The associated Bases will be revised.

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:

Pursuant to 10 CFR 50.92, it has been determined that this request involves no significant hazards consideration. The determination of no significant hazards was made by applying the Nuclear Regulatory Commission established standards contained in 10 CFR 50.92. These standards assure that

any changes to the operation of South Texas Project in accordance with this request consider the following:

(1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change to the Technical Specifications does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS [Reactor Trip System] and ESFAS [Engineered Safety Features Actuation System] instrumentation is being used; the time response allocations/modeling assumptions in the Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the SAR [Safety Analysis Report]. Therefore, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated.

(2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This change does not alter the performance of the pressure and differential pressure transmitters and switches, Process Protection racks, Nuclear Instrumentation, and Logic Systems used in the plant protection systems. All sensors, Process Protection racks, Nuclear Instrumentation, and Logic Systems will still have response time verified by test before placing the equipment into operational service and after any maintenance that could affect the response time. Changing the method of periodically verifying instrument response times for certain equipment (assuring equipment operability) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the equipment response time characteristics. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Will the change involve a significant reduction in a margin of safety?

Response: No.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors and for Process Protection racks, Nuclear Instrumentation, and Logic Systems is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response time is within that assumed in the safety analysis. Based on the above, it is concluded that the proposed license amendment request does not result in a reduction in margin of safety.

Conclusion: Based on the preceding analysis, it is concluded that elimination of periodic equipment response time testing is acceptable and the proposed license amendment does not involve a Significant Hazards Consideration as defined in 10 CFR 50.92.

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.

**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. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

**AmerGen Energy Company, LLC,
Docket No. 50-461, Clinton Power
Station, Unit 1, DeWitt County, Illinois**

Date of application for amendment: March 1, 2001.

Brief description of amendment: The amendment increases the reactor core isolation cooling system surveillance test upper pressure limit.

Date of issuance: May 31, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 139.

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 4, 2001 (66 FR 17964).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2001.

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-603329).

Brief description of amendment: The amendment relocates Technical Specification Figure 3.6.4.1-1, "Secondary Containment Drawdown Time for 1500 cfm Boundary Leakage" to plant procedures.

Date of issuance: June 1, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 140.

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 June 1, 2001.

No significant hazards consideration comments received: No.

**Dominion Nuclear Connecticut, Inc.,
Docket No. 50-336, Millstone Nuclear
Power Station, Unit No. 2, New London
County, Connecticut**

Date of application for amendment: December 21, 2000.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.11 to allow plant operation to continue if the temperature of the Ultimate Heat Sink (UHS) exceeds the TS limit of 75 °F provided the water temperature, averaged over the previous 24-hour period, is at or below 75 °F. This operational flexibility only applies if the UHS temperature is between 75 °F and 77 °F. The action time requirements if the UHS temperature exceeds 77 °F, or if the 24-hour averaged value exceeds 75 °F still apply. An associated footnote that is no longer applicable was deleted, and the associated TS Bases were modified to reflect these changes.

Date of issuance: May 31, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 257.

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 18, 2001 (66 FR 20007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 2001.

No significant hazards consideration comments received: No.

**Entergy Operations, Inc., Docket No.
50-368, Arkansas Nuclear One, Unit
No. 2, Pope County, Arkansas**

Date of application for amendment: February 6, 2001, as supplemented by letter dated May 1, 2001.

Brief description of amendment: The amendment revised the Technical Specifications associated with the reactor coolant system leakage detection systems, to make them consistent with the requirements in NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants."

Date of issuance: May 29, 2001.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 231.

Facility Operating License No. NPF-6: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 7, 2001 (66 FR 13803).

The May 1, 2001, supplemental letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the

staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 2001.

No significant hazards consideration comments received: No.

**Entergy Operations, Inc., System
Energy Resources, Inc., South
Mississippi Electric Power Association,
and Entergy Mississippi, Inc., Docket
No. 50-416, Grand Gulf Nuclear
Station, Unit 1, Claiborne County,
Mississippi**

Date of application for amendment: January 24, 2000.

Brief description of amendment: Entergy Operations, Inc. requests revisions to the Grand Gulf Nuclear Station Technical Specifications which specify the minimum useable fuel oil inventories to be maintained in the Division 1, 2, and 3 Diesel Generator Fuel Oil Storage Tanks.

Date of issuance: May 24, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 147.

Facility Operating License No. NPF-29: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 22, 2000 (65 FR 15381).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 2001.

No significant hazards consideration comments received: No.

**Exelon Generation Company, LLC,
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: November 7, 2000 as supplemented by letter dated March 23, 2001.

Brief description of amendments: The amendments would revise the technical specifications (TS) to extend the TS surveillance test interval (STI) from a 92-day STI to an 18-month STI, for the solid state protection system (SSPS) slave relay types that meet the acceptance criteria for the reliability assessments performed in accordance with the methodology described in the NRC approved Westinghouse Electric Corporation Topical Reports.

Date of issuance: May 31, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 121, 121, 115, and 115.

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 21, 2001 (66 FR 11053).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: October 25, 2000.

Brief description of amendments: Revised the Action Statements associated with Technical Specification (TS) Table 3.3.7.5-1, "Accident Monitoring Instrumentation," concerning the Drywell Hydrogen/Oxygen (H₂/O₂) Concentration Analyzers, and the associated TS Bases.

Date of issuance: As of date of issuance and shall be implemented within 30 days.

Effective date: May 24, 2001.

Amendment Nos.: 151 and 115.

Facility Operating License Nos. NPF-39 and NPF-85: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 27, 2000 (65 FR 81929).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 24, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: August 7, 2000, as supplemented February 6, 2001.

Brief description of amendment: This amendment will change Technical Specification (TS) Section Bases 3/4.3.1 and 3/4.3.2 to clarify the actions that must be performed when Steam and Feedwater Rupture Control System (SFRCS) components and SFRCS-actuated components are inoperable. Specifically, the changes will provide guidance on which TS actions are applicable for SFRCS-actuated components. The changes will also add

a new TS 3/4.7.1.8 which would provide appropriate requirements for the Main Feedwater Control Valves and the Startup Feedwater Control Valves. Additionally, the changes add TS 3/4.7.1.9 which will provide requirements for the Turbine Stop Valves. The changes are consistent with the intent of NUREG-1430, "Standard Technical Specifications—Babcock and Wilcox Plants," Revision 1, April 1995.

Date of issuance: May 29, 2001.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 246.

Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 1, 2000 (65 FR 65342).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: April 6, 2001.

Brief description of amendment: The amendment revises the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TSs) Section 6.2, "Organization," and Section 6.13, "High Radiation Area" to reflect the title change from Shift Supervisor to Shift Manager.

Date of issuance: June 1, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 154.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 2, 2001 (66 FR 22031).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: October 30, 2000.

Brief description of amendments: The amendments approve the insertion of breakaway ceramic pins into the latches of eight double-leaf doors in the auxiliary building special ventilation zone in order to restrain the doors and reduce the frequency of open-door position alarms. The ceramic latch pins are designed to break at forces well below the differential pressure that would be generated in the auxiliary building as a result of a postulated high-energy line break (HELB), and thereby allow the doors to swing open and create a relief path from the auxiliary building. Therefore, the modification provides the restraints needed to reduce the frequency of open-door position alarms; but without impeding the doors' steam relief function that was assumed in the design-basis HELB analysis.

Date of issuance: May 30, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 157 and 148.

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revise the Updated Final Safety Analysis Report.

Date of initial notice in Federal Register: March 21, 2001 (66 FR 15928).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 2001.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 16, 2001 (ULNRC-04390).

Brief description of amendment: The amendment revises Technical Specification 5.2.1.c to replace the title "Vice President and Chief Nuclear Officer" with "Senior Vice President and Chief Nuclear Officer."

Date of issuance: May 30, 2001.

Effective date: May 30, 2001, to be implemented within 60 days from the date of issuance.

Amendment No.: 145.

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 4, 2001 (66 FR 17971)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 2001.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50-280 and 50-281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: December 12, 2000, as supplemented by letters dated January 8, and February 22, 2001.

Brief Description of amendments: The amendments revise Technical Specification Section 3.17 and associated Bases. The proposed changes will accommodate a vacuum-assisted fill technique for backfilling isolated reactor coolant system (RCS) loops from the active volume of the RCS.

Date of issuance: May 22, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 226 and 226.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments change the Technical Specifications.

Date of initial notice in Federal Register: March 21, 2001 (66 FR 15932). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 2001.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland this 5th day of June 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-14755 Filed 6-11-01; 8:45 am]

BILLING CODE 7590-01-U

NUCLEAR REGULATORY COMMISSION

Procedures for Providing Security Support for NRC Public Meetings/Hearings

The Nuclear Regulatory Commission (NRC) is revising its procedures for providing security support for all public NRC forums. This revision will provide a single set of procedures that will ensure consistency and uniformity in providing security support for these meetings. These procedures will be used by NRC headquarters and regional staff and are applicable to public hearings/meetings held at NRC headquarters buildings, other NRC space in the Washington, D.C. area, and/or regional locations to include space leased for the occasion. This **Federal Register** notice supersedes the previous **Federal Register** notice, entitled "Security Support for NRC Meetings/Hearings," that was published on November 1, 1991 (56 FR 19451).

In order to balance the orderly conduct of government business with the right of free speech, the following procedures regarding attendance at NRC public meetings and hearings have been established:

Visitors (other than properly identified Congressional, press, and government personnel) may be subject to personnel screening, such as passing through metal detectors and inspecting visitors' briefcases, packages, etc.

Signs, banners, posters and displays will be prohibited from all NRC adjudicatory proceedings (Commission and Atomic Safety and Licensing Board Panel hearings) because they are disruptive to the conduct of the adjudicatory process. Signs, banners, posters and displays not larger than 18"x18" will be permitted at all other NRC proceedings, but cannot be waved, held over one's head or generally moved about while in the meeting room. Signs, banners, posters and displays larger than 18"x18" will not be permitted in the meeting room because they are disruptive both to the participants and the audience. Additionally, signs, banners, posters and displays affixed to any sticks, poles or other similar devices will not be permitted in the meeting room.

The presiding official will note, on the record, any disruptive behavior and warn the person to cease the behavior. If the person does not cease the behavior, the presiding official may call a brief recess to restore order and/or ask one of the security personnel on hand to remove the person.

For Further Information Contact:

Calvin O. Byrd, Chief, Physical Security Branch, Division of Facilities and Security, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-7402.

Dated at Rockville, Maryland, this 6th day of June 2001.

For the Nuclear Regulatory Commission.

Thomas O. Martin,

Director, Division of Facilities and Security, Office of Administration.

[FR Doc. 01-14752 Filed 6-11-01; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: SF 2802 and SF 2802B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has

submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. SF 2802, Application for Refund of Retirement Deductions (Civil Service Retirement System), is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement contributions. SF 2802B, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

Approximately 32,100 SF 2802 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 24,075 hours. Approximately 28,890 SF 2802B forms are processed annually. We estimate it takes approximately 15 minutes to complete this form. The annual burden is 7,223 hours. The total annual burden is 31,298 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or email to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before July 12, 2001.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415-3540, and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination— Contact: Donna G. Lease, Team Leader, Budget and Administrative Services Division, Forms Analysis and Design, (202) 606-0623.

U.S. Office of Personnel Management.

Steven R. Cohen,

Acting Director.

[FR Doc. 01-14711 Filed 6-11-01; 8:45 am]

BILLING CODE 6325-50-P

SECURITIES AND EXCHANGE COMMISSION**[Docket No. IC-24997; File No. 812-12326]****Met Investors Series Trust, et al.**

June 5, 2001.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").**ACTION:** Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 ("1940 Act" or "Act") for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

Summary of Application: Applicants seek an order to permit shares of any current or future series of Met Investors Series Trust (the "Trust") and shares of any other investment company that is designed to fund insurance products and for which Met Investors Advisory Corp. ("Met Advisory" or the "Manager") or any of its affiliates may in the future serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Trust and such other investment companies collectively, the "Funds") to be sold to and held by: (a) variable annuity and variable life insurance separate accounts ("Participating Separate Accounts") of both affiliated qualified pension and retirement plans outside the separate account context ("Plans"); and (c) the investment adviser of any Fund or any of the investment adviser's affiliates.

Applicants: The Trust and Met Advisory.

Filing Date: The Application was filed on November 21, 2000, and amended on March 5, 2001 and June 4, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 2001, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Elizabeth M.

Forget, President, Met Investors Series Trust, 610 Newport Center Drive, Suite 1400, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT:

Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 [tel. (202) 942-8090].

Applicants' Representations

1. The Trust was organized on July 27, 2000 as a Delaware business trust and is registered with the SEC as an open-end investment company. The Trust consists of multiple separately managed investment portfolios ("Portfolios") and may in the future issue shares of additional Portfolios.

2. Met Advisory serves as Manager of the Trust. Met Advisory is a subsidiary of Met Life Investors Group, Inc. (formerly known as Security First Group, Inc.) which in turn is an indirect wholly-owned subsidiary of Metropolitan Life Insurance Company. The Manager is responsible for providing investment management and certain administrative services to the Trust and in the exercise of such responsibility selects other affiliated and unaffiliated registered investment advisers ("Advisers") for each of the Portfolios and monitors the Advisers' investment programs and results, reviews brokerage matters, oversees compliance matters and supervises the provision of services by third parties as the Trust's custodian and administrator. The Manager will enter into investment advisory agreements with the Advisers that will be primarily responsible for the day-to-day investment programs of each Portfolio. Met Advisory is registered under the Investment Advisers Act of 1940.

3. The Funds (including the Trust) propose to offer shares of one or more of their series to insurance company separate accounts that fund variable annuity and variable life insurance to insurance company separate accounts that fund variable annuity and variable life insurance contracts (the "Contracts") established by Participating Insurance Companies including Security First Life Insurance Company (which is in the process of changing its name to MetLife Investors USA Insurance Company) and certain of its affiliates. These separate accounts

may be registered as investment companies under the Act or exempt from registration under the Act. Each Participating Insurance Company will enter into a fund participation agreement with the Funds in which the Participating Separate Account invests.

4. The Funds also will offer shares of each series directly to Plans outside of the separate account context. The Plans may choose from one of several series of any of the Funds as the sole investment under the Plan or as one of several investments. Plan participants may or may not be given the right to select among Funds, depending on the Plans. Plan participants include not only those participants of qualified pension or retirement plans as set forth in Treasury Regulation § 1.817-5(f)(3)(iii) and Revenue Ruling 94-62, but also include the holders of annuity contracts described in Section 403(b) of the Code, including Section 403(b)(7); holders of individual retirement accounts described in Section 408(b) of the Code; and holders of any other trust, account, contract or annuity that is determined to be within the scope of Treasury Regulation § 1.817-5(f)(3)(iii).

5. In addition, shares of a Fund may be offered to the Manager, an Adviser, or any of their affiliates for purposes of providing necessary capital required by Section 14(a) of the 1940 Act or for other investment purposes in compliance with Treasury Regulation 1.817-5(f)(3)(ii). The return on shares of a Fund purchased by the Manager, an Adviser, or their affiliates will be computed in the same manner as for shares held by a separate account. Any shares of a Fund purchased by such persons will be automatically redeemed if and when their investment advisory agreement with a Fund terminates, to the extent required to comply with applicable Treasury Regulations.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e-2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The relief provided by Rule 6e-2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e-2(b)(15) are available only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a

common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management investment company to fund the variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies. The relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e-2(b)(15) precludes mixed funding as well as shared funding.

2. Applicants state that because the relief under Rule 6e-2(b)(15) is available only where shares are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds also are to be sold to Plans, the Manager, an Adviser or any of their affiliates.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e-3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the Act. The exemptions granted to a separate account by Rule 6e-3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Thus, Rule 6e-3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that because the relief under Rule 6e-3(T) is available only where shares are offered exclusively to separate accounts, additional relief is necessary if shares of the Funds also are to be sold to Plans,

the Manager, an Adviser or any of their affiliates. Applicants assert that the relief granted by paragraph (b)(15) of Rules 6e-2 and 6e-3(T) should not be affected by the proposed sale of Fund shares to Plans, the Manager, an Adviser or any of their affiliates. Applicants therefore request relief in order to have the Participating Insurance Companies enjoy the benefits of the relief granted in Rules 6e-2(b)(15) and 6e-3(T)(b)(15). Applicants assert that if the Funds were to sell shares only to Plans, the Manager, an Adviser or their affiliates and/or separate accounts funding variable annuity contracts, no exemptive relief would be necessary. None of the relief provided for in Rule 6e-2(b)(15) and 6e-3(T)(b)(15) relates to Plans, the Manager, an Adviser or their affiliates, or to a registered investment company's ability to sell its shares to such purchasers. It is only because some of the separate accounts that may invest in the Funds may themselves be investment companies that rely upon Rules 6e-2 and 6e-3(T) and that desire to have the relief continue in place, that the Applicants are applying for the requested relief. If and when an irreconcilable material conflict between the separate accounts arises in this context, the Participating Insurance Companies must take whatever steps necessary to remedy or eliminate the conflict, including eliminating the Funds as an eligible investment. Applicants have concluded that the inclusion of Plans as eligible shareholders should not increase the risk of irreconcilable material conflicts among shareholders. However, Applicants further assert that even if an irreconcilable material conflict involving Plans arose, the Plans, unlike the separate accounts, can redeem their shares and make alternative investments. Because shares of the Funds will be sold without either a front-end or a contingent deferred sales load, such redemption is at the net asset value of these shares. Further, the Manager, an Adviser or their affiliates that purchases Fund shares will agree to vote its shares of the Fund in the same proportion as all Contract owners having voting rights with respect to that Fund or in such other manner as may be required by the SEC or its staff. Applicants thus argue that allowing investment by Plans, the Manager, an Adviser and their affiliates in the Funds should not increase the opportunity for conflicts of interest.

5. Applicants state that current tax law permits the Funds to sell their shares to Plans, the Manager, an Adviser or any of their affiliates. Applicants

state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification requirements on the underlying assets of the Contracts held in the Funds. The Code provides that such Contracts shall not be treated as an annuity contract or life insurance contract for any period in which the underlying assets are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. On March 2, 1989, the Treasury Department issued regulations that established diversification requirements for the investment portfolios underlying variable contracts [Treas. Reg. § 1.817-5 (1989)]. The regulations provide that, to meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by a qualified pension or retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts [Treas. Reg. § 1.817-5(f)(3)(iii)].

6. Applicants state that the promulgation of Rules 6e-2 and 6e-3(T) under the Act preceded the issuance of these Treasury regulations. Applicants assert that, given the then current tax law, the sale of shares of the same investment company to separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold in connection with both mixed and shared funding, and to be sold directly to Plans, the Manager, an Adviser or any of their affiliates. Relief is requested for a class or classes of persons and transactions consisting of Participating Insurance Companies and their scheduled premium variable life insurance separate accounts and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such separate accounts) investing in any of the Funds.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to or principal underwriter for

any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) and (2). Rules 6e-2(b)(15) and 6e-3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e-2(b)(15)(i) and 6e-3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e-2(b)(15)(ii) and 6e-3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e-2(b)(15) and 6e-3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that Section. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of Section 9(a) to the many individuals employed by the Participating Insurance Companies, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that the relief requested should not be affected by the proposed sale of shares of the Funds to the Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a). Nor is there a regulatory purpose in extending the Section 9(a) monitoring requirements because the Funds may also sell their shares to the Manager, an Adviser, or their affiliates. Rules 6e-2 and 6e-3(T) provides relief from the eligibility restrictions of Section 9(a) only for officers, directors or employees of Participating insurance Companies or their affiliates. The eligibility restrictions of Section 9(a) will still apply to any officers, directors or

employees of the Manager, an Adviser or an affiliate who participate directly in the management or administration of a Fund. Furthermore, there is no reason why the monitoring requirements should extend to all officers, directors and employees of the Participating Insurance Companies and their affiliates simply because the Funds sell certain shares to the Manager, an Adviser or their affiliates. This monitoring would not benefit Contract owners and Plan participants and would only increase costs, thus reducing net rates of return.

10. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants represent that the Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require such privileges.

11. Rules 6e-2(b)(15)(iii) and 6e-3(b)(15)(iii) under the Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the Act and the rules thereunder. Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its Contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority. Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its Contract owners if the Contract owners initiate any change in the investment company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each Rule.

12. Applicants state that the Funds' sale of shares to Plans, the Manager, an Adviser and their affiliates will not have any impact on the relief requested in this regard. Shares of the Funds sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a

trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) or ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or to the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Accordingly, Applicants note that, unlike the case with insurance company separate accounts, the issue of the resolution of irreconcilable material conflicts with respect to voting is not present with Plans because the Plans are not entitled to pass-through voting privileges. Applicants further assert that investments in the Funds by Plans will not create any of the voting complications occasioned by mixed and shared funding because Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

13. Applicants state that some Plans may provide participants with the right to give voting instructions. Applicants submit that there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. Accordingly, Applicants assert that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding. Similarly, the exercise of voting rights by the Manager, an Adviser and their affiliates does not present the type of issues respecting the disregard of voting rights that are presented by variable life separate accounts.

14. Applicants state that no increased conflicts of interest would be present by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance

Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several

15. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e-3(T)(b)(15) discussed below) are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant Funds.

16. Applicants argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard Contract owner voting instructions. Potential disagreement is limited by the requirements that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the relevant Fund, to withdraw its separate account's investment in that Fund. No charge or penalty will be imposed as a result of such a withdrawal.

17. Investments by the Manager, an Adviser or an affiliate will similarly present no conflict. The Manager, Adviser or affiliate, as applicable, will agree to vote its shares of the Fund in the same proportion as all Contract owners having voting rights with respect to that Fund or in such other manner as may be required by the SEC or its staff. This "echo" voting requirement is similar to the requirements imposed by the SEC on the voting of shares of an underlying fund held directly by a Participating Insurance Company through a registered separate account. Should the SEC no longer interpret the Act as requiring pass-through voting privileges for Contract owners, the Manager, Adviser or affiliate will no longer be required to vote their shares in this manner.

Because the Manager, Adviser or affiliate will "echo" the vote of Contract owners, there will be no conflict among them.

18. Applicants submit that there is no reason why the investment policies of a Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants represent that the funds will not be managed to favor or disfavor any particular insurer or type of Contract.

19. Section 817(h) of the Code imposes certain diversification requirements on the underlying assets of variable annuity and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817-5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations, nor the revenue rulings thereunder present any inherent conflicts of interest if Plans, variable annuity and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants submit that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Participating Separate Account or a Plan is unable to net purchase payments to make the distributions, the Participating Separate Account or the Plan will redeem shares of the Funds at their respective net asset values. The Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will make distributions in accordance with the terms of the variable contract.

21. Applicants state that they do not see any greater potential for irreconcilable material conflicts arising between the interests of participants under the Plans and owners of the Contracts issued by the Participating Separate Accounts of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between

variable annuity contract owners and variable life insurance contract owners.

22. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to Contract owners and to Plans. Applicants represent that a Fund will inform each shareholder, including each separate account and Plan, of information necessary for the shareholder meeting, including their respective share ownership in the Fund. A Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirements of Rules 6e-2 and 6e-3(T).

23. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans, the Manager, an Adviser and their affiliates does not create a "senior security," as such term is defined under Section 18(g) of the Act, with respect to any Contract owner as opposed to a participant under a Plan or the Manager, an Adviser or their affiliates. Regardless of the rights and benefits of participants and Contract owners under the respective Plans and Contracts, the Plans, the Manager, an Adviser and its affiliates and the separate accounts have rights only with respect to their shares of the funds. Such shares may be redeemed only at net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distributions of assets or payment of dividends.

24. Applicants state there are no conflicts of interest between Contract owners and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power to prevent insurance companies indiscriminately redeeming their separate accounts out of one fund and investing those monies in another fund. Generally, to accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans or the participants in participant-directed Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the monies in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of Contract owners and the interests of Plans and Plan participants conflict, the issues can be almost immediately resolved in that

trustees of the Plans can, independently, redeem shares out of the Funds.

25. Applicants assert that permitting a Fund to sell its shares to the Manager or Adviser of a Fund, or a series thereof, or to an affiliate of the Manager or Adviser, in compliance with Treas. Reg. 1.817-5 will enhance Fund management without raising significant concerns regarding irreconcilable material conflicts. Section 14(a) of the 1940 Act generally requires that an investment company have a net worth of \$100,000 upon making a public offering of its shares. Fund also will require more limited amounts of initial capital in connection with the creation of new series and the voting of initial shares of such series on matters requiring the approval of shareholders. In addition, the Funds may wish to purchase a substantial portfolio of securities upon commencement of operations and will require capital to do so. A potential source of the requisite initial or additional capital is the Manager, Adviser or an affiliate. These parties may have an interest in making the requisite capital expenditure, and in participating with the Fund in its organization. However, provision of seed capital or the purchase of shares in connection with the management of a Fund by its Manager, Adviser or any of their affiliates may be deemed to violate the exclusivity requirement of Rule 6e-2(b)(15) and/or Rule 6e-3(T)(b)(15).

26. Applicants anticipate that such investments by the Manager, an Adviser or their affiliates generally will be limited in scope and duration, and will be made only in connection with the operation of the Funds. Given the conditions of Treas. Reg. 1.817-5(f)(3) and the harmony of interest between a Fund, on the one hand, and its Manager or Adviser, on the other, Applicants assert that little incentive for overreaching exists. Furthermore, such limited investments should not implicate the concerns discussed above regarding the creation of irreconcilable material conflicts. Instead, permitting investment by the Manager, an Adviser or their affiliates will permit the orderly and efficient creation and operation of Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Fund operations.

27. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment managers

(principally with respect to stock and money market investments); and the lack of public name recognition as investment experts. Specifically, Applicants state that smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Contract business on their own. Applicants argue the use of the Funds as common investment media for the Contracts would ease these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of Met Advisory and the Advisers, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Contracts, which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants argue that Contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Funds to Plans should increase the amount of assets available for investment by such Funds. This should, in turn, promote economies of scale, permit increased safety of investments through greater diversification, and make the addition of new portfolios more feasible.

28. Applicants state that, regardless of the types of Fund shareholders, Met Advisory is legally obligated to manage the Funds in accordance with each Fund's investment objectives, policies and restrictions as well as any guidelines established by the relevant Board of Directors or Trustees of the Funds. Applicants assert that Met Advisory works with a pool of money without consideration for the identity of shareholders, and, thus, manages the Funds in the same manner as any other mutual fund.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. A majority of the Board of Trustees or Board of Directors (each, a "Board") of each Fund will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the Act and the Rules thereunder and as modified by any applicable orders of the

SEC, except that if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee(s) or director(s), then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the SEC may prescribe by order upon application.

2. The Board will monitor their respective Funds for the existence of any irreconcilable material conflict between the interests of Contract owners of all Participating Separate Accounts and of Plan Participants and Plans investing in the Funds, and determine what action, if any, should be taken in response to such conflicts. An irreconcilable material conflict may arise for a variety of reasons, which may include: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no action or interpretive letter or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance Contract owners or trustees of Eligible Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of Contract owners; and (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. The Manager, Advisers (or any other investment adviser of a Fund), any Participating Insurance Company and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the issued and outstanding shares of a Fund (such Plans referred to hereafter as "Participating Plans") will report any potential or existing conflicts to the Board of any relevant Fund. The Manager, Advisers (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by a Participating Insurance Company to inform the Board whenever it has determined to disregard Contract owner

voting instructions and, if pass-through voting is applicable, an obligation by a Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts and to assist the Boards will be contractual obligations of all Participating Insurance Companies and Participating Plans investing in Funds under their agreements governing participation in the Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and if applicable, Plan participants.

4. If a majority of the Board of a Fund, or a majority of its disinterested trustees or directors, determine that an irreconcilable material conflict exists, the relevant Participating Insurance Companies and Participating Plans, at their expense and to the extent reasonably practical (as determined by a majority of the disinterested trustees or directors), will take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of Participating Separate Accounts from the Fund or any series and reinvesting such assets in a different investment medium, which may include another series of a Fund or another Fund; (b) submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If an irreconcilable material conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If an irreconcilable material conflict arises because of a Participating Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minor position or would preclude a majority

vote, the Participating Plan may be required, at the election of the Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of an irreconcilable material conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Funds, and these responsibilities will be carried out with a view only to the interests of Contract owners and Plan participants, as applicable.

For purposes of this Condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will a Fund, Manager, or Advisers (or any other investment adviser of the Funds) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by this Condition 4 to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the irreconcilable material conflict, vote to decline such offer. No Participating Plan shall be required by this Condition 4 to establish a new funding medium for such plan if (a) a majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing plan documents and applicable law, the Participating Plan makes such decision without Plan participant vote.

5. Manager, Advisers, all Participating Insurance Companies and Participating Plans will be promptly informed in writing of any Board's determination that an irreconcilable material conflict exists, and its implications.

6. As to Contracts issued by Participating Separate Accounts under the Act, Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the SEC interprets the Act to require pass-through voting privileges for Contract owners. However, as to Contracts issued by unregistered Participating Separate Accounts, pass-through voting privileges will be extended to Contract owners to the extent granted by the issuing insurance company. Accordingly, the Participating Insurance Companies will vote shares of a Fund held in their Participating Separate Accounts in a manner

consistent with voting instructions received from Contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Participating Separate Accounts investing in the Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions. Each Participating Plan will vote as required by applicable law and governing Plan documents.

7. As long as the SEC continues to interpret the Act as requiring pass-through voting privileges for Contract owners whose Contracts are funded through a registered separate account, the Manager, Adviser of, if applicable, any of their affiliates will vote the shares of any Fund or series thereof in the same proportion as all Contract owners having voting rights with respect to that Fund or series thereof, provided, that the Manager, Adviser or any such affiliates shall vote its shares in such other manner as may be required by the SEC or its staff.

8. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to determining the existence of a conflict, notifying the Manager, Advisers, Participating Insurance Companies and Participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the SEC upon request.

9. Each Fund will notify all Participating Insurance Companies and all Participating Plans that disclosure in separate account prospectuses or any Qualified Plan Prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Fund will disclose in its prospectus that: (a) Shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, and to Plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans

investing in the Fund may conflict; and (c) the Board will monitor events in order to identify the existence of any material conflicts of interest and to determine what action, if any, should be taken in response to any such conflict.

10. Each Fund will comply with all the provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Funds) and in particular, each such Fund will either provide for annual meetings (except to the extent that the SEC may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although the Funds are not within the trusts described in Section 16(c) of the Act) as well as Section 16(a) and, if applicable, Section 16(b) of the Act. Further, each Fund will act in accordance with the SEC's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the SEC may promulgate with respect thereto.

11. If and to the extent that Rules 6e-2 and 6e-3(T) are amended (or if Rule 6e-3 under the Act is adopted) to provide exemptive relief from any provisions of the Act or the rules promulgated thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds, the Participating Insurance Companies and Participating Plans, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent applicable.

12. No less than annually, the Manager, Advisers (or any other investment adviser of a Fund), the Participating Insurance Companies and Participating Plans shall submit to the Boards such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Manager, Advisers (or any other investment adviser for a Fund), Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Boards shall be a contractual obligation of the Manager, Advisers (or any other investment adviser of a Fund), Participating Insurance Companies and Participating Plans under the agreements governing their participation in the Funds.

13. If a Plan or Plan participant shareholder should become an owner of 10% or more of the issued and outstanding shares of a Fund, such Plan will execute a participation agreement with such Fund including the conditions set forth herein to the extent applicable. A Plan or Plan participant shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-14675 Filed 6-11-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44394; File No. SR-CBOE-00-43]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change Relating to Participation Rights in Crossing Transactions

June 6, 2001.

I. Introduction

On August 29, 2000, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rule 6.74(d), which currently entitles a floor broker representing a member firm to cross a certain percentage of each customer order the firm sends to the floor against another order on behalf of the same firm.

The proposed rule change would: (a) Make clear that Rule 6.74(d) includes the situation where a floor broker is seeking to cross a *solicited* order against

the original customer order; and (b) expand Rule 6.74(d) to allow the floor broker representing the original customer order to solicit the order to trade against it even if that floor broker is not a nominee of the originating firm.

The proposed rule change was published for comment in the **Federal Register** on November 21, 2000.³ The Commission received no comments on the proposal. The CBOE filed Amendment Nos. 1 and 2 to the proposed rule change with the Commission on February 12, 2001, and May 23, 2001, respectively.⁴ This order approves the proposed rule change, accelerates approval of Amendment Nos. 1 and 2, and solicits comments from interested persons on those amendments.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act⁷ because it establishes the ability of firms and floor brokers to solicit orders to supply the contra side for customer orders in a manner that matches or improves the price available from the crowd while conforming to the principles and limitations set forth by the Commission in its original approval of Rule 6.74(d) concerning participation rights in crossing transactions.⁸

Amendment No. 1 to the proposed rule change would add Interpretation .07 to Rule 6.74 to make clear that a floor broker may not cross an order that he is holding with an order from a market maker that is then in the trading crowd. Amendment No. 2 would clarify that the proposed change to CBOE Rule 6.74 is intended to supersede the provisions of paragraph (d) of CBOE Rule 6.9, "Solicited Transactions," when the conditions specified in CBOE Rule 6.74 are met. The Commission finds that Amendment Nos. 1 and 2 are

³ See Securities Exchange Act Release No. 43537 (November 9, 2000), 65 FR 69977.

⁴ The substance of Amendment Nos. 1 and 2 is discussed below.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ See Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

appropriate clarifications of the proposed rule change and are consistent with section 6(b)(5) of the Act. In addition, because these amendments clarify the intent of the proposed rule change and thereby strengthen the proposal, the Commission finds good cause for approving their provisions prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

III. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether these amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-43 and should be submitted by July 3, 2001.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-CBOE-00-43), as amended, be, and hereby it is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14737 Filed 6-11-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44393; File No. SR-DTC-2001-08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by The Depository Trust Company Relating to DTC Settling Trades Executed on Nasdaq Europe

June 6, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on, May 25, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides that participants who settle trades executed on Nasdaq Europe through book-entry deliveries at DTC (i) are required to effect the settlement of such trades in the manner prescribed by DTC so that such trades can be separately identified and (ii) authorize DTC to provide to Nasdaq Europe information relating to the settlement of such trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is expected that on or about June 8, 2001, Nasdaq Europe, an exchange established under Belgian law, will begin listing securities on its European

Trading System. In order to facilitate the settlement of these securities, Nasdaq Europe plans to approve DTC as a settlement location for Nasdaq Europe trades in DTC-eligible securities. To allow Nasdaq Europe to designate DTC as an approved settlement location under Belgian law, DTC must agree to provide Nasdaq Europe upon request with information that DTC has pertaining to the settlement of Nasdaq Europe trades at DTC. In order for DTC to be able to provide this information, DTC must require its participants (1) to effect the settlement of such transactions in a manner that separately identifies them from the participants' other settlement activities² and (2) to authorize DTC to provide information related to such trades to Nasdaq Europe.

Under the proposed rule change, DTC will require that the settlement of Nasdaq Europe trades be effected in a separate subaccount that will be established by the participant solely for the settlement of Nasdaq Europe trades. If it is determined that a more automated solution should be developed in the future, DTC will make the necessary systems changes to allow participants to designate settlement activity relating to Nasdaq Europe trades by entering a special activity code in their deliver order instructions. If such systems changes are made, participants will be required to use the activity code to identify Nasdaq Europe trades. Participants will be kept informed by Important Notices if DTC determines that it will further automate the identification of settlement activity related to Nasdaq Europe trades.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because the proposed rule change will increase operational efficiencies for participants by allowing for the settlement at DTC of Nasdaq Europe trades in DTC-eligible securities. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because all of DTC's risk management controls will continue in effect.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

² Nasdaq Europe plans to issue a compliance notice requiring its members to ensure that settlement at DTC of Nasdaq Europe trades are done in accordance with the procedures prescribed by DTC.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from participants or others have not been solicited or received on the proposed rule change. All participants will be informed of the proposed rule change by an Important Notice.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The Commission finds that allowing DTC to require participants to set up separate subaccounts solely for the settlement of Nasdaq Europe trades and to authorize DTC to provide settlement information to Nasdaq Europe is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to clearing agencies. Specifically, the Commission believes that the proposal is consistent with section 17A(b)(3)(F) because it will facilitate the prompt and accurate clearance and settlement of securities transactions by allowing for the settlement at DTC of Nasdaq Europe trades in DTC-eligible securities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because approval prior to the thirtieth day of the publication will allow DTC to settle trades in DTC-eligible securities executed on the Nasdaq Europe when Nasdaq Europe begins trading such securities, which it is scheduled to do on Friday, June 8, 2001.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-2001-08 and should be submitted by July 3, 2001.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,³ that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14736 Filed 6-11-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44395; File No. SR-Phlx-2001-46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. ("Phlx"), Relating to a Reduction of the Minimum size of PACE¹ Orders that Must Be Automatically Guaranteed by Equity Specialists Pursuant to Phlx Rule 229

June 6, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),² notice is hereby given that on April 23, 2001, 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, II, and III below, which Items have been prepared by the Exchange. The Phlx filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(5) thereunder.⁴ Pursuant to Rule 19b-4(f)(5), the Phlx has designated this proposal as one effecting a change in an existing order-entry or trading system of the Phlx that does not: (1) Significantly affect the protection of investors or the public interest, (2) impose any significant burden on competition, or (3) significantly have the effect of limiting

³ 15 U.S.C. 78s(b)(2).

⁴ 17 CFR 200.30-3(a)(12).

¹ PACE is the Philadelphia Stock Exchange's Automatic Communication and Execution System. It is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. See Rule 229, Philadelphia Stock Exchange Guide.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-4(f)(5).

the access to or availability of the system. As such, the proposed rule change is immediately effective upon filing with the Commission. 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 Phlx, pursuant to Rule 19b-4 under the Act,⁵ proposes to amend Phlx Rule 229 to reduce the minimum automatic execution size of PACE orders for equity specialists from 599 shares to 299 shares.

The text of the proposed rule change is as follows.

(Proposed new language is italicized; proposed deletions are in brackets)

Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

Execution of Market Orders

.05 Public Order Exposure System—Subject to Supplementary Material Section .07, all round-lot market orders up to 200 [500] shares and PRL market orders up to 299 [599] shares will be stopped at the PACE Quote at the time of entry into the system ("Stop Price") and be subject to a delay of up to 30 seconds from being executed in order to receive an opportunity for price improvement. If such market order is not executed within the 30 second window, the order will be automatically executed at the Stop Price. If the PACE Quote at the time of order entry into the system reflects a 1/8 point spread or less (the difference between the best bid and offer) for equities trading in fractions, or .05 or less for equities trading in decimals, pursuant to Rule 134 or 125, that order will be executed immediately without the 30 second delay.

Subject to these procedures, the specialist may voluntarily agree to execute round-lot market orders of a size greater than 200 [500] shares and PRL market orders of a size greater than 299 [599] shares upon entry into the system. Where the specialist has voluntarily agreed to execute market orders greater than 299 [599] shares and the market order size is greater than 299 [599] shares, but less than or equal to the size of the PACE Quote, the order is automatically executable at the PACE Quote; if such order is greater than the size of the PACE Quote, the order shall [manually] receive an execution at the PACE Quote up to the size of the PACE Quote, *either manually or automatically (once this feature is implemented)* with the balance of the order receiving a professional execution, in accordance with Supplementary material .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE quote up to the entire size of such specialist's automatic execution guarantee (*regardless of the size of the PACE Quote*).

* * * * *

⁵ 15 U.S.C. 78s(b)(4).

.07

(a) Member organizations which enter market orders after the opening may elect to have such orders executed

(i) in accordance with the procedures set forth in Supplementary Material Section .05 or,

(ii) if such execution price would be outside the New York market high-low range for the day manually at or within the New York market high-low range of the day.

(b) Market orders (round-lots of 300 [600] to 2000 shares or such greater size which the specialist agrees to accept and PRL's of 301 [601] to 2099 shares or such greater size which the specialist agrees to accept) which are entered after the opening and which the specialist has not agreed to accept for automatic execution shall not be subject to the execution parameters set forth in Supplementary Material .05 and shall be executed in accordance with Supplementary Material .10(b) and other applicable rules of the Philadelphia Stock Exchange; provided, however, that the odd-lot portion of PRL's of 301 [601] or more shares shall be executed at the same price as the round-lot-portion. In the case of a PRL order, the round-lot portion(s) of which is executed at more than one price, the odd-lot portion shall be executed at the same price as the first round-lot portion is executed.

(c) Unchanged

* * * * *

Execution of Limit Orders

* * * * *

.10

(a) In the case of stocks for which the PACE Quote bid is less than \$1.00, the provisions of paragraph .10(b) shall apply.

In the case of stocks for which the PACE quote bid is \$1.00 or more:

(i) Marketable Limit Orders—round-lot orders up to 200 [599] shares and the round-lot portion of PRL limit orders up to 299 [599] shares which are entered at the PACE Quote shall be executed at the PACE Quote. Such orders shall be executed automatically unless the member organization entering orders otherwise elects. Specialists may voluntarily agree to execute marketable limit orders greater than 299 [599] shares. Where the specialist has voluntarily agreed to automatically execute marketable limit orders greater than 299 [599] shares and the order size is greater than 299 [599] shares, but less than or equal to the size of the PACE Quote, the marketable limit order is automatically executable at the PACE Quote; if the order size is greater than 299 [599] shares and greater than the size of the PACE Quote, the marketable limit order shall manually receive an execution at the PACE Quote up to the size of the PACE Quote, with the balance of the order receiving a professional execution, in accordance with Supplementary Material .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee.

(ii)–(iii): Unchanged.

(b)–(c): Unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to reduce the equity specialists' minimum automatic execution size for PACE orders, thereby reducing the amount of orders that qualify for an automatic execution guarantee, pursuant to various provisions of Exchange Rule 229. According to the Phlx, the proposed rule change is intended to address the equity specialist's hardship in the new decimal environment. Specialists indicate that the transition to trading in decimal increments, rather than in fractions, has resulted in a wider range of quoted prices (more ticks), as well as an increase in small-sized bids and offers made at a particular price. Such bids and offers (which can be for as little as 100 shares) qualify, regardless of their size, to become the National Best Bid or Offer ("NBBO"), also known for PACE purposes as the "PACE Quote."

PACE provides certain execution guarantees to eligible orders. Currently, with respect to market orders, Rule 229, Supplementary Material .05, provides that round-lot market orders for up to 500 shares (and partial round-lot orders⁶—"PRLs"—up to 599 shares) are automatically entitled to the NBBO price ("stopped") as of the time of entry into the PACE system. In addition, Supplementary Material .05 provides that those orders will be subject to a 30 second delay in execution in order to allow for the opportunity for manual price improvement.

A specialist may voluntarily agree to execute round-lot market orders greater than 500 shares (and PRL market orders greater than 599 shares). In addition, Supplementary Material .05 states that if a specialist agrees to execute market orders greater than 599 shares, and the order size is smaller or equal to the size of the PACE Quote, the order is

automatically executable at the PACE Quote. If the order size is greater than the PACE Quote, the order is manually handled by the specialist, who executes it at the PACE Quote up to the portion equal to the PACE Quote size, with the balance receiving a professional manual execution.⁷ Regardless of the size of the PACE Quote, however, the specialist may, under Supplementary Material .05, choose to guarantee automatic execution at the PACE Quote up to the entire size of his automatic execution guarantee.⁸ Thus, when the specialist's automatic execution guarantee is higher than 599 shares, whether an order automatically executes at the PACE Quote depends on the size of the PACE Quote. This size-sensitivity is discussed further below.

Supplementary Material .07(b) currently provides that market orders consisting of round-lot orders of 600 to 2,000 shares and PRLs of 601 to 2,099 shares (or any greater size which the specialist agrees to accept), which are entered after the opening and not accepted for automatic execution by the specialist, will be handled manually in accordance with the requirements of Supplementary Material .10. Supplementary Material .07 further provides that the odd-lot portion of PRLs of 601 or more shares shall be executed at the same price as the round-lot portion.

With respect to marketable limit orders, Rule 229, Supplementary Material .10(a)(i) provides that round-lot marketable limit orders up to 500 shares (and partial round-lot marketable limit orders up to 599 shares) which are entered at the PACE Quote shall be executed at the PACE Quote, and executed automatically if the member organization entering the order so elects. Although the current minimum automatic execution size (for both market and marketable limit orders) is 599 shares (meaning all securities on PACE are subject to an automatic execution size of at least this amount), specialists may establish higher sizes.⁹

Together, these provisions of Rule 229 guaranteeing the NBBO to certain eligible PACE orders have become more

⁷ See Rule 229, Supplementary Material .10(a).

⁸ Following a telephone conversation on May 30, 2001 between Edith Hallahan, Deputy General Counsel, Exchange, and Heidi Pilpel, Special Counsel, Commission, the Exchange represented that the specialist sets his automatic execution guarantee by filling out an Exchange form to that effect, effective as of the next business day, except when unusual circumstances occur, such as a fast market, in which case the specialist is allowed to request an immediate change of his automatic guarantee, upon floor official approval.

⁹ The minimum delivery size is 2,099 shares. See note 8 above explaining how the specialist sets its minimum execution guarantee.

⁶ A partial round-lot order for the purposes of Rule 229 is a combined round-lot and odd-lot order.

onerous to equity specialists in today's marketplace when required to guarantee a minimum of 599 shares. Specifically, specialists face situations where bids and offers as small as 100 shares trigger the PACE Quote guarantees described above. Small size quotes, however, might not necessarily reflect the overall market price at a given time.

Nevertheless, under the PACE rule, in certain circumstances it is the specialist's duty to give the NBBO price, regardless of the size of the NBBO. Particularly, when the specialist's guarantee is set at the current minimum of 599 shares, the size of the PACE Quote does not affect the price at which orders up to 599 shares are executed.

Thus, the Exchange hereby proposes to decrease the minimum automatic execution size from 599 to 299 shares, which should decrease the amount of orders that qualify for the above automatic price guarantee features; and should allow the specialist to choose to handle more orders manually, and voluntarily, in accordance with Supplementary Material .05 and .10, thereby alleviating some of the burdens of mandatory execution guarantees. In addition, when an order is greater than the size of the PACE Quote, the proposal will offer the specialist the option to give the order an execution at the PACE Quote, either manually or automatically, up to the PACE Quote size. In other words, the specialist may choose manual or automatic execution up to the PACE Quote size portion of his order, but it remains his choice, just as he may still choose to guarantee an automatic execution at the PACE Quote for orders up to the size of his elected "automatic execution guarantee," as stated in Supplementary Material .05. As such, the automatic execution guarantee will be more sensitive to the size of the PACE Quote.

For these reasons, the Exchange believes that this proposal is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it should promote just and equitable principles of trade, by fostering fair and orderly markets while relieving specialists of the duty to execute certain orders at a guaranteed price, where that price would otherwise not be available for the size that the specialist must guarantee.

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

No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a rule effecting a change in an existing order-entry or trading system of a self-regulatory organization, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(5) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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 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-2001-46 and should be submitted by July 3, 2001.¹⁰

¹⁰ The Commission notes the Exchange's obligation to submit to the Commission (individually or jointly with other exchanges) a study regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior ("Decimals Study"), pursuant to a Commission Order dated June 8, 2000. See Securities Exchange Act Release No. 42914 (June 8, 2000); 65 FR 38010 (June 19, 2000), as amended by Securities Exchange Act Release No. 44336 (May 22, 2001); 66 FR 29368 (May 30, 2001) (extending the deadline to submit the Decimals Study). The Commission expects the

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3336]

State of Kansas; Amendment No. 1

In accordance with a notice received from the Federal Emergency Management Agency, dated May 1, 2001, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as occurring between April 21, 2001 and continuing through May 1, 2001. All other information remains the same, i.e., the deadline for filing applications for physical damage is June 26, 2001 and for economic injury the deadline is January 28, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 6, 2001.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01-14751 Filed 6-11-01; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3343]

State of Ohio

Scioto County and the contiguous counties of Adams, Jackson, Lawrence and Pike in the State of Ohio; and Greenup and Lewis Counties in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe thunderstorms, high winds and flooding which began on May 17, 2001 and continued through May 26, 2001. Applications for loans for physical damage may be filed until the close of business on August 3, 2001 and for economic injury until the close of business on March 4, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration,
Disaster Area 2 Office, One Baltimore
Place, Suite 300, Atlanta, GA 30308
The interest rates are:

Exchange to evaluate in the Decimals Study the effect of amended Rule 229 on equity specialists' handling of customer limit orders for more than 299 shares.

¹¹ 17 CFR 200.30-3(a)(12).

For Physical Damage

Homeowners with Credit Available

Elsewhere: 6.625%

Homeowners without Credit Available

Elsewhere: 3.312%

Businesses with Credit Available

Elsewhere: 8.000%

Businesses and Non-Profit

Organizations Without Credit

Available Elsewhere: 4.000%

Others (Including Non-Profit

Organizations) With Credit Available

Elsewhere: 7.125%

For Economic Injury

Businesses and Small Agricultural

Cooperatives Without Credit

Available Elsewhere: 4.000%

The number assigned to this disaster for physical damage is 334311 for Ohio and 334411 for Kentucky. The number assigned to this disaster for economic injury is 9L8000 for Ohio and 9L8100 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 4, 2001.

John Whitmore,

Acting Administrator.

[FR Doc. 01-14750 Filed 6-11-01; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending June 1, 2001**

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2001-9824.

Date Filed: May 31, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 21, 2001.

Description: Application of Federal Express Corporation pursuant to 49

U.S.C. section 41102 and Subpart B, requesting renewal and amendment of its certificate of public convenience and necessity for Route 568 to provide scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in Mexico, on the other hand.

Docket Number: OST-1995-766.

Date Filed: June 1, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 22, 2001.

Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. section 41108 and 14 CFR part 377, requesting renewal of its certificate authority to serve between U.S. points and Barcelona, Spain on segment 3 of its certificate for Route 602.

Docket Number: OST-2001-9826.

Date Filed: June 1, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 22, 2001.

Description: Application of MEDjet International, Inc., pursuant to 49 U.S.C. section 41102 and Subpart B, requesting a certificate of public convenience and necessity to engage in (i) interstate charter air transportation of persons, property and mail; and, (ii) foreign air transportation of persons, property and mail.

Docket Number: OST-2001-9828.

Date Filed: June 1, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 22, 2001.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41102 and Subpart B, requesting an amendment of its Experimental Certificate of Public Convenience and Necessity for Route 564 (U.S.-Mexico) to incorporate segments authorizing service between Seattle and San Jose del Cabo/Puerto Vallarta/Mazatlan; (ii) San Francisco and Zihuatanejo; and (iii) Los Angeles and Manzanillo/Zihuatanejo.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01-14726 Filed 6-11-01; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Dockets No. FAA-2001-9852; No. FAA-2001-9854]

Notice of Alternative Policy Options for Managing Capacity at LaGuardia Airport and Proposed Extension of the Lottery Allocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on alternative policy options for managing capacity and mitigating congestion and delay at LaGuardia Airport (LGA) and the proposed extension of the lottery allocation.

SUMMARY: The Federal Aviation Administration is gathering information on the feasibility and effectiveness of a limited number of demand management options that could replace the current temporary administrative limits on the number of aircraft operations at LGA which are scheduled to expire on September 15, 2001. Because of the unique circumstances that exist at LGA and the need to avoid gridlock at one of the nation's most critical airports, the FAA is examining various demand management approaches—that is, approaches that would continue to bring airport demand and capacity into equilibrium. The options discussed below are classified into either market-based or administrative options. While two specific options submitted by the Port Authority of New York and New Jersey (PANYNJ) are included for comment in this **Federal Register** Notice, FAA does not propose, nor endorse, either of these options at this time.

The FAA will use the information provided by interested parties, as well as other research, to identify an access management process that will allocate LGA's limited capacity among aircraft operators. Commenters are requested to discuss how the various demand management options would affect other important public policy objectives, such as airline competition and small community access to important air travel markets, and may raise legal and regulatory impediments, although that is not the focus of this notice.

DATES: Comments on Phase One, the temporary extension of the current administrative lottery allocation beyond September 14, 2001, must be received by July 12, 2001. Comments on Phase Two, demand management options to replace the current administrative allocation, must be received by August 13, 2001.

ADDRESSES: Comments should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA-2001-9852 for Phase One and Docket No. FAA-2001-9854 for Phase Two, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: DMS.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10:00 a.m. and 5:00 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John M. Rodgers, Director, Office of Aviation Policy and Plans, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202-267-3274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impacts of each option are also invited. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned policy decisions. Communications should identify the docket number and be submitted in triplicate to the address specified above. All communications and a report summarizing any substantive public contact with FAA personnel on this notice will be filed in the appropriate docket. The dockets are available for public inspection both before and after the closing dates for receiving comments.

Before taking any final action on this matter, the Administrator will consider all comments made on or before the closing dates for comments.

The FAA will acknowledge receipt of a comment if the commentor includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. FAA-2001-9852" For Phase One or "Docket No. FAA-2001-9854" for Phase Two. When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commentor.

Background

A. History

PANYNJ operates four airports: John F. Kennedy International, Newark International, LaGuardia Airport and Teterboro Airport. These airports are used intensively with over 90 million passengers, 2.8 million tons of cargo, and over 1.4 million aircraft movements

passing through them each year. Each airport plays a different role, targeted for different users and designed to accommodate different types of operations. LGA, just seven miles from midtown Manhattan is the close-in airport offering frequent, short-haul service to meet the needs of the business community. As a result, the airport experiences a steady and heavy flow of arrivals and departures throughout the day—early morning and through early evening. Demand for access to LGA has been so great that in 1969 the FAA promulgated the High Density Rule (HDR)¹ which is in effect at LGA and three other congested airports. Given the hub and spoke nature of airline service in the United States, delays at LGA can quickly proliferate throughout the entire aviation system, causing delays and ground holds across significant portions of the country.

Recent legislation has made it even more important that the capacity/demand imbalance at LGA be addressed. On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (AIR-21) was enacted, exempting certain flights from the HDR operation limits and providing for the rule to end in 2007. Specifically, AIR-21 exempts flights operated by new entrant carriers or flights that serve small hub and non-hub airports with aircraft with less than 71 seats. Exemption requests for more than 600 flights were filed with DOT and approved. By September 2000, air carriers had added nearly 200 new scheduled flights at LGA, with plans to operate more than 300 new flights by the end of January 2001. While direct service to LGA increased, so too did delays. In September, as calculated from FAA's Air Traffic Operations Network Database (OPSNET), flight delays at LGA accounted for 25 percent of the nation's delays, compared to 10 percent for the previous year.

Concerned about the accelerating levels of congestion, flight delays, and cancellations and the prospects of reaching gridlock, PANYNJ attempted to impose a temporary moratorium on new flights at LGA and requested the assistance of the FAA. Using its authority under 49 U.S.C. 40103 and pending the development of a longer-term solution, the FAA published a Notice of Intent in the **Federal Register** on November 15, 2000, announcing its intention to temporarily cap AIR-21 slot exemptions at LGA and allocate them via a lottery (65 FR 69126; November 15, 2000). The lottery, which was

conducted on December 4, 2000, followed procedures published in the **Federal Register** and was based on an airspace management limit of 75 scheduled operations per hour (plus 6 "other" operations primarily used by the general aviation community) beginning January 31, 2001 (65 FR 75765; December 4, 2000). In order to attain that limitation, the number of AIR-21 slot exemptions at LGA was restricted to a total of 159 a day between the hours of 7:00 a.m. and 9:59 p.m. The December 4 lottery allocation remains in effect until September 15, 2001, unless extended, while the FAA explores other options to manage the imbalance between airport capacity and demand on a more permanent basis.

When an airport begins to routinely experience increasing levels of delay, the airport operator often considers ways to increase the airport's limited capacity such as the addition of new runways. The FAA believes that this is the preferred approach for relieving airport congestion and reducing delay. However, in certain cases, runway expansion is neither practicable nor feasible. For example, at LGA—located on 680 acres in the Borough of Queens, New York City, bordered by Flushing and Bower Bays—there is little opportunity for runway expansion. Consequently, delay must be addressed by other means.

B. The Operating Environment at LGA

The FAA's analysis indicates that an operationally acceptable level of daily flights during peak hours at LGA is in the low to mid-1200's rather than the mid-1300's or more as occurred at the airport during fall 2000. At that higher level of scheduled demand, it was common to experience lengthy delays even during periods when there was good weather and the airport was operating at maximum capacity.

In April 2000, prior to the implementation of any AIR-21 exemptions, LGA had an average of 1,039 daily operations and 104 daily delays of 15 minutes or more. The number of allocated slot reservations including scheduled and non-scheduled operations was approximately 71 per hour. During September 2000, airlines began the scheduled operation of almost 200 exemption flights. The number of slots and slot exemptions allocated during the morning and afternoon periods peaked at the low 90's per hour. LGA had an average of 1,163 daily operations and 351 daily delays during September. Hourly schedules beyond capacity compounded operational issues since delays starting in the early morning hours frequently impact later

¹ Title 14 of the Code Federal Regulations, Part 93, Subpart K.

flights. By November 2000, carriers had added about 300 exemption flights and the hourly scheduled allocation exceeded 100 in peak hours. Between April 2000 and November 2000, the average daily operations increased by over 22 percent and the average daily delays increased by over 230 percent.

During September and October 2000, there was also an increase in the number and duration of flight disruptions and irregular operations caused by long delays. Airlines had operational and customer service issues because aircraft were out of operational sequence, crews on delayed flights exceeded the permitted duty time, and passengers missed connecting flights. In many cases, the airlines responded to the delay situation by canceling flights

and accommodating passengers on alternative flights. This means that, although the reported delays increased significantly along with the traffic growth, the full impact of the cancellations and flight disruptions is understated in the delay and operational statistics. The impact was particularly burdensome for new entrant carriers that operate only a few flights at the airport. Because they have less flexibility, they offered fewer alternatives and some passengers were either accommodated on competitors' flights or on subsequent days.

Notwithstanding the level of delays in November 2000, carriers had scheduled additional flights to begin in the next few months. Capacity simply did not exist to accommodate the increased

level of flights without daily traffic management programs, limiting demand and delaying flights to ensure the safety of the operation. The volume-related delays at LGA negatively impacted the efficiency of the air traffic control system. Therefore, the FAA decided to reduce the number of AIR-21 operations at the airport and allocate the exemptions by spreading them out in a manner that would ensure they could be accommodated without substantial delay, at least under good weather conditions.

The following table reflects operational and delay data for LGA before AIR-21, the impact during fall 2000, and after the lottery schedules were implemented.

TABLE 1.—OPERATIONS AND DELAYS

	Pre AIR-21 April 2000	Post AIR-21 October 2000	Post AIR-21 lottery April 2001
HDR Slots/Exemptions	71	104	81
Monthly Operations	31,116	37,373	34,874
Monthly Delays	3,109	10,226	2,941
Average Daily ATC Operations	1,039	1,268	1,162
Average Daily Delays	104	330	98
Percentage of Operations Delayed	9.97	27.36	8.43
Average Delay Time (minutes)	44.1	40.84	40.51
Average Taxi-in (minutes)	6.49	7.49	7.36
Average Taxi-out (minutes)	26.98	31.79	25.49

¹ Peak.

Source: FAA's OPSNET and FAA's Slot Administration Office.

Following the implementation of the reduced daily and hourly operating levels on January 31, 2001, delays have decreased by 71 percent compared to October 2000. The data for April 2001 compares favorably to the pre-AIR-21 levels for April 2000 despite the increased daily flights (i.e., the 159 exemption flights allocated in the December 4 lottery). Average daily delays, the percentage of operations delayed, average delay times, and average taxi-out times have all decreased. In the first three months following the implementation of the revised schedules, LGA's share of total airport delays was 11 percent compared to almost 30 percent in fall 2000. Finally, the most recently available on-time arrival performance for March 2001, as reported to the Department of Transportation, has improved by 13 percentage points over the October 2000 levels.

The FAA believes it is a significant accomplishment of the airport and ATC system for LGA to have a year over year growth of twelve percent in average daily operations while generally maintaining the performance of the

airport prior to the implementation of the AIR-21 exemptions. This would be a notable accomplishment at many airports but is particularly so at LGA given the physical limitations of the airfield, the complexity of the surrounding airspace, and the challenges of accommodating a changing fleet mix. The FAA finds that the current cap on scheduled operations manages delay and congestion and still accommodates the AIR-21 exemptions to the greatest extent practical. At the current demand levels, airlines are better able to plan their operations and there are fewer non-weather related disruptions and irregular operations. This is representative of the level of system performance the flying public expects and can be realized at LGA given a combination of reasonable demand and good system conditions.

The FAA will continue to monitor system performance and pursue procedural and other capacity enhancements. However, the FAA reaffirms that the existing cap of 75 scheduled operations is the current practical hourly limit for scheduled flights at the airport (plus 6 "other"

general aviation/unscheduled operations), and we believe that any adopted demand management policies should reflect that established operational limit.

However, there are other factors that must also be considered which may have contributed to congestion and delay at LGA. For example, in recent years there has been a continuing trend toward using smaller aircraft for the provision of scheduled service at LGA. In fact, over the last six years there has been a significant increase in the use of smaller aircraft serving LGA. For example, as Table 2 illustrates, in April 1996, 26.54% of all air carrier operations were conducted by aircraft of 77 seats or less. By April 2001 this percentage has increased to 36.71%. While the use of small aircraft has promoted service to small communities, these aircraft may have also contributed to the congestion and delay experienced at LGA while accommodating fewer passengers than larger aircraft. A proper balance between access and airport congestion must be struck if LGA's limited resources are to be used as efficiently as possible.

TABLE 2.—PERCENT DISTRIBUTION OF AIR CARRIER OPERATIONS AT LGA BY SEAT SIZE

Seat Size	April 1996	April 2000	April 2001
<77	26.54	30.86	36.71
78–100	10.82	6.15	4.86
101+	62.64	62.99	58.43

Source: Official Airline Guide.

The Office of the Secretary and the FAA are currently examining the broader policy implications of demand management options at congested airports throughout the United States from both a local and national perspective. It is DOT's intention to develop a full array of public policy tools to develop a comprehensive aviation strategy that focuses on ways to reduce delays, improve airport capacity management, enhance competition, and promote the efficiency of the overall aviation system. However, based on the unique circumstances at LGA, the FAA anticipates that action will be necessary at LGA in the near term. There are several characteristics that make the situation at LGA unique. First, given LGA's prominence in the national airspace system, local delay events routinely proliferate throughout large portions of the aviation system. Second, the amount of airport congestion experienced prior to implementation of the December 4, 2000 lottery allocation was on the verge of creating gridlock and it is critical that we act to avoid this reoccurrence. Third, LGA is a HDR airport at which operations are limited by regulation until 2007.

Given the unique circumstances that exist at LGA, the FAA believes that a demand management approach has potential to continue to realign demand with capacity and provide for an effective and efficient means of allocating the airport's limited capacity once the exemption slot lottery allocation is no longer in place. But any special demand management measures at LGA would maintain the Federal policy that requires airport operators to provide reasonable and nondiscriminatory access to air carriers.

Options

The FAA is considering a phased approach in its implementation of a demand management solution at LGA. In the first phase, the FAA would extend the existing lottery and hold an additional lottery to allocate any unused capacity. In the second phase, one of several demand management approaches would be adopted. The approaches currently under

consideration are discussed below. Beyond these approaches, the FAA recognizes that there may be other effective approaches that it should consider and strongly encourages the submission of comments on any approach that could continue to manage airport delay and congestion at LGA. When evaluating each proposed option, commenters are requested to consider the following points:

- The option should effectively manage airport delay and congestion at LGA.
- The option should improve the efficient use of the airport's capacity, and to the extent possible, expand capacity at the airport or within those aviation facilities operated by PANYNJ.
- The option may use economic incentives to bring about a balance between airport capacity and demand.
- The option should be flexible enough to allow policy makers the opportunity to address certain policy goals such as ensuring air carrier competition and service to small communities.
- The option cannot degrade aviation safety.

A. Phase One: Extend the Existing Lottery Allocation and Hold an Additional Lottery To Allocate Unused Capacity

The FAA considered three options that would extend the December 2000 lottery allocation, but proposes only one of the options in this notice for comment. The first option was to extend the termination date of the current lottery allocation. While this option would not disrupt current scheduled operations, it does not have the flexibility necessary to take into account changes, such as returned or unused slot exemptions, since the lottery was held on December 4, 2000. The second option would be to conduct a new lottery of all 159 AIR-21 slot exemptions. This option was rejected because, with limited exceptions, new entrant and small community carriers have implemented viable schedules using the slot times currently allocated. Additionally, the FAA determined that it would be too disruptive for the carriers, passengers and communities that have benefited from new schedules following the December lottery.

The last option considered is the option proposed by the FAA in this notice for comment. The FAA proposes to maintain the slot lottery allocation, that began January 31, 2001, and to conduct an additional lottery to allocate certain available capacity. This option would maintain the current allocation without disruption and provides

opportunity for new entrant carriers that were limited or excluded from the first lottery. It was the FAA's intention for the slot lottery allocation to be a short-term solution and that the eligibility criteria, which limited participation in the lottery to carriers that had received an allocation from the FAA by November 9, 2000, and planned to begin service by January 1, 2001, was warranted in order to recognize existing service while discouraging the filing of additional requests and commencement of new service. Given that it is necessary to maintain current operational limits, the FAA believes that unused available capacity should provide access to LGA for carriers that previously were excluded or did not receive a full allotment as a new entrant. However, this access must be within the current operational limit.

The FAA proposes to make available through the new lottery four AIR-21 slot exemption times that were selected by Southeast Airlines in the December 4 lottery but subsequently not used. Additionally, there are 10 slot exemptions in the 9 p.m. hour that were turned in to the FAA permanently. Consequently, there are 14 exemption slots that are available for allocation. Carriers that permanently returned exemption slots, had exemption slots withdrawn for non-use, or otherwise did not operate the selected slot exemptions will have their number of slots exemptions reduced accordingly. The agency considered whether the seven slots selected by Legend Airlines and subsequently allocated by a contingency round should be withdrawn and made available during this second lottery. Upon consideration, the FAA determined that the withdrawal of these exemption slots would further disrupt carrier schedules and that these slots should continue to be used by the carriers that participated in the contingency round. In the event that prior to this proposed lottery additional slot exemptions are permanently returned by airlines or withdrawn by the FAA for non-use, those slot exemptions would be placed in the available pool for reallocation.

The agency proposes that carriers eligible to participate in the lottery for these 14 exemption slots be initially limited to new entrant carriers that did not participate in the December 4 lottery or new entrant carriers that were unable to select up to four exemption slots during the first round of the December 4 lottery. Any slot exemption not selected by a new entrant in the first round would be offered to all eligible carriers again using the established rank order from the December 4 lottery.

Consistent with the intent of AIR-21 this proposed allocation to new entrants through this additional lottery will provide an opportunity to maintain approximately the same balance of slot exemptions for new entrants and service to small communities.

Vanguard Airlines is the only carrier which participated in the first lottery that was limited to selecting less than the four slot exemptions permitted in the first round to all other participating new entrant carriers. The FAA believes that allowing Vanguard limited participation to potentially select two additional slots exemptions places it on equal footing with other new entrant carriers that may participate in this proposed lottery.

The FAA proposes to follow similar lottery procedures as set forth in the December 4, 2000, **Federal Register** notice, with certain modifications. All carriers eligible to participate in the lottery must meet the eligibility criteria for AIR-21 operations, as articulated under OST Order 2000-4-10. A notice of intent to participate in the lottery by a carrier must be received by the FAA Slot Administration Office by the date specified in a notice of lottery subsequently published in the **Federal Register**. Any slot exemptions not selected by participating new entrant carriers would be made available for service to small-hub and non-hub airports by carriers that participated in the December 4, 2000, lottery and allocated in accordance with the established rank order from that lottery. Similar to the December 4 lottery, participating new entrant carriers would select available slot exemption times until the carrier had a maximum of four slot exemptions during peak hours. Also, consistent with the first round provisions of the December 4 lottery, the FAA proposes that new entrant carriers be able to select exemption times without regard to the cap of 75 scheduled operations per hour. However, the FAA does have concern that certain hours may become oversubscribed. For example, in the 5 p.m. hour, additional selections by new entrant airlines in the December 4 lottery had resulted in 80 scheduled slot operations allocated during this hour. If flights during current peak periods were to increase, the operational and delay consequences to all operators may offset the benefits for new entrants. In order to maintain a balance between the operational benefits of a limit of 75 scheduled operations per hour and the additional flexibility that may be needed by certain new entrant airlines, the FAA does reserve, if necessary, that certain hours (for example, 5:00 p.m.

and 6:00 p.m.) may be limited or excluded for the purpose of new entrant airline selections exceeding the 75 hourly cap.

The lottery procedures are proposed as follows:

1. New entrant carriers eligible to participate in this lottery are carriers that did not participate in the December 4 lottery or carriers that selected less than four exemption slots during the first round of the December 4 lottery and must have certified to the Department of Transportation in accordance with the procedures articulated in OST Order 2000-4-10.

2. New entrant carriers intending to participate must notify the FAA Slot Administration Office by the date specified in the notice of lottery to be published in the **Federal Register**.

3. New entrant carriers will participate in a random drawing for selection order. Carriers will select in that order. Each carrier must make its selection within 5 minutes after being called or it shall lose its turn.

4. No new entrant carrier may select more than four exemption times. Carriers that hold less than four slot exemptions may only select slot exemptions so as to not exceed holding a total of four. Each new entrant carrier may select one slot exemption time in each hour without regard to whether a slot is available in that hour. The available times and any applicable restrictions concerning available exemption slot times will be announced in the notice of lottery.

5. There will be one round reserved for selection by new entrant carriers. That round will be concluded when all participating new entrant carriers have reached their maximum allocation, or carriers choose not to select remaining available times. Any remaining slot exemption times once the first round is completed will be made available to carriers providing service to small hub or non-hub airports in accordance with the established rank order from the December 4, 2000 lottery.

6. The FAA Chief Counsel will be the final decision-maker concerning eligibility of carriers to participate in the lottery.

7. The slot exemptions reallocated by lottery will remain in effect through October 26, 2002. If circumstances warrant, this date may be extended through notice in the **Federal Register**.

8. All operations allocated under these lottery procedures must commence by October 29, 2001.

9. All carriers that participate and select exemption slots during the lottery must re-certify to the Department of Transportation in accordance with the

procedures articulated in OST Orders 2000-4-10 and 2000-4-11, and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operation.

10. The allocation of slot exemptions by this proposed lottery would remain through October 26, 2002. In this notice, the FAA discusses several longer-term demand management options. A number of these options could not be implemented prior to October 26, 2002. In the event that the longer-term option selected cannot be implemented before the above date, the FAA anticipates that continued restrictions on the operation of AIR-21 slot exemptions in the interim would be necessary. Any slot that becomes available during the effective period of the lottery allocation will be allocated to eligible carriers using the established rank orders. The FAA may extend the effective period of the lottery allocation by publication of a notice in the **Federal Register**. If the FAA determines that a sufficient number of slot exemptions are available, these slot exemptions would be allocated by a lottery. Subsequent notices of lotteries would be published in the **Federal Register** and set forth the details of available slot exemption times, any applicable hourly restrictions and required start-up dates. Eligibility criteria for future lotteries would be updated to reflect prior allocation and operation of slot exemptions.

B. Phase Two: Implementation of a Longer-Term Solution

It is paramount to assure that all other reasonable options to expand LGA's limited runway capacity have been explored. For example, should the PANYNJ conduct a comprehensive capacity enhancement study, identifying all actions that it will take to increase capacity or efficiency at the airport prior to implementing demand management approaches.

Given an apparent inability to significantly expand airfield capacity at LGA, the FAA believes that the only way to ensure that the demand for and the supply of airfield capacity at the airport remains in balance, over the long run, may be to adopt demand management at LGA. The approaches that are currently under consideration can be generally classified into two categories: market-based and administrative options. However, it would be possible to create hybrid options based on the characteristics of each approach. These general approaches are discussed below.

I. Market-Based Options

The FAA is currently considering two general types of market-based options to manage demand and allocate capacity at LGA. The first option would allow PANYNJ to establish a congestion price for landings and takeoffs. The second option is to hold an auction for a predetermined number of landing and take-off rights at LGA. Economic theory suggests that under perfect information and absent any competitive constraints, both approaches (if fully implemented) would yield an efficient allocation of resources and would generate an equal amount of revenue. The difference between the two options is the role of the market. Under an auction, the FAA determines the number of available landing rights and the market determines their value. Under congestion pricing, the price is set by the PANYNJ and the market then determines how many landing rights will be used at that price. The general characteristics of each option are described below. In addition to a generalized description of these market-based solutions, two specific applications of these approaches are outlined below. These specific options were developed by PANYNJ for consideration by the FAA and are fully detailed in the Appendix. While the specific options submitted by PANYNJ are included for comment in this **Federal Register** notice, FAA does not propose, nor endorse, either of these options at this time. Federal laws, regulations, and U.S. international obligations presently in place may, in fact, prevent PANYNJ from imposing these proposals. In this notice we seek suggestions on effective, comprehensive solutions that represent the best public policy for controlling congestion and allocating operating rights at LGA, and we will consider pertinent legal issues in any policy options ultimately put forward for adoption.

A. Congestion-Based Landing Fees

(1) A Generalized Description of a Congestion-Based Landing Fee

The congestion based landing fee option allocates slots (under the HDR) and slot exemptions (under AIR-21 and pre AIR-21 exemption authority) based on the aircraft operator's willingness to pay. Traditional landing fees could be supplemented or replaced entirely by a system of fees that would let the market allocate aircraft operations per hour. Under all scenarios, FAA would maintain ultimate control of the maximum number of allowable flights at the airport based on safety and efficiency. During periods of high

demand only those aircraft operators that value the use of the airport's runways most would use the runways. Other users could choose to operate during periods of lower demand or could choose to operate at less congested neighboring facilities (e.g., John F. Kennedy International Airport). Proponents of this approach have suggested that this type of congestion-based pricing policy would encourage the use of larger aircraft at LGA and would consequently increase the number of passengers that use the capacity constrained facility.

On a practical level, there are a number of ways in which a congestion pricing system could be established. For instance, a two-part tariff could be created, combining the traditional landing charge with a flat surcharge that could vary throughout the day. Alternatively a weight-based fee could be constructed which would encourage the use of larger aircraft during periods of high demand. Regardless of how the fee is constructed, it must be capable of bringing into balance airport capacity and demand.

(2) A Potential Congestion-Based Fee Approach

The PANYNJ has identified two versions of congestion pricing for consideration. A complete description of these is provided in the Appendix. When evaluating both versions of this option, commenters are asked to be mindful of their key characteristics.

Option A contemplates that the restrictions imposed by the HDR would remain in effect until 2007 and that the FAA would increase the number of slot exemptions under AIR-21. The PANYNJ would levy the same congestion fee on all aircraft operations (both landings and take-offs), including operations conducted under HDR authority, that occur during the Congested Period at LGA, except for a limited number of AIR-21 flights that would be exempted from the fee. The PANYNJ anticipates that the FAA would conduct a lottery (in the same manner as it conducted the initial AIR-21 slot exemption lottery in December 2000) to allocate three additional AIR-21 slot exemptions per hour for use for qualified AIR-21 operations. The congestion fee would be set to discourage the actual operation of flights beyond the hourly operations target. Each year thereafter, the FAA would conduct another lottery to allocate additional slot exemptions for qualified AIR-21 operations. Under this option, the PANYNJ expects that the congestion fee would range between \$350-\$700 for each arriving and departing flight. Associated annual

revenues are estimated to range between \$130-\$260 million per year.

Option B differs from Option A in two ways. The first difference is that under Option B the PANYNJ contemplates that the FAA would gradually reduce the constraints imposed under both the HDR and the AIR-21 slot exemption lottery in conjunction with the introduction of the congestion fee and in anticipation of the elimination of the HDR by 2007 as required by AIR-21. In addition to increasing the number of AIR-21 slot exemptions that could be allocated, as in Option A, the FAA would (i) annually increase the number of allocated HDR operations in each hour by a maximum of 5 percent using the rules established in the FAA's HDR regulations to allocate among the airlines the authority to conduct these additional operations, and (ii) revise the HDR to reduce or eliminate the current restrictions that limit the use of 14 commuter slots each hour to small aircraft, which, the PANYNJ indicates will improve the operating efficiency of LGA. Effective in 2007, when the HDR is eliminated, there would no longer be any administrative constraints on the permissible number of operations at LGA, but the congestion fee would remain in place and would continue to maintain a balance between demand and capacity at LGA.

The second difference between Option A and Option B is that under Option B, the PANYNJ would levy two different congestion fees: one congestion fee would be charged for all flights operating between LGA and any small hub or non-hub airport qualifying for AIR-21 service, as well as general aviation flights, and another, much higher congestion fee would be charged for all other aircraft operations. Under this option, the PANYNJ expects that the congestion fee for air carriers serving AIR-21 markets (and general aviation) to range between \$350-\$700 for each arriving and departing flight and a range of \$700-\$2,000 for all other arriving or departing aircraft. Associated annual revenues are estimated to range between \$240-\$550 million per year.

Under congestion pricing, the PANYNJ is also considering the desirability of exempting from the congestion fee certain operations that serve airports that qualify for AIR-21 small hub or non-hub service under 49 U.S.C. 41716(a) and DOT Order 2000-4-11. Three potential approaches under consideration are to exempt (i) 80 operations (or a lower number that may be determined by PANYNJ to increase the overall operating efficiency of LGA) qualified under AIR-21 for small hub or non-hub service; (ii) all AIR-21

qualified operations serving small hub or non-hub airports within 300 miles of LGA, for example, given that passengers in markets within this distance have few connecting flight options; or (iii) a combination of these two approaches. The PANYNJ has also considered whether to exempt new entrant airlines from the congestion fee, but presently does not anticipate doing so because of concerns that such an exemption could disadvantage incumbent carriers vis-à-vis new entrant carriers.

The FAA is interested in receiving comments regarding the key characteristics of the procedure which the PANYNJ has identified for consideration and encourages, to the extent appropriate, variations on the PANYNJ approaches. Issues such as adequacy, effectiveness, ease of administration, and impact on air carriers and the traveling public should all be addressed. In particular, comments are solicited on whether the proposed range of fees will likely influence air carrier behavior and manage congestion and delay at LGA; whether the approach would maintain and/or expand service to small communities and foster new airline entry into the LGA market; and whether the approach provides for a smooth transition to 2007 when the HDR expires.

B. Auctioning of Landing and Take-Off Rights

(1) A Generalized Description of an Auction

Under this approach, the airport or the FAA would hold an auction for a specified number of landing and take-off rights. Each eligible aircraft operator would have the opportunity to participate in the auction. To ensure that air carriers could build and maintain reliable service patterns prior to the elimination of the HDR in 2007, the auction would be phased in over a number of years, with a fixed percentage of HDR slots and AIR-21 slot exemptions auctioned off each year. To ensure that air carrier competition remains vibrant at LGA and that all aircraft operators have an opportunity to participate in the auction, landing and take-off rights could also be re-auctioned periodically. For example, a staggered approach could require 25% of the available landing and take-off rights each year be re-auctioned, with each landing and take-off right valid for a period of 4 years. Auction "fees" could be considered as an addition to all other fees assessed at the airport. Alternatively, the airport could exempt the recipients of the auctioned landing

and take-off rights from the current weight-based landing fees.

Comments are specifically requested on the various methods by which an auction could be constructed and the frequency of the auction. Similar to the congestion pricing option, it is anticipated that an auction, would generate revenue in excess of the airport's traditional rate base. There are several possible approaches to cap revenue to recover only the cost associated with operations affected by the auction. The two specific methods that are described here are examples. First, actual auction bids/payments could be scaled back proportionately to the ratio of airport cost to the aggregate of winning bids. Second, rebates could be offered to new entrants and limited incumbents to ensure the promotion of air carrier competition and service to small communities.

(2) A Potential Auction Based Approach

The PANYNJ has identified a hybrid procedure for consideration that combines both administrative procedures and an auction of a portion of operations at LGA. A complete description of this approach is provided in the Appendix. When evaluating this option, commenters are asked to be mindful of the key characteristics of its proposed application. These characteristics are summarized below:

- Airport reservations would replace HDR Slots and AIR-21 slot exemptions.
- Air carrier reservations would be allocated according to the following formula:
 - Each carrier given a baseline allocation of reservation of up to 20 reservations per day for use for service between LGA and any other destination permitted under the LGA Perimeter Rule.
 - 80 Reservations (allocated by lottery, auction, or a combination of these methods) reserved for carriers seeking to serve small communities.
 - 70 percent of the remaining reservations allocated to each carrier according to their enplaned market share.
 - Remaining reservations auctioned among competing carriers.

The PANYNJ suggests that this approach could be implemented in one of two ways:

Option A: Immediate replacement of all HDR slots and AIR-21 slot exemptions. Reservations would be reallocated every two years according to one of the four methods described above.

Option B: Four-year phase out of the existing HDR slots and AIR-21 slot exemptions. In the first year, airlines are

guaranteed to receive at least 75 percent of their current HDR slots and AIR-21 slot exemptions through a baseline allocation. In the second year, airlines are guaranteed 50 percent; and in the third year 25 percent. In this scenario phase out would be completed in year four.

The Auction for reservations (excluding the auction proceeds for the 80 reservations set-aside for small communities) is estimated to yield additional annual revenues to the PANYNJ of approximately \$60 million to \$90 million for Option A and for Option B once it is fully implemented. Option B is estimated to yield additional revenues of approximately \$18–\$26 million in the first year, \$35–\$53 million in the second year, and \$53–\$79 million in the third year. These estimates assume auction prices in the range of \$20,000 to \$30,000 per Reservation per month.

The FAA is interested in receiving comments regarding the key characteristics of the procedures that the PANYNJ identified for consideration and encourages comments, to the extent appropriate, on variations of this approach. Issues such as adequacy, effectiveness, ease of administration, and impact on air carriers and the traveling public should all be addressed. In particular, comments are solicited on whether the relative distribution of reservations among the four potential allocation methods provide sufficient opportunity for service by new entrants and provide for the maintenance and/or expansion of service to small communities; how much revenue would be derived from the auction and if the suggested use of funds is appropriate (see discussion in the succeeding section of this notice). Finally, is the combination of administrative procedures and market-based solutions appropriate or should there be greater reliance on a market mechanism to allocate reservations. For example, is it appropriate to allocate 70 percent of the remaining reservations based on air carrier business performance (i.e., enplaned market share) or should more of these reservations be included in those that are auctioned off after the baseline and service to small communities allocations have been made.

(3) Collection and Use of Revenue Derived From a Market-Based Approach

As noted previously, it is anticipated for a market-based approach to be effective in allocating scarce resources at LGA, the revenue generated would far exceed the amount collected by traditional airport charges. Furthermore,

the specific market-based options that have been offered by PANYNJ for consideration have suggested that any market-based fee or auction payment would be in addition to the airport's traditional landing charges. The generation of revenue in excess of the airport's traditional cost base raises several policy questions for the FAA.

As noted above, a market-based approach has the potential to generate large sums of excess revenue beyond the airport's traditional rate base. What is the appropriate use of this additional revenue? In this circumstance, would there need to be specific limitations on use of the revenue generated by PANYNJ under a market-based approach?² Should the use of such funds be explicitly limited, as a part of the FAA's approval?

The PANYNJ has identified several possible uses for revenue derived under a market-based approach. For example, revenues could be used:

- To pay for projects that increase airport capacity in the local airport system or at other regional airports;
- To pay for expenses incurred for AIP-eligible (but not AIP-funded) noise mitigation projects, in order to reduce the burden of airport activity on nearby communities;
- To lease HDR slots at LGA from airlines, and to hold them in abeyance, in order to reduce demand;
- To advance the goals of AIR-21 to increase airline competition and small community air service; or
- Periodically to rebate remaining proceeds to airlines operating at LGA based on the number of passenger enplanements at LGA during a defined period of time, in order to provide an incentive for airlines to increase the volume of passengers they carry without increasing the number of flights they operate from LGA (by up-gauging their fleet of aircraft and improving their load factors).

In addition to these options, the FAA has also identified some potential uses of the excess revenue that would be generated under a market-based approach. They include (1) encouraging the use of less congested facilities by offering rebates to aircraft operators; (2) creating a national/regional trust fund for capacity enhancement; (3) using excess revenue to encourage service to small communities. Several of these options are likely to require statutory authority and/or rulemaking.

² At LGA, under current federal legislative authority, PANYNJ use of airport revenues is not subject to the general federal requirement to use airport-generated revenue only for airport purposes, and PANYNJ may use airport revenue to support the general obligations of the Authority.

The FAA is seeking comment on these suggested uses of funds and the desirability of showing that all capacity and efficiency actions have been taken.

II. Administrative Options

The FAA is currently considering three types of administrative options to allocate takeoff and landing rights at LGA. Further variations of each option are also possible. The first option would encourage the use of larger aircraft at LGA. Three variations of this approach are discussed. The second option would replace the HDR with a new slot allocation rule that would streamline the slot allocation process that exists under the HDR. It would rationalize the pools of slots set-aside for small community service by consolidating existing HDR commuter and air carrier slots used for service to small hub and non-hub airports and AIR-21 slot exemptions allocated for that service into a single category and provide a limited withdrawal of air carrier slots for new entrants. The third option would repeal the current HDR and establish a new rule that would provide each carrier with potentially slightly lower percentage of its current slot base. There would be a limited withdrawal of slots that would be apportioned to three pools to be allocated by lottery: (1) For new entrants, (2) for small community service, and (3) for general distribution to all incumbent carriers.

In addition to the three options presented above, there are two administrative options that the FAA considered but declined to set forth for public comment. One of these options would be to reduce the number of reservations provided per hour at LGA in the "Other" category. Currently, there are six operations permitted per hour at LGA in the "Other" category that are available for general aviation, charter operations and other non-scheduled operations. The FAA considered whether to reduce the number of reservations allocated under the "Other" category and add a corresponding number of AIR-21 operations per hour. However, the FAA believes it is important to ensure access for general aviation and other unscheduled operations. Therefore, the agency has decided against reduction of this already limited category of operations.

The FAA also considered whether the HDR should be changed to eliminate the authority to conduct extra sections of scheduled flights. Extra sections operate based on passenger demand and do not require an additional slot beyond the one required for the original scheduled flight. The Air Carrier Association of

America, some new entrant airlines and others have said that by eliminating the authority for extra sections, capacity would be available for AIR-21 operations. The FAA has decided not to seek comment on eliminating the extra section authority in the HDR. While this might result in some opportunities for reallocation of operations, the FAA recognizes that the use of extra sections predates the adoption of the HDR and is a significant factor in accommodating passenger demand in certain markets during peak travel periods.

There have been allegations that extra section authority may be abused by airlines when the FAA is conducting air traffic management programs, *e.g.*, that some carriers file additional flight plans solely for the purpose of obtaining better proposed times for air traffic clearance and then a later scheduled flight is substituted in the proposed "extra section" time. The FAA has investigated these allegations. The FAA Air Traffic Control System Command Center routinely monitors proposed flights and has addressed this behavior at LGA and other airports during traffic management programs. The FAA does not find this to be an on-going practice that affects operations at LGA.

A. Encouraging the Use of Larger Aircraft

The first variation of this approach would involve the FAA administratively determining the minimum aircraft size operating at LGA. By establishing a minimum size, the amount of airport congestion and delay experienced at the airport could be controlled, while simultaneously increasing the throughput of passengers at LGA. Provision for access by air carriers serving small communities would be achieved by exempting a specified number of operations, reserved for serving small and non-hub airports, from the minimum aircraft size requirement. A transition period would be necessary to determine the appropriate minimum aircraft size that would balance the demand for and supply of airfield capacity.

For example, the FAA would phase-out the HDR over a period of time, perhaps four years. However, a shorter phase-out would also be considered if the number of slots that would be phased-out under a four-year period would not produce the intended benefits in a timely manner. In the first year, the FAA would withdraw 25 percent of the slots and slot exemptions either randomly or using the slot withdrawal priority number during the congested periods. These withdrawn slots and slot exemptions would then be

made available for use based on aircraft size. In the succeeding years, additional slots and slot exemptions would be withdrawn. All slots and slot exemptions could be allocated based on a procedure such as the one described below, which gives priority to larger aircraft.

One possible approach for allocating by aircraft size would be for the FAA to invite air carriers to submit a series of hourly flight schedules for flights to occur over the next six months according to aircraft size for those hours during the period of congestion. The congestion period would run from 7:00 a.m. to 21:59 p.m. on weekdays, and more limited time periods on the weekends. Air carriers would first be asked to submit to the FAA hourly flight schedules for aircraft serving LGA with 150 or more seats. Air carriers with the largest aircraft, would be given priority by the FAA in granting authority to implement their schedules. In the event that there still exists excess airfield capacity during the congested period, air carriers would again be invited to submit hourly flights schedules for aircraft serving LGA with 100–149 seats. To the extent that excess capacity still exists, the remaining landing and takeoff rights would be allocated among all qualified air carriers serving LGA. The allocation, when complete, would be effective for approximately six months consistent with summer and winter scheduling seasons. Successive six-month schedules would be authorized by the FAA using a similar process.

To ensure that service to small and non-hub airports be maintained, an initial baseline allocation of 150 operations could be guaranteed to air carriers serving small and non-hub airports. This baseline allocation would be done via lottery and reallocated every 2 years. Air carriers would be free to determine which small communities they would serve and the frequency of service. The baseline allocation of 150 slots seeks to guarantee a minimum amount of service to small communities than is greater than provided under the current lottery. Air carriers will be able to supplement this baseline allocation with operations received in other allocations. Under this option, the FAA is also considering as an alternative to creating a small community set-aside, the desirability of establishing a baseline allocation for all air carriers serving LGA.

It is possible that over a period of time, for example, five years, the FAA would be able to establish permanent minimum aircraft size requirements based on experience from the semi-

annual schedule submission process. Once a permanent solution is established, air carrier access would be determined solely by compliance with the minimum aircraft size requirement.

The second variation to encourage the use of larger aircraft would be to maintain the HDR and AIR–21 allocations and eliminate the use of commuter aircraft (*i.e.*, jets aircraft with 55 seats or less and turboprops with 74 seats or less) in air carrier slots. There are approximately 80 air carrier slots that are operated with commuter aircraft. Under this variation, carriers would decide whether to continue this service using a commuter slot, to continue this service with a large aircraft or to eliminate the service entirely. Regardless of which course is chosen by the carriers, it is anticipated that there will be an increase in the average size of aircraft operating at LGA.

The third variation to encourage the use of larger aircraft would be to maintain the current HDR and AIR 21 allocations and eliminate the size limitation of the commuter category (merge the air carrier and commuter categories). This would provide flexibility to carriers with commuter slot holdings, who have the ability to use larger aircraft to serve the same community or change the service to a larger market. Presently, most commuter slots are held by incumbent airlines or airline affiliates that are the largest slot holders at the airport. This variation/option could reduce service to small communities because of potentially greater economic returns in larger, high-yield markets. However, if it is necessary to ensure some level of service to small communities beyond that provided by codifying the AIR–21 operations, a set-aside for small communities could be incorporated.

B. Establish a Pool of Slots for Small Community Service and Withdraw Slots at Regular Intervals for Reallocation to New Entrants

In general, this option would create a slot allocation rule to survive post-2007. It would retain the basic framework of the existing HDR, but would simplify and rationalize the pool of slots that is set aside for small community service by consolidating into a single category the HDR commuter slots serving small communities, the AIR–21 exemption slots allocated to serve small hub and nonhub airports, and the air carrier slots used for small community service. As a result, slots dedicated to service to small communities would be set at a level that accommodates the current level of service. The number of slots in this new category would not increase in the

future. Continuing access for new entrant operations would be assured by a periodic withdrawal and reallocation of a small number of slots from the air carrier category to new entrant carriers in order to provide competition and avoid the virtual denial of new access experienced under the buy-sell rule.

This option would maintain certain logistical aspects of the HDR for purposes of continuity, such as the same slot withdrawal numbers, the withdrawal priority system, and the minimum slot usage requirement and slot trading. The AIR–21 slot exemptions would be codified and added to the HDR slot totals. It is noted that this option would not disturb the “Other” category of slots used for general aviation and other non-scheduled operations. Instead of the commuter slot category, a new category for operations serving small communities would be established and would be comprised of the current HDR commuter slots serving small communities, air carrier slots serving small communities and AIR 21 slot exemptions serving small communities. As a result, there would be approximately 260 slots in the category for small community service with no aircraft size limitation. This encompasses the current level of service to small communities. The remaining commuter slots, which served medium/large communities, would move to the air carrier category with no aircraft size limitation.

The rule would create a continuing mechanism that would provide for a limited withdrawal (3% or less every year, or two years) from the air carrier HDR slot category for new entrant service. The withdrawal would target individual hours to ensure a distribution throughout the day. A lottery process would be used to reallocate the withdrawn slots to new entrants. If demand by new entrants is less than the number of slots withdrawn, each unused slot would be returned to the incumbent holder. Slots used for new entrant service, small community service and to support international obligations would not be subject to the withdrawal.

Lastly, it has been argued that current buy/sell provisions of HDR have had the unintended effect of limiting competition and new entrant access. One variation that could be incorporated in this option is the elimination of one-way trades, *i.e.*, a prohibition on the buying or leasing of slots. Carriers could only trade slots on a one-for-one basis at the same airport. While this would not prevent carriers from conducting a two-way trade that

also involved consideration, it would prevent a carrier or other entity from retaining the long-term allocation of a slot that it does not operate.

C. Reallocation of Slots Under a Replacement Rule

In general, the HDR would be repealed and replaced by a new rule that would establish and periodically allocate new hourly operational limitations. It would also consolidate the current number of HDR slots, pre AIR-21 slot exemptions to new entrants, and AIR-21 slot exemptions. Most slots would be reallocated to carriers currently holding them, in order to provide a stable and continuing base for current operations. A percentage of slots (examples are provided below) would be held back from larger incumbent carriers at the time of reallocation to provide a pool of slots for allocation by lottery to three separate categories: (1) New entrants; (2) small community service; and (3) limited redistribution open to all incumbents. This option protects the investment made in facilities by carriers and avoids major disruption in service because of slot reallocation. The periodic withdrawal and lottery of slots for new entrants and small community service could permit a gradual increase in slots available for these operations in the future. Over time, however, slots used by the large incumbent carriers for service in major markets could gradually be reduced, as slots were withdrawn for reallocation to new entrants and service to small communities.

Slots would have expiration dates and upon expiration (for instance every two years) the FAA would reallocate the slots using the following process:

1. Carriers would all receive a base, which is their current number of slots held today up to a maximum of 20.
2. Carriers that hold 21–100 slots would receive 98 % (or some percentage) of that portion of operations.
3. Carriers that hold over 100 slots would receive 95 % (or some percentage) of that portion of operations.³
4. Using the above slot pool, the FAA would conduct the three following lotteries: (a) New entrant; (b) small community service; (c) general distribution. The general distribution lottery would be open to all participants and could result in additional growth by new entrants, small community service, or other incumbents.

³ Using the percentages given in steps 1 and 2, preliminary analysis shows that a slot pool of approximately 35 slots would be available for reallocation.

Slots provided to foreign carriers in response to international obligations would need to be excluded from the withdrawal provisions. The FAA could apportion the slots available for each lottery based on demand or other policy considerations. Potentially, some of the slots that large incumbent carriers lose could be recouped by them through the small community service lottery or the general distribution lottery. This option could continue the existing ability to buy and sell slots or, alternatively, incorporate a ban on sales and leases and limit slot transfers to one-for-one trades as discussed in the previous option.

Commenters are requested to consider the effectiveness, administrative simplicity, transitional issues, and fairness of these administrative approaches.

Legal Considerations

This notice proposes both administrative and market-based pricing options to manage airport congestion and delays, which raise complex statutory, regulatory, and policy issues as well as difficult issues with respect to our international aviation obligations. Federal laws, regulations, and U.S. international obligations presently in place may restrict the types of alternative fee structures airports may adopt, especially if higher/lower fees deviate significantly from traditional cost accounting and cost-allocation methodologies. Additionally, requirements that grant-funded airports be available for public use on fair and reasonable terms and without unjust discrimination could continue to make it difficult for airports to design workable market-based pricing regimes.

We mention these legal issues and factors as background and, for purposes of this notice, request that commenters set aside consideration of the current statutory, regulatory, or international authorities. We seek suggestions on effective, comprehensive solutions that represent the best public policy for controlling congestion at LGA. While we will consider pertinent legal issues in any policy options ultimately put forward for adoption, perceived legal impediments should not unduly limit comments in response to this request. Accordingly, we will defer consideration of current legal factors.

With regard to the AIR-21 slot lottery allocation and procedures, the FAA, pursuant to its broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States, proposes to extend the allocation of slot exemptions

pursuant to the December 4, 2000, lottery and to conduct a limited second lottery for available capacity. 49 U.S.C. 40103 authorizes the agency to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

On April 5, 2000, the “Wendell H. Ford Aviation Investment and Reform Act for the 21st Century” (“AIR-21”) was enacted. Section 231 of AIR-21 significantly amended 49 U.S.C. 41714 and included new provisions codified at 49 U.S.C. 41716, 41717, and 41718. These provisions enabled air carriers meeting specified criteria to obtain new slot exemptions at New York’s LGA Airport and John F. Kennedy International Airport, Chicago’s O’Hare International Airport and Washington DC’s Ronald Reagan Washington National Airport. As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemptions authorized by the statute.

Again, the agency notes that Section 231 of AIR-21, 49 U.S.C. 41715(b)(1) expressly provides that the provisions for slot exemptions are not to affect the FAA’s authority for safety and the movement of air traffic. The reallocation of certain exemption times by the lottery procedures described in this Notice is based on the FAA’s statutory authority and does not rescind the exemptions issued by the Department under Orders 2000-4-10⁴ and 2000-4-11.⁵ As

⁴ Order 2000-4-10 implements the provisions of 49 U.S.C. § 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes “. . . to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20.” Applications submitted under this provision must identify the airports to be served and the time requested.

⁵ Specifically, Order 2000-4-11 implements 49 U.S.C. 41716(a), which provides in pertinent part that an exemption must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or non-hub airport in 1997, under certain conditions. The exemption must be granted if: (1)

provided in those orders, carriers that have filed the exemption certifications also need to obtain an allocation of slot exemption times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LGA, especially during peak hours, even if those operations would otherwise qualify for exemptions under AIR-21.

Lastly, section 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described herein and allows for special conditions to be included when circumstances warrant special consideration.

Issued in Washington, DC. on ???, ??, 2001.

Louise Maillett,

Acting Assistant Administrator for Policy, Planning, and International Aviation.

Appendix 6.—Demand Management Options Submitted to FAA for Consideration by the Port Authority of New York and New Jersey

Demand Management Alternatives for LaGuardia Airport

The allowable number of aircraft operations at LaGuardia Airport ("LGA") is currently limited by two primary administrative mechanisms. First, there are a limited number of slots and slot exemptions authorized under the High Density Rule ("HDR slots"). The HDR slots were established in 1968 to reduce delays at LGA and several other highly congested airports.

The airline was not providing such nonstop service between the small hub or non-hub airport and LaGuardia Airport during the week of November 1, 1999; or (2) the proposed service between the small hub or non-hub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR-21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub or non-hub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

⁶ The FAA has inserted in square brackets dates associated with PANYNJ's reference to various Federal Register Notices. These changes were made to comply with Federal Register formatting standards.

See 14 CFR part 93, subpart K. Second, following enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR-21"), which exempted certain aircraft operations at LGA from the High Density Rule and which calls for the abolition of the High Density Rule slots at LGA by 2007, the Federal Aviation Administration ("FAA") authorized only a limited number of AIR-21 slot exemptions on an interim basis and used a lottery to allocate these exemptions among eligible airlines. See 65 FR 75765 [December 4, 2000] *et seq.* These limits on AIR-21 slot exemptions are currently scheduled to expire on September 15, 2001.

In conjunction with the U.S. Department of Transportation ("DOT") and the FAA, the Port Authority of New York and New Jersey ("PANYNJ") has been considering a variety of alternative market-based demand management programs that might be implemented at LGA when the existing limits on AIR-21 slot exemptions expire. The PANYNJ's principal goal in exploring various demand management alternatives has been to find ways to use market forces to bring the level of demand for use of the LGA airfield into alignment with its limited capacity, and thereby improve airline schedule reliability, reduce flight cancellations and avoid excessive delays. The PANYNJ strongly believes that the millions of passengers who use LGA each year should not suffer from gridlock on the airfield or in the air. At the same time, the PANYNJ respects the twin objectives of AIR-21: to facilitate the entry of new airlines to the LGA market, thereby promoting airline competition, and to enhance service between LGA and small hub and non-hub destinations.

The PANYNJ is confident that the implementation of a market-based demand management program at LGA will encourage the efficient use of the airport's scarce airfield capacity, thereby allowing continued growth in the airport's passenger volume, by providing incentives to use larger aircraft, while promoting competition and maintaining reasonable stability in the air services provided at LGA. The PANYNJ expects that an ancillary benefit to the traveling public of the use of an effective market-based demand management program will be the availability of new revenue that can be used to encourage development of increased airport capacity in the region. In developing effective market-based demand management programs for consideration at LGA, the precise roles to be played in implementing such plans by the PANYNJ, as the local airport proprietor, and the FAA and DOT as the federal regulators, remain to be determined. The PANYNJ's firm belief, however, is that the PANYNJ together with the FAA and DOT have the combined statutory authority to implement an effective market-based demand management program at LGA.

The FAA and DOT have encouraged the PANYNJ to develop and submit for public comment two alternative sets of potential demand management alternatives for LGA, in anticipation of the expiration of the current limits on AIR-21 slot exemptions (currently scheduled for September 15, 2001) and the

elimination of all HDR slots no later than 2007. These alternatives are the focus of this document. The PANYNJ expects to select a demand management program for LGA after carefully reviewing the public comments on the programs it is currently considering, and after consulting with the FAA and DOT, the airlines operating at LGA, and other affected constituencies. The PANYNJ has not yet determined what demand management approach it will favor, and invites public comment on both the general structures and specific parameters of the alternatives that are described below. The PANYNJ anticipates that it (and the FAA and DOT) will provide another opportunity for public comment before a demand management program is implemented at LGA.

The first set of alternatives the PANYNJ is studying would use congestion pricing in combination with administrative constraints to keep demand in alignment with the limited airfield capacity at LGA. These congestion pricing alternatives are described in two options. Under Option A, the HDR would remain in effect until 2007, but over time the FAA would expand the current number of slot exemptions that can be used for operations qualifying under AIR-21. This would allow only AIR-21 service to expand, but would create the potential for an excessive number of aircraft operations seeking to use LGA's airfield. To bring the level of demand arising from both HDR and AIR-21 service into alignment with airfield capacity, the PANYNJ would levy a congestion fee on all aircraft landing or taking-off during a defined "congested period" at LGA, except perhaps for a limited number of daily flights between small hub and non-hub airports and LGA that would be given an exemption. Under Option B, the FAA would simultaneously phase out the limits imposed under both the HDR and AIR-21, by separately allowing the numbers of operations permitted under the HDR and under AIR-21 to increase, and congestion pricing would be used to align the level of demand to provide these services with the limited airfield capacity at LGA.

The second set of alternatives under consideration by the PANYNJ would use a combination of administrative mechanisms and auctions to allocate time-specific "reservations" that would be required in order to conduct an aircraft operation at LGA. These alternatives are also described in two options, but both options would include four groups of reservations: (i) each airline would be allocated up to 20 reservations each day (subject to an aggregate limit of 300); (ii) 80 reservations each day would be set aside for use only for service to or from small hub and non-hub airports, and would be allocated by a lottery, an auction, or a combination of these methods; (iii) 70 percent, or a lesser share, of the remaining reservations would be allocated among the airlines serving LGA in proportion to each airline's share of the airport's total passenger volume; and (iv) the remaining reservations would be allocated among all airlines by auction and would not be limited to use for any particular type of service. The main difference between the two options concerns the timing of elimination of the current system of HDR slots. Under

Option A the HDR slots would be eliminated at the outset, while under Option B the current system of HDR slots would in effect be phased out over four years.

The remainder of this document, submitted to the FAA and DOT by the PANYNJ, has three sections. Section 1 summarizes the factual and procedural background of the PANYNJ's work on demand management programs for LGA. This section describes the PANYNJ airport system, and explains the capacity constraints and demand management problem at LGA. Section 1 concludes with a brief description of various approaches that were reviewed during the process of developing the two sets of alternatives that are presently under consideration by the PANYNJ. Sections 2 and 3, respectively, detail the essential features of the congestion pricing and auction alternatives the PANYNJ is currently considering. The DOT, FAA, and PANYNJ all seek public comment on these possible long-term solutions to the demand management problem at LGA. The commitment of all stakeholders to constructive dialogue will yield the optimal solution for airlines, local communities and air travelers.

1. Background

Since 1968, the number of aircraft operations at LGA has been managed primarily through administrative mechanisms. The DOT, FAA, and PANYNJ have been exploring ways in which market-based mechanisms could best be used in the future to manage demand at LGA, while achieving the goals of AIR-21 to facilitate greater competition in scheduled air service, and to permit new service between small hub or non-hub airports and LGA.

1.1 Description of the PANYNJ Airport System

The PANYNJ operates a four-airport system comprised of LaGuardia, John F. Kennedy International, Newark International, and Teterboro Airports. Each of these airports plays a different role, targeted for different users and designed to facilitate different types of operations. LaGuardia Airport, just seven miles from midtown Manhattan, is the airport offering frequent, short-haul service to meet the needs of the business community. For many years, the PANYNJ has implemented a perimeter rule at LGA (limiting scheduled flights to destinations no more than 1500 miles away) and imposed minimum landing fees on non-scheduled aircraft operators. John F. Kennedy International Airport ("JFK") has for many years served as an international gateway, designed to meet the needs of the long-haul traveler, but with the capacity to accommodate additional domestic flights as well. With the recent introduction of new domestic service and the scheduled completion of the PANYNJ's AirTrain rail service in 2003, JFK is expected to accommodate an increasing share of the region's domestic and origin-destination traffic in the coming years. Newark International Airport combines frequent service to business centers with growing international traffic, and will also benefit from improved ground access. Teterboro Airport is the key reliever airport for the

immediate region, serving the needs of corporate and general aviation. These four airports are intensively used, with over 90 million passengers, 2.8 million tons of cargo, and over 1.4 million aircraft movements passing through them each year. The PANYNJ's four airports complement other aviation facilities within the New York/New Jersey region that are capable of providing service to some of the same markets served by the PANYNJ's airport system.

1.2 The Capacity Constraints and Demand Management Problem at LaGuardia Airport

A key operational challenge at LGA is to maintain a balance between flight operations and the limited physical capacity of the airfield. As the FAA has previously found, "LaGuardia Airport simply does not have the capacity for the unlimited addition of new flights." [65 FR 75768, December 4, 2000]. LGA is small. It consists of only 680 acres. It is surrounded by Flushing Bay on one side, a major arterial highway on the other, and dense residential neighborhoods. LGA's two 7,000-foot runways are perpendicular and intersect one another, which means that arriving and departing flights must be carefully timed and synchronized. The PANYNJ has been making and continues to plan capital improvements to handle larger aircraft at LGA, so that the physical infrastructure is in place to serve more passengers without increasing the numbers of flights. However, LGA does not have the physical space to add runways to handle additional numbers of operations.

In the first seven months after AIR-21 was enacted on April 5, 2000, airlines sought to schedule more than 600 new flights a day at LGA, even though during the previous 18 months LGA actually handled fewer than 1000 flights each day on average, but had experienced serious problems of congestion and delay. As of November 1, 2000, about 300 of those new flights had begun operations. The immediate result was greatly increased levels of flight delay at LGA, which the FAA has previously described in some detail. See 65 FR 69127, November 15, 2000; 65 FR 75766, December 4, 2000. The FAA found that "[t]his increasing level of congestion and delay makes carrier schedules impossible to meet, frustrates passenger travel plans, and places an unnecessary strain on carrier ground operations and on air traffic control services." 65 FR 69128, November 15, 2000. As an interim solution, the FAA adopted a limit on the number of AIR-21 slot exemptions that could be used and allocated them by a lottery in order to achieve a limit of 75 scheduled operations per hour at LGA. 65 FR 75770 [December 4, 2000]. The FAA found that "[t]he limit of 75 scheduled operations per hour would limit daily and hourly demand on airport facilities and the air traffic control system to a number of flights that can be accommodated, at least in good weather conditions." 65 FR 69218 (sic 69128, November 15, 2000. The FAA imposed limits on AIR-21 slot exemptions and conducted its lottery in December 2000 as an interim step, in order to provide time to develop a long-term mechanism to prevent undue congestion at LGA. 65 FR 75769 December 4, 2000. The FAA's limits on the number of AIR-21 slot exemptions that can

be used took effect on January 31, 2001, and caused a significant reduction in the volume of operations and resulting levels of delay and flight cancellations at LGA. Nevertheless, LGA has remained among the most highly congested and delay prone airports in the nation.

Because the physical capacity of the airfield at LGA has been reached, the number of flights at LGA during current periods of congestion cannot be raised without re-introducing the especially high levels of flight delay and cancellations that plagued LGA last year and caused serious problems throughout the nation's aviation system. As a result, methods for managing the level of demand so that it matches available capacity must be ready to put in place when the FAA's current limits on AIR-21 slot exemptions expire.

1.3 Development of the Alternatives Presented Below

1.3.1 Focus on Market-Based Solutions

The PANYNJ has considered many approaches to managing demand at LGA, including the use of new systems of administrative controls with no market-based features. However, any purely administrative system of managing demand will almost inevitably display the characteristics that have led to persistent criticism of the system of HDR slots that has existed since 1968. Purely administrative methods for allocating capacity are generally less efficient and less responsive to market conditions than economic allocation methods. Efficient, economic allocation methods can be augmented with administrative measures, exemptions or subsidies to address competing policy goals. With encouragement from the FAA and DOT, the PANYNJ has therefore been particularly interested in exploring ways of using market forces to achieve the most efficient use of the limited capacity at LGA consistent with its overall goals and objectives. Two general types of economic demand management tools are available under these circumstances.

The first is congestion pricing. The logic of congestion pricing is to use price to bring the level of demand for use of the airfield at LGA into alignment with its limited capacity. Under a pure form of congestion pricing, the market alone would determine which flights are operated. Congestion pricing can be combined, however, with administrative constraints on allowable operations. Congestion pricing has the advantage of promoting efficient use of scarce capacity at LGA. Under a congestion pricing program, the PANYNJ would raise the price charged to aircraft operators for use of the airfield during congested periods, and the demand for use of the airfield would adjust to the congestion price. The new fee would be set with an expectation that demand would align with capacity. However, if the resulting number of operations turned out to be substantially higher or lower than the capacity of LGA, the congestion price would be adjusted accordingly.

The second economic demand management tool available at LGA is to use an auction to allocate a fixed number of allowable operations among competing

airlines. Under a pure auction approach, the allowable number of aircraft operations would be fixed to match the limited airfield capacity at LGA, and the airlines would establish the market price for each allowable operation through an auction. An auction would be expected to improve the efficiency of use of the airfield by allocating the allowable operations to the bidders that can make the most productive use of the opportunity to use the airfield at LGA. Auctions can effectively be combined with administrative allocations or subsidies funded with auction proceeds to achieve desired policy objectives.

1.3.2 Development of Congestion Pricing Alternatives

Congestion pricing at LGA would necessarily have a different character than the forms of peak-hour pricing that have been considered at other airports. Some airports have a few hours of peak demand each day, and might be able to use "peak-hour" pricing to encourage scheduled and unscheduled aircraft operations to move to less congested times. At LGA, in contrast, the demand for aircraft operations exceeds available capacity for almost the entire day on weekdays. Adopting a "peak-hour" price for a few hours a day in order to shift operations to other times would not solve the problem. Shifting flights to the late night or early morning hours is not a desirable alternative, due to lack of market demand for service at those times and concern about adverse noise impacts on the surrounding residential neighborhoods. Since the airfield capacity of LGA cannot be significantly increased, this means that a pricing scheme cannot succeed as a demand management tool at LGA unless it can keep demand in alignment with capacity throughout the entire day. The PANYNJ has been exploring the possible parameters of such a congestion pricing approach.

The PANYNJ determined early in its examination of alternatives that a congestion price which was limited to the recovery of the airfield's capital costs and operating expenses would not be adequate to achieve the goal of aligning demand with capacity. Accordingly, the PANYNJ has focused its attention on congestion pricing alternatives that are not based on the recovery of the airfield's historical costs and operating expenses. The PANYNJ considered the potential effects of the immediate elimination of the operational limits imposed by the HDR slots, coupled with the use of a congestion fee alone to bring the level of demand for use of the airfield at LGA into line with its limited capacity. The experience during the fall of 2000, when the airlines rushed to secure hundreds of AIR-21 slot exemptions, suggests that sudden removal of all operational limits would again produce a tremendous surge in aircraft operations. A congestion fee would need to be very high to counteract this surge, and bring demand back in line with capacity. This approach would not be a good way to achieve the PANYNJ's overall goals and objectives. The PANYNJ has, therefore, focused more attention on ways to combine a congestion fee with a gradual elimination of the constraints on

HDR and AIR-21 operations imposed by the FAA.

In exploring such an approach, a range of possible targets for operations during periods of congestion at LGA has been considered. The tradeoffs here are real. With fewer operations during congested periods, delay will be reduced, schedules will be more reliable, and the burden on air traffic control will be more manageable. However, aiming for too low an operations target risks not making full use of LGA's capacity, and making it more difficult for all market segments to receive reasonable levels of access to LGA. In the opposite direction, aiming for a higher target permits more flights, making it easier to achieve the AIR-21 goals of facilitating entry by additional airlines and increasing service to smaller airports. But too high a target would result in a renewed increase in flight delays and cancellations, disrupting the operations of the airlines that AIR-21 seeks to foster, and could unreasonably tax the capacity of air traffic control. The problem is further complicated by the fact that the effective capacity of LGA's airfield is significantly lower under Instrument Flight Rules ("IFR") and certain wind conditions than it is in good weather under Visual Flight Rules ("VFR") with favorable winds. Lower airfield capacity conditions often occur at LGA, and if the target level of operations is set too high, the frequency of gridlocked operations will be unacceptable to the PANYNJ and the traveling public.

The PANYNJ has also considered whether the same congestion fee should apply to all flights, or whether certain kinds of flights should be exempted or pay a lower congestion fee. Once again, there are inevitable tradeoffs. Exempting certain flights means that some of the economic benefits of promoting efficient use of limited capacity at LGA will be lost, while applying the fee to all operations means that uneconomic, but socially desirable service may not be available.

The alternative congestion fee options described in Section 2 below reflect these and related considerations.

1.3.3 Development of Auction Alternatives

The PANYNJ also considered a variety of ways in which auction mechanisms might be used to manage demand at LGA. In contrast to congestion pricing alternatives where prices are established with the goal of producing a target level of aircraft operations, in an auction the number of permitted aircraft operations is established in advance, and airport users set at auction the price for permission to operate at the airport.

Auctions are used to allocate resources and transfer asset rights in many industries, including utilities and telecommunications. For example, the Federal Communications Commission has been using auctions to allocate spectrum licenses for wireless communications. Auctions have proven to be effective in circumstances where demand for a resource is much greater than available finite capacity, price setting is uncertain, and there is a goal of fostering increased competition. Properly structured auctions can result in significantly increased

competition among service providers and lower costs to consumers.

The PANYNJ explored the possibility of allocating all available capacity at LGA through a single auction. Although a pure auction might achieve a higher degree of economic efficiency than the mixed allocation and auction approaches set forth in Section 3 below, it may not perform as well in achieving the AIR-21 goals of access to new entrant airlines and service to small communities. Additionally, a pure auction of all available capacity at LGA has the potential to be unduly disruptive to the air services currently provided to the traveling public and to services by airlines with lesser financial capacity. The PANYNJ has also been concerned that an auction of all available capacity at LGA might add unduly to airline costs and potentially could translate into increased average air fares to and from the New York and New Jersey areas, especially given the absence of experience with auctions among airport users and the resultant uncertainty about the prices that might be paid at auction.

The PANYNJ therefore explored a wide variety of ways to smooth the transition from the current system of inflexible administrative controls to a new market-based auction approach. The results of this analysis are reflected in the two auction options set forth below for comment.

1.3.4 Use of Congestion Fee or Auction Proceeds

From the start, the PANYNJ recognized that the primary purpose of implementing an economic demand management tool such as a congestion fee or an auction is to allocate the scarce resources available at LGA efficiently, not to generate additional revenue to the PANYNJ. The PANYNJ also concluded that it is appropriate to maintain the existing weight-based landing fee, as the time-tested way to recover current LGA airfield operating and capital costs.

The PANYNJ has considered a variety of possible uses for proceeds from a congestion fee or an auction. The options considered include using the additional revenues:

- (i) To pay for projects that increase airport capacity in the local airport system or at other regional airports, including new physical infrastructure and technological improvements that could increase airfield capacity as well as facilities and technologies that might more efficiently guide aircraft to and from an airport;
- (ii) To pay for expenses incurred for AIP-eligible (but not AIP-funded) noise mitigation projects, in order to reduce the burden of airport activity on nearby communities;
- (iii) To lease HDR slots at LGA from airlines, and to hold them in abeyance, in order to reduce the level of demand;
- (iv) To advance the goals of AIR-21 of increased airline competition and small community air service; or
- (v) Periodically to rebate remaining proceeds to airlines operating at LGA based on the number of passenger enplanements at LGA during a defined period of time, in order to provide an incentive for airlines to increase the volume of passengers they carry without increasing the number of flights they

operate from LGA (by up-gauging their fleet of aircraft and improving their load factors).

These possible uses of demand management revenues remain under consideration by the PANYNJ.

2. Congestion Pricing

Introduction and Overview. Reflecting its concern that an immediate abolition of the operational limits imposed by the FAA under the HDR and AIR-21 would be ill-advised, the PANYNJ has been exploring how congestion pricing could be combined with phased increases in the number of legally authorized operations to improve the efficiency of use of the airfield at LGA without reintroducing higher levels of delay.

The logic of this approach is, over time, to have the FAA reduce its administrative constraints by increasing the number of operations that would be legally permissible under the HDR, AIR-21, or both, and to substitute market forces by charging a Congestion Fee (in addition to the existing landing fee) for all aircraft operations during a defined Congested Period. The Congestion Fee would be designed to align the level of demand with limited airfield capacity, and the intended overall impact would be to shift toward more productive use of the airfield while maintaining approximately the same overall level of operational activity that has been observed since the AIR-21 lottery took effect.

The Congestion Fee alternative is described below in two possible forms, Option A and Option B.

Option A contemplates that the restrictions imposed by the HDR would remain in effect until 2007 and that the FAA would only increase the number of slot exemptions under AIR-21 that could be used. Under this Option, the PANYNJ anticipates that before it would implement the Congestion Fee, the FAA would conduct a lottery (in the same manner as it conducted the initial AIR-21 slot exemption lottery in December 2000) to allocate three additional AIR-21 slot exemptions per hour for use for qualified AIR-21 operations. Each year thereafter, the FAA would conduct another lottery to allocate additional slot exemptions for qualified AIR-21 operations. The PANYNJ would levy the same Congestion Fee on all aircraft operations (both landings and take-offs), including operations conducted under HDR authority, that occur during the Congested Period at LGA, except for a limited number of AIR-21 flights that might be exempted from the Fee.

Option B differs from Option A in two principal ways.

The first difference is that under Option B the PANYNJ contemplates that the FAA would gradually reduce the constraints imposed under both the HDR and the AIR-21 slot exemption lottery in conjunction with the introduction of the Congestion Fee and in anticipation of the elimination of the HDR by 2007 as required by AIR-21. In addition to increasing the number of AIR-21 slot exemptions that could be used, as in Option A, the FAA would (i) annually increase the number of allowable HDR operations in each hour by a maximum of 5 percent using the rules established in the FAA's HDR regulations to allocate among the airlines the

authority to conduct these additional operations, and (ii) revise the HDR to reduce or eliminate the current restrictions that limit the use of 14 "commuter slots" each hour to small aircraft, to improve the operating efficiency of LGA. Effective in 2007, when the HDR is eliminated, there would no longer be any administrative constraints on the permissible number of operations at LGA, but the Congestion Fee would remain in place and would continue to maintain a balance between demand and capacity at LGA.

The second difference between Option A and Option B is that under Option B, the PANYNJ would levy two different Congestion Fees: one Congestion Fee would be charged for all flights operating between LGA and any small hub or non-hub airport qualifying for AIR-21 service, as well as general aviation flights, and another, much higher Congestion Fee would be charged for all other aircraft operations.

Provisions Common to Both Option A and Option B

2.1 Effective Date

The new Congestion Fee would take effect on September 16, 2001 or whenever the limits resulting from the FAA's AIR-21 slot exemption lottery expire if they are extended by the FAA.

2.2 General Rules

2.2.1 Nature of the Congestion Fee

The Congestion Fee would be designed to align the level of demand with the limited capacity of the airfield at LGA. The amount of the Congestion Fee would not be dependent upon the historical costs of the airfield at LGA or otherwise dependent upon accounting costs incurred by the PANYNJ. Initially, the Congestion Fee would not vary during the Congested Period, but in the future the PANYNJ might vary the level of the Congestion Fee during the Congested Period to manage hour-by-hour demand for use of the airfield at LGA.

2.2.2 Operations Subject to the Congestion Fee

All aircraft arriving at or departing from LGA during the "Congested Period" would be assessed a Congestion Fee, except potentially for a limited number of daily flights between small hub and non-hub airports and LGA that might be exempted, as described in Section 2.5 below. Operations at other times would not be subject to the Congestion Fee.

2.2.3 Definition of Congested Period

The Congested Period would consist of all hours during which the demand for use of the airfield at LGA exceeds its capacity, as well as any hour immediately preceding or immediately following that period. Based on current conditions, the Congested Period would run from 06:00 to 22:00 on weekdays, from 06:00 to 14:00 on Saturday, and from 09:00 to 22:00 on Sunday.

2.2.4 Existing Landing Fee To Remain in Effect

All aircraft operations at LGA would continue to be subject to and would be required to pay any landing fee established by PANYNJ, in addition to any Congestion

Fee. The PANYNJ expects that the existing weight-based landing fee and the minimum landing fee would remain in effect. (The "additional surcharge" of \$100 currently levied upon general aviation operations during certain congested hours would be eliminated and, in effect, replaced by the new Congestion Fee.)

2.3 Operations Target

2.3.1 Initial Target

A target level of operations during the Congested Period would be established before the PANYNJ sets the Congestion Fee. The PANYNJ would set the initial Congestion Fee, and adjust it as necessary, with the intent that there be no more than the target level of operations. The PANYNJ has been considering the desirability and implications of a target level of 78 total operations per hour at LGA for each hour during the Congested Period. This equates to 1248 scheduled and unscheduled operations between the hours of 06:00 and 22:00 each weekday. In monitoring success in reaching such an hourly target, reasonable hourly variations would be deemed acceptable so long as the cumulative number of operations during any three-hour period during any portion of the Congested Period did not exceed three times the hourly target.

2.3.2 Revision of Operations Target or Congested Period

The FAA, DOT and PANYNJ would continue to monitor the actual level of delay experienced at LGA, and the operations target or the definition of the Congested Period, or both, could be revised if actual delays and flight cancellations are significantly higher or lower than anticipated.

2.4 Revisions to Congestion Fee

The PANYNJ would periodically review operational results under the Congestion Fee and would adjust the amount of the Fee if actual operations were significantly higher or lower than the operations target. The PANYNJ could also use the proceeds from the Congestion Fee to purchase or lease HDR or AIR-21 operating authority from any airline, and hold the authority in abeyance to reduce the level of demand for use of the airfield.

2.5 Exemption for Small Hub and Non-Hub Service

The PANYNJ is considering the desirability of exemptions from the Congestion Fee for certain operations that serve airports that qualify for AIR-21 small hub or non-hub service under 49 U.S.C. § 41716(a) and DOT Order 2000-4-11. Three potential approaches under consideration are exemptions for (i) 80 operations (or a lower number that would increase the overall operating efficiency of LGA) qualified under AIR-21 for small hub or non-hub service; (ii) all AIR-21 qualified operations serving small hub or non-hub airports within 300 miles of LGA, for example, given that passengers in markets within this distance have few connecting flight options; or (iii) a combination of these two approaches. The PANYNJ has also considered whether it would be desirable to exempt new entrant

airlines from the Congestion Fee, but presently believes that such an exemption might be anti-competitive.

Any small hub and non-hub operations exempted from the Congestion Fee would be allocated by a lottery among the airlines providing or seeking to provide service to small hub or non-hub airports. The selection sequence among airlines that seek Congestion Fee exemptions for small hub and non-hub operations would be established using a lottery. Participating airlines would be able to obtain two exemptions from the Congestion Fee in each of successive rounds of the allocation, until the entire number of exempt operations has been assigned. The small hub and non-hub operations exempted from the Congestion Fee would be reallocated among airlines every two years, in the same manner. A new lottery would be conducted each time that this allocation takes place. The lottery would only be used to determine the sequence of selections. It is presently contemplated that the exemptions allocated by the lottery could not be traded and would be subject to a "use or lose" restriction to ensure that desired service is provided to smaller airports. Any unused exemption authority that is returned to the PANYNJ would be redistributed by picking up the selection sequence from where the lottery last ended.

Provisions That Differ Between Option A and Option B

2.6 Structure and Initial Amount of the Congestion Fee

Option A (no change in HDR): Under Option A, all aircraft operators would pay the same Congestion Fee during the Congested Period except for a certain number of daily flights between small hub and non-hub airports and LGA. It is currently anticipated that the initial level of the Congestion Fee under Option A would be in the range of \$350–\$700 for each arriving and departing aircraft.

Option B (gradual reduction of HDR constraints): Under Option B, there would be two separate Congestion Fees. The first would be charged for operations during the Congested Period that serve any airport that qualifies for AIR–21 small hub or non-hub service under 49 U.S.C. § 41716(a) and DOT Order 2000–4–11, except for a certain number of daily flights between small hub and non-hub airports and LGA, as well as for general aviation operations. The second would be charged for all other operations. It is currently anticipated that the initial level of the Congestion Fee under Option B would be in the range of \$350–\$700 for each arriving and departing aircraft serving AIR–21 qualified destinations (and general aviation), and in the range of \$700–\$2000 for all other arriving or departing aircraft.

2.7 Revenue Estimates

Both Congestion Pricing options would be expected to produce significant streams of revenue that would be dedicated to beneficial aviation uses (see Section 1.3.4. above).

Option A (no change in HDR): A Congestion Fee of \$350–\$700 per operation is estimated to yield additional annual revenues to the PANYNJ of approximately \$130–\$260 million per year.

Option B (gradual reduction of HDR constraints): A general Congestion Fee of \$700–\$2000 for each operation during the Congested Period, combined with a Small Hub/Non-Hub Congestion Fee of \$350–\$700 per operation, is estimated to yield additional annual revenues to the PANYNJ of approximately \$240–\$550 million.

3. Allocation and Auction of Reservations

Introduction. This alternative would replace the current system of HDR slots and AIR–21 slot exemptions. Airlines would instead be required to have a "Reservation" in order to conduct an operation at LGA during the Congested Period. Reservations would be limited in number, to ensure that the level of operations at the airport is aligned with the limited capacity of its airfield. Reservations would be available to new market entrants and smaller market participants, and mechanisms would be established to permit the regular reallocation of Reservations over time. This method would allocate the total number of available Reservations during each hour in the Congested Period in four distinct tranches or groups.

First, each airline would be permitted a Baseline Allocation of at least 20 Reservations each day. This is intended to ensure that new entrants will have an opportunity to provide service at LGA. Second, a total of 80 Reservations would be reserved each day for flights to or from small hub or non-hub airports qualifying for service under AIR–21; these Reservations would be allocated among the airlines seeking to provide these services using a lottery similar to the FAA's December 2000 AIR–21 slot exemption lottery, an auction, or a combination of these methods. This set aside for service to small hub and non-hub airports is intended to ensure that there will remain a reasonable level of service between smaller airports and LGA, and to encourage the efficient use of the capacity reserved for this purpose. (No airline would be prevented from using other Reservations as well to serve small hub or non-hub airports from LGA.) Third, 70 percent, or a lesser share, of the remaining Reservations each day would be allocated in proportion to each airline's share of total passenger volumes at LGA. This Performance-Based Allocation is intended to provide a reasonable degree of stability in the market while creating an incentive for airlines to use Reservations productively by carrying more passengers on each flight. Fourth, the remaining Reservations would be auctioned, without restriction as to use. This is intended to encourage efficient use of the remaining capacity at LGA and to promote competition.*

This Reservations alternative is described in two potential forms, Option A and Option B, which are currently under consideration by the PANYNJ.

* A hypothetical illustration of how the total number of Reservations in the congested Period would be divided among these four tranches in option A is attached at the back of this document. The division of Reservations in Option B would take a similar form, although during the phase-in period the total number of Reservations in the Baseline Allocation would be expected to be higher.

Option A contemplates immediate replacement of all HDR slots and AIR–21 slot exemptions authorized by the lottery with a new system of Reservations, which would be reallocated every two years.

Option B differs from Option A in one principal respect: Option B contemplates, in effect, a four-year phase out, rather than immediate replacement, of operating authority under the existing High Density Rule. This phase out would be accomplished through adjustments to the Baseline Allocation. Although all HDR slots would formally be withdrawn immediately, each airline would be guaranteed to receive in its Baseline Allocation for the first year a number of Reservations representing at least 75 percent of the number of HDR slots and AIR–21 slot exemptions it is currently using. As the new program is phased in, this guarantee would decline to 50 percent for the second year and 25 percent for the third year. The phase out of the current HDR slot system would not be complete until the fourth year. During the first four years Reservations would be assigned for only one year, but thereafter Reservations would be reallocated every two years, as in Option A.

3.1 Effective Date

The new system of Reservations would take effect on September 16, 2001 or whenever the limits resulting from the FAA's AIR–21 slot exemption lottery expire if they are extended by the FAA.

3.2 Reservations

3.2.1 Need for an LGA Reservation

A Reservation would authorize an aircraft operation at LGA, either for an arrival or a departure, during a specified hour on a specified day of the week. Reservations for scheduled flights would be allocated through the mechanisms described in Section 3.3 below. Unscheduled operations would not be permitted unless there is an available Reservation in accord with Section 3.2.3.2 below. It would be a violation of the PANYNJ's Rules and Regulations governing LGA for any aircraft to arrive at or depart from LGA during the "Congested Period" without a Reservation.

3.2.2 Definition of Congested Period

The "Congested Period" would be the same for the system of Reservations as it would be for Congestion Pricing (see Section 2.2.3 above).

3.2.3 Number of Reservations

The total number of operations to be permitted during each hour of the Congested Period would be established before the new system of Reservations is implemented. The PANYNJ has been reviewing the desirability and implications of using 81 as the total number of Reservations for operations at LGA would be permitted for each hour during the Congested Period. The allowance for 81 hourly Reservations would produce approximately the same results as the target of 78 actual hourly operations envisioned under the Congestion Fee alternatives. If 81 hourly Reservations are allowed, the frequent cancellation of a few scheduled flights for non-LGA operational reasons (e.g., weather effects elsewhere, aircraft mechanical

problems) and the lack of use of Reservations by general aviation are typically expected to produce about 78 actual hourly operations. The allowed number of Reservations would be allocated between scheduled and unscheduled operations as follows:

3.2.3.1 Scheduled Operations

A total of 75 Reservations would be available each hour for scheduled operations during the Congested Period. This equates to a total of 1200 Reservations available from 06:00 to 22:00 on weekdays at LGA for scheduled operations.

3.2.3.2 General Aviation and Military Flights

A total of six Reservations would be available each hour for general aviation or military operations during the Congested Period. The FAA would manage the assignment of these Reservations for general aviation and military flights in the same manner as it currently does under the HDR.

3.3 Periodic Reallocation of Reservations for Scheduled Operations

Option A (no phase in): Reservations to conduct a scheduled operation at LGA would be allocated every two years. The first allocation would be scheduled so that the results would take effect on the Effective Date.

Option B (four-year phase in): Reservations to conduct a scheduled operation at LGA would be allocated for a one-year period for each of four years, during which allocations based on existing HDR slot allocations would be phased out. The first allocation would be scheduled so that the results would take effect on the Effective Date. At the end of the first four years, the phase-out would be completed, and thereafter the reallocation of Reservations would take place every two years.

3.3.1 Baseline Allocation

In order to ensure that new airlines may enter the LGA market and that limited incumbents may expand the scope of their operations, and to provide an appropriate incentive for the provision of service to small hub or non-hub airports that is consistent with the limited capacity at LGA, all airlines would be eligible for a Baseline Allocation of Reservations for each day of the week.

Each request for a Baseline Allocation would require a refundable financial deposit provided to the PANYNJ for each requested Reservation. If the requesting airline obtains a Reservation and complies with the use-or-lose requirement set forth in Section 3.5.2 below for one full calendar year, the financial deposit would be returned; otherwise, it would be forfeited to the PANYNJ.

3.3.1.1 Initial Baseline Allocation

Option A (no phase in): Each airline would be permitted to obtain a Baseline Allocation of up to 20 Reservations for each day of the week to use for service between LGA and any other destination permitted under the LGA Perimeter Rule. (AIR-21 uses 20 operations as the measure of an incumbent airline.) In no event, however, would the total number of Reservations assigned to all airlines in any Baseline Allocation exceed 300. In the event that the total number of Reservations

properly requested in the Baseline Allocation exceeds 300, each airline's requests would be reduced proportionately so that the total number of Reservations in the Baseline Allocation equals 300.

Option B (four-year phase in): Each airline would be permitted to obtain an initial Baseline Allocation of a number of Reservations for each day of the week to use for service between LGA and any other destination permitted under the LGA Perimeter Rule.

For the first year, this number would be equal to the greater of (i) 20 Reservations, or (ii) 75 percent of the total number of HDR slots that were assigned to the airline as of June 30, 2001 and used at least 80 percent of the time during the preceding two months. For the second year, this number would be equal to the greater of (i) 20 Reservations, or (ii) 50 percent of the total number of HDR slots that were assigned to the airline as of June 30, 2001 and used at least 80 percent of the time during the preceding two months. For the third year, this number would be equal to the greater of (i) 20 Reservations, or (ii) 25 percent of the total number of HDR slots that were assigned to the airline as of June 30, 2001 and used at least 80 percent of the time during the preceding two months.

For the fourth year, and in every biennial reallocation thereafter, each airline would be permitted to obtain up to 20 Reservations each day of the week to use for service between LGA and any other destination in the same manner, and subject to the same rules, as under Option A.

3.3.1.2 Assignment Mechanism

Each airline could determine the hours during which the Reservations would be used. However, during the Congested Period, no airline could use Reservations acquired in the Baseline Allocation to schedule during any 60-minute period more than the greater of (i) two operations, or (ii) 6.5 percent of the airline's daily Reservations (i.e. one-sixteenth, reflecting the 16 hour Congested Period on weekdays).

3.3.1.3 Subsequent Requests for Baseline Allocation

A new entrant airline or other airline that chose not to obtain its full Baseline Allocation could request additional Baseline Reservations at any time, up to the maximum number of permitted Baseline Reservations, by making a "subsequent request" for a further Baseline Allocation. The PANYNJ could allocate additional Reservations up to such airline's full Baseline Allocation, either by (1) issuing unassigned Reservations, including Reservations that have been voluntarily returned or forfeited under the use-or-lose requirement set forth in Section 3.7.2 below, or (2) making reasonable efforts to lease a Reservation from another airline, using proceeds from the auction of Reservations under Section 3.3.4 below. If a sufficient number of unassigned Reservations were not available, and the PANYNJ were not able to lease a sufficient number of assigned Reservations from another airline, the requesting airline would be required to await the next regular reallocation to obtain additional Baseline Allocations.

3.3.2 Small Hub and Non-Hub Allocation

Number of Small Hub and Non-Hub Reservations to be Allocated. A total of five Reservations during each hour of the Congested Period would be reserved for service between LGA and any airport that qualifies for AIR-21 small hub or non-hub service under 49 U.S.C. § 41716(a) and DOT Order 2000-4-11. This equates to 80 Reservations between the hours of 06:00 and 22:00 each weekday. This is approximately the current number of AIR-21 slot exemptions for service to small hub or non-hub airports.

3.3.2.2 Assignment Mechanism

For Reservations assigned through the Small Hub and Non-Hub Allocation, airlines would select the specific Reservation hours for arriving and departing flight pairs in a sequence as determined by a lottery similar to the lottery used by the FAA in December 2000 to allocate AIR-21 slot exemptions. The selection sequence would be repeated until all of the Reservations made available for the Small Hub and Non-hub Allocation have been assigned specific times. A new lottery would be conducted each time a Performance-Based Allocation is made. The PANYNJ is also considering the desirability of (i) using an auction to assign these Reservations among airlines conducting operations between AIR-21 qualified small hub or non-hub airports and LGA, since this approach may produce a more efficient result; (ii) assigning these Reservations among airlines conducting operations between AIR-21 qualified small hub or non-hub airports that are within 300 miles of LGA, for example, given that passengers in markets within this distance have few connecting flight options; or (iii) a combination of these approaches.

3.3.3 Performance-Based Allocation

After the Baseline Allocation and the Small Hub and Non-Hub Allocation have been completed, 70 percent (or a lesser share that would increase the overall operating efficiency of LGA) of all remaining Reservations for scheduled operations would be allocated among airlines based on their market share of total revenue passengers at LGA. Presently, the core connecting hub and shuttle businesses of the incumbent airlines at LGA in aggregate account for approximately 70 percent of the total passenger volume at the airport.

3.3.3.1 Determination of Reservations Subject to Performance-Based Allocation

For each hour of the Congested Period of each day of the week, the number of Reservations that are to be allocated by the Performance-Based Allocation would be calculated as 70 percent, or a lesser share, of the difference between (a) the total number of Reservations available for use by scheduled airlines in that hour, and (b) the sum of (i) all Reservations claimed for that hour under the Baseline Allocation and (ii) all Reservations claimed for that hour for use as one of the 80 Reservations reserved for the Small Hub and Non-Hub Allocation.

3.3.3.2 Calculation of Market Share

Each airline's share of the LGA market would be determined on the basis of

passenger enplanements on all flights at LGA as reported to the United States Department of Transportation for the most recently available 12-month period.

3.3.3.3 Calculation of Each Airline's Performance-Based Allocation

The Performance-Based share of Reservations for each airline would be determined by multiplying each airline's market share by the sum of (i) the total number of Reservations that are to be assigned by the Performance-Based Allocation (determined under Section 3.3.3.1 above) and (ii) the total number of Reservations assigned under the Baseline Allocation, and then subtracting from that product the total number of Reservations assigned to the airline in the Baseline Allocation. If the total number of Reservations assigned to the airline in the Baseline Allocation exceeds its Performance-Based share of Reservations, the airline would receive no additional Reservations through the Performance-Based Allocation.**

3.3.3.4 Assignment Mechanism

For Reservations assigned through the Performance-Based Allocation, airlines would select the specific Reservation hours for arriving and departing flight pairs in a sequence as determined by a lottery similar to the lottery used by the FAA in December 2000 to allocate AIR-21 slot exemptions. Once an airline has acquired its total number of allocated Performance-Based Reservations, it would be passed over in the lottery sequence. The selection sequence would be repeated until all of the Reservations made available for the Performance-Based Allocation have been assigned specific times. A new lottery would be conducted each time a Performance-Based Allocation is made.

3.3.4 Auction of Remaining Reservations

3.3.4.1 Number of Remaining Reservations To Be Auctioned

All LGA Reservations for scheduled operations that remain after the Baseline

Allocation, the Small Hub and Non-hub Allocation and the Performance-Based Allocation would be subject to auction.

3.3.4.2 Revenue Estimate

In both of the Allocation and Auction options, the Auction of Remaining Reservations would be expected to produce significant streams of revenue that would be dedicated to beneficial aviation uses (see Section 1.3.4. above). The Auction of Remaining Reservations is estimated to yield additional annual revenues to the PANYNJ of approximately \$60 million to \$90 million for Option A and for Option B once it is fully implemented. Option B is estimated to yield additional revenues of approximately \$18–\$26 million in the first year, \$35–\$53 million in the second year, and \$53–\$79 million in the third year. These estimates assume auction prices in the range of \$20,000 to \$30,000 per Reservation per month.

3.4 Auction Rules

The specific rules for participating in and conducting Auctions of Remaining Reservations would be promulgated in advance of the initial Auction.

3.5 General Rules Governing Reservations

3.5.1 Treatment of Commuter Affiliates

All airlines sharing a common designator code would be considered a single airline for the purpose of allocating Reservations.

3.5.2 Use-or-Lose Requirement

All Reservations would be subject to a use-or-lose requirement, under which an airline would forfeit any Reservation that is not used for operations at least 80 percent of the time over any two-month period. Any airline that forfeits a Reservation under this use-or-lose rule could not acquire any additional Reservation for a two-year period, except through the next scheduled auction. Airlines could avoid any use-or-lose penalty by returning a Reservation to the PANYNJ for reallocation. The PANYNJ could use Reservations that are returned voluntarily or that are forfeited under the use-or-lose

requirement to satisfy additional requests for Baseline Allocations in between the scheduled reallocations of Reservations.

3.5.3 Exchange, Sale, or Lease of Reservations

3.5.3.1 Baseline Allocation Reservations

Reservations acquired through a Baseline Allocation could be exchanged between airlines, so long as the trade was made only for operational reasons and on a one-for-one basis at LGA. Airlines that trade Reservations from their Baseline Allocation would be required to certify that no other consideration is involved. Reservations acquired through a Baseline Allocation could not be sold or leased to another airline (except, under Option B, to the extent that any airline receives at any time during the four-year phase in a total Baseline Allocation of more than 20 Reservations for any given day), but these Reservations could be sold or leased to the PANYNJ.

3.5.3.2 Other Reservations

Reservations acquired through the Small Hub and Non-hub Allocation, the Performance-Based Allocation or the Auction of Remaining Reservations could be exchanged between or among airlines, or could be sold or leased to another airline or to the PANYNJ, but any Reservations acquired through the Small Hub and Non-Hub Allocation could only be used for service between LGA and AIR-21 qualified small hub and non-hub airports.

3.5.4 Airfield Fees

All aircraft operations at LGA, including those for which an auction price is paid, would remain subject to any landing or take-off fees established by the PANYNJ. The PANYNJ currently anticipates that the existing weight-based landing fee would remain in effect, and that the current minimum fees for general aviation might be increased to the range of \$350–\$700 for each arriving and departing aircraft.

ILLUSTRATION OF ALLOCATION AND AUCTION OF RESERVATIONS—OPTION A

	Inputs	Number of Reservations
Hours in the Congested Period	16	
Reservations per hour	81	
Total Number of Reservations in the Congested Period		1296
GA set-aside per hour	6	
Total GA set-aside in the Congested Period		96
Net Reservations for scheduled services		1200
Number of airlines	15	
Baseline Allocation/airline	20	
Total Baseline Allocation (if fully subscribed)		300
Remaining Reservations		900
Small hub/non-hub set-aside per hour	5	
Small hub and Non-hub Allocation		80
Remaining Reservations		820
Performance-Based share of remaining reservations	70%	
Number of Reservations for Performance-Based Allocation		574

** The PANYNJ acknowledges that especially if Option A were implemented, the initial Performance-Based Allocations could cause abrupt changes in the total number of flights certain airlines might be permitted to operate at LGA because the current mix of assignments of HDR

slots and slot exemptions and AIR-21 slot exemptions does not always correspond to airline market shares (measured by passenger volumes). As a result, the PANYNJ is considering the desirability of some kind of "hold harmless" rule that would temper the impact of the Performance-Based

Allocations by ensuring that no airline would lose more than a specified percentage of the operating authority it was assigned and actually used during the preceding allocation period.

ILLUSTRATION OF ALLOCATION AND AUCTION OF RESERVATIONS—OPTION A—Continued

	Inputs	Number of Reservations
Remaining Reservations for Auction		246

[FR Doc. 01-14739 Filed 6-7-01; 2:43 pm]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Field Approval Process

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting to discuss public concerns with the FAA Field Approval Process.

DATES: The meeting will be held on July 19, 2001, 9 a.m. to 4 p.m. Arrangement for presentations must be made by July 12, 2001.

ADDRESSES: The meeting will be held at the 3rd Floor FAA Auditorium, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Wayne Fry, Federal Aviation Administration, AFS-300, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493-5228, fax (202) 267-5115.

SUPPLEMENTARY INFORMATION: The meeting will be held on July 19, 2001, from 9 a.m. to 4 p.m., at the 3rd floor FAA Auditorium, Washington, DC. The agenda will include: Field Approval Process Improvement.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by July 12, 2001, to present oral statements at the meeting. To make arrangements to present oral statements, please contact the person listed under the heading for **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, June 7, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

[FR Doc. 01-14746 Filed 6-7-01; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2000-9739]

Notice of Receipt of Petition for Decision That Nonconforming 1998-2001 BMW R1100 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1998-2001 BMW R1100 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1998-2001 BMW R1100 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 12, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:**Background**

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation

into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

DC Imports of Coral Springs, Florida ("DCI") (Registered Importer R-00-242) has petitioned NHTSA to decide whether non-U.S. certified 1998-2001 BMW R1100 motorcycles are eligible for importation into the United States. The vehicles were manufactured for sale in European markets and DCI believes that they are substantially similar to the 1998-2001 BMW R1100 motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1998-2001 BMW R1100 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

DCI submitted information with its petition intended to demonstrate that non-U.S. certified 1998-2001 BMW R1100 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1998-2001 BMW R1100 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116

Brake Fluid, 119 New Pneumatic Tires for Vehicles other than Passenger Cars, and 122 Motorcycle Brake Systems.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all reflectors with reflectors that are certified to meet the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: Installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR Part 565 must be affixed.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 6, 2001.

Marilynne Jacobs,

Director, Office of Vehicle Safety, Compliance.

[FR Doc. 01-14727 Filed 6-11-01; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2001-9707]

Notice of Receipt of Petition for Decision That Nonconforming 1999-2001 Mercedes Benz CL500 and CL600 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999-2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999-2001 Mercedes Benz CL500 and CL600 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 12, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., S.W., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to

conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland ("J.K.") (Registered Importer 90-006) has petitioned NHTSA to decide whether 1999-2001 Mercedes Benz CL500 and CL600 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1999-2001 Mercedes Benz CL500 and CL600 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999-2001 Mercedes Benz CL500 and CL600 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1999-2001 Mercedes Benz CL500 and CL600 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999-2001 Mercedes Benz CL500 and CL600 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209

Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, 301 Fuel System Integrity, and 302 Flammability of Interior Materials, as well as 49 CFR 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of the word "Brake" for the international ECE warning symbol on the markings for the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour. The petitioner states that the entire instrument cluster will be replaced with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamps and front sidemarker lamps, (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lamps, and (c) installation of U.S. model high-mounted stop light assembly (if necessary).

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: Installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems*: Add a relay to the power window systems to prevent operation when the ignition is off.

Standard No. 201 *Occupant Protection in Interior Impact*: Replacement of components subject to standard with U.S. model components on vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, knee bolsters, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. The front and rear outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton.

Standard No. 214 *Side Impact Protection*: Inspection of all vehicles and installation of reinforcing door

beams on vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 6, 2001.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.
[FR Doc. 01-14728 Filed 6-11-01; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34045]

Watco Companies, Inc.—Control Exemption—Eastern Idaho Railroad, Inc.

Watco Companies, Inc. (Watco), a noncarrier, has filed a notice of exemption to acquire control through stock ownership of the Eastern Idaho Railroad, Inc., a Class III rail carrier.

The transaction was scheduled to be consummated on or shortly after May 25, 2001, the effective date of the exemption.

At the time it filed this notice, Watco controlled four Class III railroad subsidiaries: South Kansas and Oklahoma Railroad Company, operating in the States of Missouri, Kansas and Oklahoma; Palouse River & Coulee City Railroad, Inc., operating in the States of Washington, Oregon and Idaho; Timber Rock Railroad, Inc., operating in the States of Texas and Louisiana; and

Stillwater Central Railroad operating in the State of Oklahoma.¹ Watco is proposing to acquire all of the outstanding stock of EIRR, an Idaho corporation.

Watco states that: (1) The railroads do not connect with each other; (ii) the acquisition of control 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 notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34045 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 Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: June 5, 2001.

By the Board, David M. Konschnick,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 01-14634 Filed 6-11-01; 8:45 am]

BILLING CODE 4915-00-U

¹ On May 25, 2001, Watco also filed a notice of exemption in STB Finance Docket No. 34042, *Watco Companies, Inc.—Continuance in Control Exemption—Kansas & Oklahoma Railroad, Inc.*, to permit its control of Kansas & Oklahoma Railroad, Inc., when that entity becomes a rail carrier.

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****[STB Finance Docket No. 34042]****Watco Companies, Inc.—Continuance in Control Exemption—Kansas & Oklahoma Railroad, Inc.**

Watco Companies, Inc. (Watco), a noncarrier, has filed a verified notice of exemption to continue in control of Kansas & Oklahoma Railroad, Inc. (K&O), upon K&O's becoming a carrier.

This transaction is related to two concurrently filed verified notices of exemption: STB Finance Docket No. 34030, *Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Central Kansas Railway, L.L.C.*, wherein K&O seeks to acquire most of the rail lines owned or leased and operated by the Central Kansas Railway, L.L.C. (CKR) in the States of Kansas and Colorado; and STB Finance Docket No. 34047, *Kansas & Oklahoma Railroad, Inc.—Trackage Rights Exemption—Central Kansas Railway, L.L.C.*, wherein K&O seeks to acquire temporary overhead trackage rights over a 16-mile rail line, which is to be retained by CKR, in the State of Kansas.

The transaction was expected to be consummated on or shortly after June 1, 2001.

Watco owns and controls five existing Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO), which operates in the States of Missouri, Kansas, and Oklahoma; Palouse River & Coulee City Railroad, Inc., which operates in the States of Washington, Oregon, and Idaho; Timber Rock Railroad, Inc., which operates in the States of Texas and Louisiana; Stillwater Central Railroad, which operates in the State of Oklahoma; and Eastern Idaho Railroad, Inc. (EIRR), which operates in the State of Idaho.¹

Watco states that: (i) K&O will not connect with the rail lines of any existing carrier in the Watco corporate family;² (ii) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being acquired by K&O with any

of the carriers controlled by Watco; 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 notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34042, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: June 5, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 01–14636 Filed 6–11–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****[STB Finance Docket No. 34030]****Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Central Kansas Railway, L.L.C.**

Kansas & Oklahoma Railroad, Inc. (K&O), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 678 miles of rail lines in the State of Kansas from the Central Kansas Railway, L.L.C. (CKR). K&O will also acquire, by assignment from CKR, the lease of approximately 225 miles of rail lines in the States of Kansas and Colorado that are owned by the Union

Pacific Railroad Company (UP). In addition, K&O will acquire, by assignment from CKR, incidental trackage rights over seven segments of rail line in the State of Kansas owned by the UP and The Burlington Northern and Santa Fe Railway Company (BNSF).

K&O will acquire from CKR the following rail lines located in the State of Kansas:

(1) The Salina Subdivision rail line between milepost 20 + 492 feet, at Salina, and milepost 103.34, at Osborne;

(2) The Scott City Subdivision rail line between milepost 0.0, at Great Bend, and milepost 120 + 1338.7 feet, at Scott City;

(3) The Garden City Subdivision rail line between milepost 120 + 169 feet, at Scott City, and milepost 125 + 4687 feet, at Shallow Water;

(4) The Great Bend Subdivision and Garfield Industrial Spur rail lines between milepost 218.3288, east of Monroe Street at Hutchinson, and milepost 303.0, at Garfield;

(5) The Jetmore Subdivision rail line between milepost 0.0, at Larned, and milepost 46 + 2483.5 feet, at Jetmore;

(6) The Wichita Subdivision rail line (a) between milepost 0.0 and 3.5 at Wichita, and (b) between milepost 19.5, at Garden Plain, and milepost 79 + 3855 feet, at Pratt;

(7) The Englewood Subdivision rail line between milepost 46.0, east of Rago, and milepost 136, at Protection;

(8) The McPherson Subdivision rail line (a) between milepost 43.8, at McPherson, and milepost 58.0, west of Conway, and (b) between milepost 77.4, at Lyons, and milepost 98 + 1209.5 feet, at Ellinwood;

(9) The Geneseo Subdivision rail line between milepost 572.677, on the east leg of the wye and 1213 feet of the west leg of the wye, at Geneseo, and milepost 550.5, at ST Junction;

(10) The Hutchinson Subdivision rail line between milepost 538.0, at Yaggy, and milepost 484.0, at Wichita;

(11) The Hardtner Subdivision rail line between milepost 485.938, at Wichita, and milepost 514.25, at Conway Springs;

(12) The Stafford Subdivision rail line between milepost 559 + 955 feet, at Conway Springs, and milepost 583.3, near Belmont; and

(13) The H&S Subdivision rail line between milepost 31.1, at Kingman, and milepost 48.2, at Rago.

K&O will be assigned by CKR the following: (1) The CKR lease of the UP rail line between UP milepost 747.5, at Townner, CO, and UP milepost 523.02, at Geneseo, KS; and (2) the CKR lease of the rail freight easement over the UP rail

¹ Watco's control of EIRR is the subject of a verified notice of exemption in *Watco Companies, Inc.—Control Exemption—Eastern Idaho Railroad, Inc.*, STB Finance Docket No. 34045.

² According to the verified notice, SKO operates as a non-exclusive agent for the Southern Pacific Transportation Company (SP) (now merged into Union Pacific Railroad Company) over SP's trackage rights on a rail line owned and operated by The Burlington Northern and Santa Fe Railway Company (BNSF) between Hutchinson and Winfield, KS. SKO neither performs any operations on the BNSF line in its own account nor holds itself out to be an operator over the BNSF line.

line between milepost 312.65 and milepost 313.38, at Wichita, KS.

K&O will acquire, by assignment from CKR, incidental overhead trackage rights in the State of Kansas over:

(1) BNSF's Hutchinson Subdivision rail line between milepost 218.3 and milepost 213 + 4333 feet, at Hutchinson, including BNSF's Hutchinson "Way" Yard Track Nos. 144, 259, 304, 260, 261, 221, 174, 172, 171, 241, 220, 169, and 168;

(2) BNSF's rail line between milepost 56.6 and milepost 60.2, at Abilene;

(3) BNSF's rail line between milepost 184.3 and milepost 190.0, at Newton;

(4) UP's rail line between milepost 487.1, at Newton, and milepost 518, at McPherson, including the segment of track extending about 116 feet in a southerly direction from milepost 487.1, and including UP's Siding Track No. 6, at Hesston, and Siding Track No. 1, at Moundridge;

(5) UP's rail line between milepost 164.05, at Abilene, and milepost 184.56, at Salina;

(6) UP's rail line between milepost 246.46 and milepost 243.56, at Hutchinson; and

(7) UP's rail line between milepost 182.0 and milepost 187.2, at Salina.

Because the projected revenues of the rail lines to be operated will exceed \$5 million, K&O certified to the Board, on April 2, 2001, that the required notice of its rail line acquisition was posted at the workplace of the employees on the affected lines on April 2, 2001.

According to K&O's certification, it served a copy of the notice on the national office of the United Transportation Union, the only labor union with employees on the affected lines. See 49 CFR 1150.32(e). The transaction was scheduled to be consummated on or shortly after June 1, 2001.

The transaction is related to two concurrently filed verified notices on exemption: STB Finance Docket No. 34042, *Watco Companies, Inc.—Continuance in Control Exemption—Kansas & Oklahoma Railroad, Inc.*, wherein Watco Companies, Inc. seeks to continue in control of K&O upon K&O's becoming a Class III rail carrier; and STB Finance Docket No. 34047, *Kansas & Oklahoma Railroad, Inc.—Trackage Rights Exemption—Central Kansas Railway, L.L.C.*, wherein K&O seeks to acquire temporary overhead trackage rights over CKR's 16-mile rail line in the State of Kansas.

In the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed

at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34030 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 Karl Morell, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: June 5, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01-14633 Filed 6-11-01; 8:45 am]

BILLING CODE 4915-00-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34047]

Kansas & Oklahoma Railroad, Inc.— Trackage Rights Exemption—Central Kansas Railway, L.L.C.

Central Kansas Railway, L.L.C. (CKR), has agreed to grant to Kansas & Oklahoma Railroad, Inc. (K&O) temporary overhead trackage rights over the trackage of CKR located between CKR milepost 19.5, near Garden Plain, KS, and CKR milepost 3.5, at Wichita, KS, a distance of 16 miles (trackage rights line).¹

The transaction was scheduled to be consummated on or shortly after June 1, 2001.²

This transaction is related to two concurrently filed verified notices of exemption: STB Finance Docket No. 34030, *Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Central Kansas Railway, L.L.C.*, wherein K&O seeks to acquire most of the rail lines

¹ The trackage rights line was authorized for abandonment by the Board in *Central Kansas Railway, L.L.C.—Abandonment Exemption—in Sedgewick County, KS*, STB Docket No. AB-406 (Sub-No. 14X) (STB served Apr. 10, 2001). As noted in STB Docket No. AB-406 (Sub-No. 14X), the abandonment of the trackage rights line was subject to the condition that CKR could not consummate abandonment until it certified to the Board that its relocation project near Kingman, KS, had been completed and that any necessary rehabilitation and maintenance had been performed on its rail line between Wichita and Kingman via Conway Springs, KS.

² K&O indicates that it will shortly file a petition for exemption to permit temporary trackage rights operations and thus to limit the term of the trackage rights.

owned or leased and operated by CKR in the States of Kansas and Colorado;³ and STB Finance Docket No. 34042, *Watco Companies, Inc.—Continuance in Control Exemption—Kansas & Oklahoma Railroad, Inc.*, wherein Watco Companies, Inc. seeks to continue in control of K&O upon K&O's becoming a Class III rail carrier.

The trackage rights will allow K&O to move traffic to and from Wichita until the relocation and rehabilitation projects have been completed.

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.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34047, 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 Karl Morell, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at www.stb.dot.gov.

Decided: June 5, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01-14635 Filed 6-11-01; 8:45 am]

BILLING CODE 4915-00-P

³ In addition to the lines being acquired by K&O in the STB Finance Docket No. 34030 proceeding, K&O will also assume from CKR the ongoing work on the relocation project near Kingman and the rehabilitation of the rail line between Wichita and Kingman via Conway Springs. However, K&O will not acquire the trackage rights line.

DEPARTMENT OF THE TREASURY**Submission for OMB review; comment request**

June 4, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 12, 2001 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512-0026.

Form Number: ATF F 3 (5320.3).

Type of Review: Revision.

Title: Application for Tax Exempt Transfer of Firearm and Registration to Special (Occupational) Taxpayer.

Description: This form is used by qualified persons to apply for permission to transfer National Firearms Act firearms to other qualified persons exempt from tax. The form establishes eligibility and exemption.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 2,521.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: Other (ATF 3 is required to be submitted and approved by ATF prior to the transfer of a National Firearms Act weapon from one Special Occupational Tax paying Federal firearms licensee to another Special taxpaying licensee. The form is required whenever such a transfer is to be made.)

Estimated Total Reporting Burden: 13,111 hours.

OMB Number: 1512-0027.

Form Number: ATF F 4 (5320.4).

Type of Review: Revision.

Title: Application for Tax Paid Transfer and Registration of Firearm.

Description: This form is used to apply for permission to transfer a National Firearms Act firearm subject to the transfer tax imposed by the National Firearms Act. The form establishes eligibility.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 11,065.

Estimated Burden Hours Per

Respondent: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 44,260 hours.

OMB Number: 1512-0028.

Form Number: ATF F 5 (5320.5).

Type of Review: Revision.

Title: Application for Tax Exempt Transfer and Registration of Firearm.

Description: This form is used to apply for permission to transfer an National Firearm Act firearm exempt from transfer tax based on statutory exemptions. The form establishes eligibility and exemption.

Respondents: Business or other for-profit, Individuals or households, State, Local or Tribal Government.

Estimated Number of Respondents: 7,888.

Estimated Burden Hours Per

Respondent: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 379,896 hours.

Clearance Officer: Frank Bowers, (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW, Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01-14682 Filed 6-11-01; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY**Submission for OMB review; comment request**

June 5, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 12, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0112.

Form Number: IRS Form 1099-INT.

Type of Review: Extension.

Title: Interest Income.

Description: This form is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. It is used to verify that payees are correctly reporting their income.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government.

Estimated Number of Respondents/Recordkeepers: 709,000.

Estimated Burden Hours Per

Respondent/Recordkeeper: 12 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 54,979,533 hours.

OMB Number: 1545-0715.

Form Number: IRS Form 1099-B.

Type of Review: Extension.

Title: Proceeds From Broker and Barter Exchange Transactions.

Description: Form 1099-B is used by brokers and barter exchanges to report proceeds from transactions to the Internal Revenue Service.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per

Respondent/Recordkeeper: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 29,402,969 hours.

OMB Number: 1545-1342.

Form Number: IRS Form W-5.

Type of Review: Extension.

Title: Earned Income Credit Advance Payment Certificate.

Description: Form W-5 is used by employees to see if they are eligible for the earned income credit and to request part of the credit in advance with their pay. Eligible employees who want advance payments must give Form W-5 to their employers.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 183,450.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form.	11 min.
Preparing the form	27 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 137,588 hours.

OMB Number: 1545-1596.

Form Number: IRS Form 8857.

Type of Review: Extension.

Title: Request for Innocent Spouse Relief.

Description: Section 6103(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, "innocent spouse" relief when: taxpayer filed a joint return with tax substantially understated; taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. GAO Report GAO/GGD-97-34 recommended that IRS develop a form to make relief easier for the public to request.

Respondents: Individuals or households.

Estimated Number of Respondents: 21,336.

Estimated Burden Hours Per Respondent:

Learning about the law or the form.	17 min.
Preparing the form	22 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21,123 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.
[FR Doc. 01-14683 Filed 6-11-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its

information collection titled, "Assessment of Fees—12 CFR 8."

DATES: You should submit written comments by August 13, 2001.

ADDRESSES: You should direct written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-0223, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway or Camille Dixon, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Assessment of Fees—12 CFR 8.

OMB Number: 1557-0223.

Description: The OCC is requesting comment on its proposed extension, without change, of the information collection titled, "Assessment of Fees—12 CFR 8." The National Bank Act authorizes the OCC to collect assessments, fees, and other charges as necessary or appropriate to carry out the responsibilities of the OCC. The OCC will require national banks to provide the OCC with "receivables attributable" data from independent credit card banks, that is, national banks that primarily engage in credit card operations and are not affiliated with a full service national bank. "Receivables attributable" are the total amount of outstanding balances due on credit card accounts owned by an independent credit card bank (the receivables attributable to those accounts) on the last day of an assessment period, minus receivables retained on the bank's balance sheet as of that day. The OCC will use the information to verify the accuracy of each bank's assessment computation and to adjust the assessment rate for independent credit card banks over time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 35.

Estimated Total Annual Responses: 70.

Frequency of Response: Semiannually.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden: 70 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 4, 2001.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 01-14674 Filed 6-11-01; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8839

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8839, Qualified Adoption Expenses.

DATES: Written comments should be received on or before August 13, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Adoption Expenses.

OMB Number: 1545-1552.

Form Number: 8839.

Abstract: Section 23 of the Internal Revenue Code allows taxpayers to claim a nonrefundable tax credit for qualified adoption expenses paid or incurred by the taxpayer. Code section 137 allows taxpayers to exclude amounts paid or expenses incurred by an employer for the qualified adoption expenses of the employee which are paid under an adoption assistance program. Form 8839 is used to figure the credit and/or exclusion.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 81,815.

Estimated Time Per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 92,724.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are

invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-14760 Filed 6-11-01; 8:45 am]

BILLING CODE 4830-01-N

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8689

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8689, Allocation of Individual Income Tax to the Virgin Islands.

DATES: Written comments should be received on or before August 13, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Individual Income Tax to the Virgin Islands.

OMB Number: 1545-1032.

Form Number: Form 8689.

Abstract: Form 8689 is used by U.S. citizens or residents as an attachment to Form 1040 when they have Virgin Islands source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.

Current Actions: There are no changes being made to Form 8689 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 4 hours, 23 minutes.

Estimated Total Annual Burden Hours: 3,512.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-14761 Filed 6-11-01; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 8862**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8862, Information To Claim Earned Income Credit After Disallowance.

DATES: Written comments should be received on or before August 13, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information To Claim Earned Income Credit After Disallowance.

OMB Number: 1545-1619.

Form Number: Form 8862.

Abstract: Section 32 of the Internal Revenue Code allows taxpayers to claim an earned income credit (EIC) for each of their qualifying children. Code section 32(k), as enacted by section 1085(a)(1) of the Taxpayer Relief Act of 1997, disallows the EIC for a statutory period if the taxpayer improperly claimed it in a prior year. Form 8892 is used by taxpayers to reestablish their eligibility to claim the EIC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 2 hours, 46 minutes.

Estimated Total Annual Burden Hours: 2,760,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-14762 Filed 6-11-01; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Notice 89-102**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 89-102, Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

DATES: Written comments should be received on or before August 13, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.

OMB Number: 1545-1141.

Notice Number: Notice 89-102.

Abstract: Section 597 of the Internal Revenue Code provides that the Secretary of the Treasury shall provide guidance concerning the tax consequences of Federal financial assistance received by certain financial institutions. Notice 89-102 provides that qualifying financial institutions that receive Federal financial assistance prior to a planned sale of their assets or their stock to another institution may elect to defer payment of any net tax liability attributable to the assistance. Such financial institutions must file a statement describing the assistance received, the date of receipt and any amounts deferred.

Current Actions: There are no changes to this notice at this time.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-14763 Filed 6-11-01; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5329

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5329, Additional Taxes Attributable to IRAs, Other Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs.

DATES: Written comments should be received on or before August 13, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Additional Taxes Attributable to IRAs, Other Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs.

OMB Number: 1545-0203.

Form Number: 5329.

Abstract: Form 5329 is used to collect taxes related to: Early distributions from individual retirement arrangements (IRAs) and other qualified retirement plans; distributions from education (ED) IRAs not used for educational expenses; excess contributions to traditional IRAs, ED IRAs, and medical savings accounts (MSAs); and excess accumulations in qualified retirement plans.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 56 min.

Estimated Total Annual Burden Hours: 937,000.

The following paragraph applies to all of the collections of information covered by this notice:

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

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

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-14764 Filed 6-11-01; 8:45 am]

BILLING CODE 4830-01-U



Federal Register

**Tuesday,
June 12, 2001**

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Proposed Designation of Critical
Habitat for the Northern Great Plains
Breeding Population of the Piping Plover;
Proposed Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH96

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Northern Great Plains Breeding Population of the Piping Plover**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the northern Great Plains breeding population of the piping plover (*Charadrius melodus*), pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed designation includes 16 critical habitat units comprised of 11 areas of prairie alkali wetlands, inland and reservoir lakes, totaling approximately 196,576.5 acres [79,553.1 hectares] and 5 areas found along portions of 4 rivers in the States of Minnesota, Montana, Nebraska, North Dakota, and South Dakota totaling approximately 1,338 river miles (2,153 kilometers).

Critical habitat would include prairie alkali wetlands and surrounding shoreline, including 200 feet (61 meters) of uplands above the high water mark; river channels and associated sandbars, and islands; reservoirs and their sparsely vegetated shorelines, peninsulas, and islands; and inland lakes and their sparsely vegetated shorelines and peninsulas. 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 critical habitat. Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat; we may exclude areas from the final critical habitat determination if we determine that the benefits of excluding these areas outweigh the benefits of including them in the final designation. As a result, the final designation may differ from this proposal.

DATES: Comments—We will accept comments until the close of business on August 13, 2001. Public Meetings—We have scheduled five public meetings for this proposal. These informal meetings will start at 6 p.m. and end at 9 p.m. See “Public Meetings” section for meeting dates and addresses.

ADDRESSES: You may submit written comments and information to Piping Plover Comments, South Dakota Ecological Services Field Office, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501 or by facsimile to 605-224-9974. You may hand-deliver written comments to our South Dakota Field Office at the address given above. You may send comments by electronic mail (e-mail) to FW6_PipingPlover@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 above address.

FOR FURTHER INFORMATION CONTACT: Nell McPhillips, at the above address or telephone 605-224-8693, extension 32.

SUPPLEMENTARY INFORMATION:**Background***Description*

The piping plover (*Charadrius melodus*) is a small [(approximately 6.7 to 7.1 inches long) (17 to 18 centimeters) and 1.5 to 2.2 ounces (43 to 63 grams) in weight (Haig 1992)], migratory member of the shorebird family (Charadriidae). It is one of six species of belted plovers in North America. During the breeding season adults have single black bands across both the forehead and breast, orange legs and bill, and pale tan upper parts and are white below. The adults lose the black bands and their bill becomes grayish-black during the winter. The plumage of juveniles is similar to that of wintering adults.

Geographic Range

The breeding range of the piping plover extends throughout the northern Great Plains, the Great Lakes, and the Atlantic Coast in the United States and Canada. Three breeding populations of piping plovers have been described—the northern Great Plains population, the Great Lakes population, and the Atlantic Coast population.

Great Lakes piping plovers formerly nested throughout much of the Great Lakes region in the north-central United States and south-central Canada, but currently nest only in northern Michigan and at one site in northern Wisconsin. On the Atlantic Coast, piping plovers nest from Newfoundland, southeastern Quebec, and New Brunswick to North Carolina. Sixty-eight percent of all Atlantic

nesting pairs breed in Massachusetts, New York, New Jersey, and Virginia (Service 1999).

The northern Great Plains population's breeding range includes southern Alberta, southern Saskatchewan, and southern Manitoba, south to eastern Montana, North Dakota, South Dakota, southeastern Colorado, Iowa, Nebraska, and east to Lake of the Woods in north-central Minnesota. The majority of the United States' pairs are in the Dakotas, Nebraska, and Montana (Service 1994). Fewer birds nest in Minnesota, Iowa, and Colorado, with occasional nesting in Oklahoma and Kansas.

Historic data on the distribution of northern Great Plains piping plovers are somewhat scarce, with regular surveying efforts beginning after 1980. Some breeding records do exist for a majority of North Dakota counties (Service and North Dakota Game and Fish Department 1997); Lake of the Woods County, in Minnesota (Service 2000b); counties along the Missouri River, as well as Codington, Day, and Miner Counties in South Dakota (South Dakota Ornithologists' Union 1991); and counties along the Missouri, Loup, Niobrara, Elkhorn, and Platte River in Nebraska (Dinan et al. 1993, Nebraska Game and Parks Commission 1995). Plovers were first reported in Montana in 1967 in Phillips County and also were observed in Sheridan and Valley Counties during the 1970s (Carlson and Skaar 1976). Nesting was first observed in Colorado in 1949 and a few reports of non-nesting birds occurred during the 1950s and 1960s (Bailey and Niedrich 1965), but there are no reports of nesting between 1949 and 1989 (Colorado Department of Natural Resources 1994). In Iowa, nesting plovers were observed in Pottawattamie and Harrison Counties during the 1940s, 1950s, and 1960s (Stiles 1940, Brown 1971). Incidental records exist for Wyoming, as well as Eddy County, New Mexico, in 1964 (Bailey and Niedrich 1965).

The current breeding range of the northern Great Plains population is similar to the previous records, with the following exceptions—piping plovers have not been reported in Wyoming or New Mexico since their initial records, and since 1996, Kansas has reported nesting activity along the Kansas River due to newly available habitat after scouring flows in 1993 (Busby et al. 1997). Additionally, in 1987 and 1988 piping plovers nested at Optima Reservoir, Oklahoma (these are the only known nesting records for Oklahoma) (Boyd 1991). In North Dakota, plovers nest at various prairie alkali wetlands in Benson, Burke, Burleigh, Divide, Eddy,

Emmons, Kidder, Logan, McHenry, McIntosh, McLean, Mountrail, Pierce, Renville, Sheridan, Stutsman, Ward, and Williams Counties, as well as sandbars and reservoir shorelines along the Missouri River (K. Kreil, Service, pers. comm.). South Dakota nesting has generally been limited to the Missouri River, primarily below the Gavins Point and Fort Randall Dams and on Lake Oahe (C.D. Kruse, U.S. Army Corps of Engineers, pers. comm.). Occasionally plovers have nested on Lake Sharpe (Missouri River), and have additionally been sighted on Lake Francis Case (Missouri River) during the nesting season but nesting has not been documented. In Colorado, nesting has been observed on various reservoirs of the Arkansas River during the 1990s (Plissner and Haig 1997, Nelson unpubl. report). In Montana, plovers currently nest along the Missouri River, on Duck Creek Bay, Bear Creek Bay, Skunk Coulee, and the Big Dry Creek Arm of Fort Peck Reservoir, and alkali wetlands and reservoirs in Phillips and Sheridan Counties (G. Pavelka, U.S. Army Corps of Engineers, pers. comm., H. Pac, Montana Fish, Wildlife, and Parks, pers. comm.). In Nebraska, piping plovers can still be found on sandbars along the Niobrara, Loup, and Platte Rivers, but habitat has been reduced on the Platte River. After upstream dams were built, reduced flows allowed the establishment of woody vegetation on most islands, due to the lack of scouring, high spring flows (Ziewitz *et al.* 1992). Along the central reach of the Platte, this loss of habitat has forced most plovers to nest on sand and gravel mining spoil piles (Sidle and Kirsch 1993). Most nesting on the Platte River currently occurs on the lower Platte, where encroachment is least advanced (Ziewitz *et al.* 1992). Lake McConaughy in Nebraska also supports nesting plovers on its sandy beaches (Peyton and Matson 1999). In Iowa, Missouri River habitat has been lost due to channelization below Sioux City, leaving piping plovers to nest on industrial fly ash ponds in Woodbury and Pottawattamie Counties (D. Howell, Iowa Dept. of Natural Resources, pers. comm.). Plovers continue to nest in low numbers at Lake of the Woods, Minnesota (Minnesota Department of Natural Resources, 1999).

Population Status

Historical piping plover population trend data are generally nonexistent. However, Audubon and Wilson described plovers as a common resident of the Atlantic coast during the 1800s (Bent 1929). On September 21, 1804, the Lewis and Clark expedition was present

in the area of present day Lake Sharpe on the Missouri River, where William Clark wrote, “* * * we observed an immense number of plover of Different kind Collecting and taking their flight southerly * * *” (Moulton 1987). By 1900, the piping plover had been greatly reduced by over-harvesting. With the Federal protection of the Migratory Bird Treaty Act, the plover recovered by the 1920s and was reported as common (Bent 1929). Since that time, plover populations again declined throughout most of their range and have been extirpated from many states. Breeding surveys in the early 1980s reported 2,137 to 2,684 adult plovers in the northern Great Plains/Prairie region, 28 adults in the Great Lakes region, and 1,370 to 1,435 adults along the Atlantic Coast (Haig and Oring 1985). In 1991 the first International Piping Plover Census was carried out, with 2,032 adult piping plovers observed in the United States’ portion of the northern Great Plains (Haig and Plissner 1993). In 1996, during the second International Census, 1,597 adult piping plovers were observed in the same area (Plissner and Haig 1997); a reduction of almost 22 percent from 1991. Part of this reduction was likely an artifact of increased numbers of piping plovers nesting in Canada in 1996, due to high water levels in the United States (Plissner and Haig 1997).

Current estimates of piping plover survival rates are limited. Root *et al.* (1992) estimated a mean annual survival rate of 0.664 for adults in the northern Great Plains population from 1984 to 1990 using recapture and re-sighting data from plovers in North Dakota. Larson *et al.* (2000) reevaluated survival from this study, including some additional years of banding and resights. The new mean local annual survival rate was 0.737 for adults (Larson *et al.* 2000). Most plover mortality was thought to occur during migration or on wintering grounds (Root *et al.* 1992); however, a recent study on Padre Island, Texas, indicated over-wintering survival can be very high (Drake 1999).

Ryan *et al.* (1993) developed a stochastic population growth model using empirical, demographic data, which indicated the northern Great Plains plover population was declining 7 percent annually. They also used the simulation model to predict reproductive and survival rates necessary to stabilize and increase the population. Ryan *et al.* (1993) stated that if adult (0.66) and immature (0.60) survival rates were held constant, a 31 percent increase, from 0.86 to 1.13 chicks fledged per pair, was needed to stabilize the population. Annual

population increases of 1 and 2 percent required 1.16 and 1.19 chicks per pair, respectively. Such growth would result in the northern Great Plains population reaching the level needed for recovery and delisting from the Act in 53 and 30 years respectively. One- and 5-year delays in the initiation of 1 percent population growth caused 13- and 67-year delays respectively in reaching recovery. Model (Ryan *et al.* 1993) results indicated that the northern Great Plains population is declining substantially. However, using more recent survival estimates (Larson *et al.* (2000)) in the stochastic population growth model have shown that the feasibility of recovering the northern Great Plains population is more likely than previously determined (Ryan *et al.* 1993, Plissner and Haig 2000).

A population viability model, developed by Plissner and Haig (2000), used the metapopulation viability analysis package, VORTEX. Plissner and Haig (2000) found in the northern Great Plains and Great Lakes populations, if the adult and immature survival rates were held constant, it would require a 36 percent higher mean fecundity, or an increase from 1.25 to 1.7 chicks fledged per pair, to reach a significant probability of persisting for the next 100 years.

Ecology

Piping plover breeding habitat consists of open, sparsely vegetated areas with alkali or unconsolidated substrates. Piping plovers primarily breed in four habitat types in the northern Great Plains—alkali lakes and wetlands, inland lakes (Lake of the Woods), reservoirs, and rivers. Based on the International Piping Plover Census, most breeding occurs along alkali lakes and wetlands, and other small water bodies, with 59.6 percent and 78 percent observed on those sites in 1991 (Haig and Plissner 1993) and 1996 (Plissner and Haig 1997), respectively. For these areas, nesting sites are generally wide, gravelly, salt-encrusted beaches with minimal vegetation (Prindiville Gaines and Ryan 1988).

Piping plovers use barren to sparsely vegetated islands, beaches, and peninsulas at inland lake habitats (Nordstrom and Ryan 1996), such as Lake of the Woods, Minnesota. Sandbars and reservoir shorelines with similar features are the preferred nesting habitats of piping plovers along riverine systems (Schwalbach 1988, Kruse 1993). In 1991, approximately 38 percent of the population was observed on reservoirs, river shores, and sandbars. In 1996, 15.1 percent was observed at those areas; this was a high-water year and much of the

habitat along rivers was inundated, likely forcing birds to nest elsewhere. These data suggest that habitat use by piping plovers is dynamic and that the habitat necessary to support the northern Great Plains population is diverse.

Although the preference of piping plovers for open areas has been repeatedly noted in the literature, quantitative data on habitat characteristics, evidence of habitat selection, and information on the relative quality of inland habitats remain scarce. A survey of the research literature suggests that this lack of quantitative and qualitative data is a result of the dynamic nature of the habitat, climate, and hydrologic cycles of the northern Great Plains. Several studies have suggested that beach width may affect habitat use by piping plovers breeding on inland lakes. Whyte (1985) recorded minimum nest-to-water distances of 131.2 feet (40 meters) in Saskatchewan and suggested that beaches less than 65.6 to 98.4 feet wide (20 to 30 meters wide) were not likely to be used by piping plovers. However, in Alberta, Weseloh and Weseloh (1983) calculated a mean beach width of only 38.4 feet (11.7 meters) at nest sites. But they noted that these seemed to be the widest beaches available. Prindiville, Gaines, and Ryan (1988) reported mean beach width to be larger in occupied territories ($\bar{x}$ = 108.3 feet (33 meters)) than in unoccupied sites ($\bar{x}$ = 44.6 feet (13.6 meters)) in North Dakota. The amount and distribution of beach vegetation affect piping plover habitat selection and reproductive success. Prindiville, Gaines, and Ryan (1988) found no difference in vegetative cover between territories ($\bar{x}$ = 3.4 percent) and unoccupied sites ($\bar{x}$ = 3.8 percent). However, vegetation was more clumped in territories than in unoccupied sites. Furthermore, territories in which nests were successful had either less vegetation or more clumped vegetation than territories with unsuccessful nests (Prindiville 1986).

Substrate composition also may affect habitat selection by piping plovers and influence nest success. Cairns (1977) found 31 of 38 nests in Nova Scotia on mixed sand and gravel and stated that those nests were less conspicuous than those on sand alone. Whyte (1985) reported that piping plovers were more likely to establish nests on gravel than was expected by chance alone. In North Dakota, gravel was generally more evenly distributed and in greater concentration on piping plover territories than at unoccupied sites (Prindiville 1986).

Piping plovers nesting on the Missouri, Platte, Niobrara, Loup and other rivers, use reservoir shorelines and large dry, barren sandbars in wide, open channel beds. Along these rivers, plovers often nest in the vicinity of endangered interior least terns (*Sterna antillarum*). Vegetative cover on nesting islands is usually less than 25 percent (Ziewitz *et al.* 1992). Twenty-eight Platte River sandbars, occupied by nesting piping plovers, averaged 938 feet (286 meters) in length and 180 feet (55 meters) in width (Faanes 1983). Vegetative cover on those sandbars averaged 25.4 percent. Armbruster (1986) estimated the optimum range for vegetative cover on nesting habitat from 0–10 percent, and Schwalbach (1988) found that 89 percent of the plovers nested in areas of less than 5 percent vegetative cover. On the Missouri River, Schwalbach (1988) found that the average vegetation height ranged from 2 to 11 inches (6 to 29 centimeters) and the majority of the plovers (63 percent) nested in areas where vegetation was less than 4 inches (10 centimeters).

Average elevation of nests (least terns and piping plovers) above river level ranges from 7.4 inches (19 centimeters) below Gavins Point Dam to 12 inches (30 centimeters) below Garrison Dam (Schwalbach 1988, Dirks 1990). Schwalbach (1988) and Ziewitz *et al.* (1992) suggested that birds select a higher nest site, away from the water's edge, when available. For nesting, piping plovers evidently seek habitats with wide horizontal visibility, protection from terrestrial predators, isolation from human disturbance, low likelihood of inundation, and nearby feeding habitat.

Open, wet, sandy areas provide feeding habitat for plovers on river systems and throughout most of the species' nesting range. Piping plovers feed primarily on exposed substrates by pecking for invertebrates at or just below the surface (Cairns 1977, Whyte 1985). In Saskatchewan, Whyte (1985) noted that adults concentrated foraging efforts within 16.4 feet (5 meters) of the water's edge. He found broods also fed most often near the shore, but their use of upland beach habitats was greater than that of adults. Cairns (1977) reported that chicks tended to feed on firmer sand at greater distances from the shoreline than adults. At Lake of the Woods, Minnesota, and on Long Island-Chequamegon Point, Wisconsin, adult piping plovers seemed to prefer shoreline or beach pool edges (wet sand) over open beach (dry sand) as feeding sites (Wiens 1986, S. Matteson, Wisconsin Department of Natural Resources, pers. comm.). Studies

suggest that forage areas include the nesting island itself, as well as adjacent sandbar flats (Cairns 1977, Whyte 1985, Corn and Armbruster 1993). Spring/fen areas on the peripheries of some alkali lakes also are important feeding sites for plover chicks (Rabenberg *et al.* 1993).

Upland areas surrounding wetlands, such as the spring/fen areas, have also been noted in the scientific literature to be important to maximizing the effective period of time wetlands can provide critical functions (i.e., water quality, flood control, groundwater recharge, nutrient recycling, primary productivity, and wildlife habitat) within the agricultural landscape (Gleason and Eulis 1998). This is particularly important when considering wetlands within the agricultural landscape in the northern Great Plains. In addition appropriate upland widths are based on several variables, including—existing wetland functions, values, and sensitivity to disturbance; land-use impacts; and desired upland functions (Castelle *et al.* 1992). Critical functions to consider for piping plovers nesting on wetlands in the northern Great Plains include water quality, invertebrate abundance, and the lifespan of the wetland. To maintain water quality and maximize the effective period of time the wetland maintains critical functions, available research suggests upland buffers of 100 to 300 feet (30.5 to 91.4 meters) (Castelle *et al.* 1992, Lee *et al.* 1997, Gleason and Eulis 1998, NRCS 2000).

Conditions for nesting are highly variable in the Great Plains. Therefore, local population estimates may not always give an accurate description of the population as a whole, and success may depend on the availability of alternative habitat types (Plissner and Haig 1997). In addition to primary nesting habitat types, piping plovers also may use sand pits and ash ponds, which often mimic natural habitats (Service 1988, Corn and Armbruster 1993, Lackey 1994). These areas are only suitable for a limited period of time after their initial creation, as vegetation encroachment generally reduces habitat quality after a few years (Sidle and Kirsch 1993).

Breeding site fidelity (rate at which adults return to the same breeding sites in subsequent years) for piping plovers ranged from 4.5 percent in two studies combined in South Dakota (Schwalbach 1988, Dirks 1990) to 87.5 percent in Lake of the Woods, Minnesota (Haig and Oring 1987). Wiens (1986) found return patterns to specific breeding sites did not seem to be influenced by previous reproductive success. In Manitoba, Haig and Oring (1988) observed two patterns

of return by adults—(1) those that hatched chicks the year before returned to the same breeding site but changed territories, and (2) adults that experienced nest failure the year before generally changed sites. Adults have been known to use breeding sites as far as 339.1 miles (546 kilometers) apart in consecutive years (Haig 1987). The varying rates of site fidelity reported in these studies suggest that piping plovers need a variety of available nest sites. Sites used in 1 year may not be used in subsequent years; conversely, sites unoccupied by piping plovers may be used in the future.

Similar observations of chick returns further demonstrate the need for numerous nest sites in the Great Plains. The percentage of observed chicks returning to natal sites has ranged from 4.7 percent in New York (Wilcox 1959) to 1.3 to 50 percent in South Dakota (Schwalbach *et al.* 1993, Niver 2000) and 70 percent at Lake of the Woods, Minnesota (Haig and Oring 1987). Chick dispersal (movement from natal site to first breeding site) is difficult to characterize and few banding studies have been carried out in the Great Plains. But, long-range dispersal distances (3.1 to 169.5 miles (5 to 273 kilometers)) have been documented in piping plovers (Haig and Oring 1988) and similar distances were observed in two plovers on the Missouri River (R. Niver, Service, and C.D. Kruse, U.S. Army Corps of Engineers, pers. comm.).

The nesting season typically begins in late March to early April when plovers arrive on the breeding grounds. Breeding activities, including courtship flights, nest bowl scraping, territorial interactions, egg laying, incubating, and chick rearing, can be observed throughout the summer. Nests are shallow scrapes and are often lined with shell fragments, pebbles, or small sticks. Typical clutch size is 3 to 4 eggs and incubation lasts 27 to 31 days. Chicks can feed themselves after hatching (i.e., are precocial), and fledge at 18 to 25 days of age (Service 1988b). Fledging success varies by site and year. For example, between 1986 and 1999 along the Missouri River, there were 0.06 to 1.61 fledged chicks/pair (USACE unpubl. data). Between 1982 and 1987 Haig and Oring (1987) reported fledge ratios between 0.3 to 2.1 or 0.4 to 3.0 fledged chicks/pair, depending on 1987 data, for Lake of the Woods, Minnesota. In the United States Alkali Lake Core region, which includes parts of northwest North Dakota and northeast Montana, annual fledge ratios varied between 0.60 to 1.49 fledged chicks/pair from 1994 to 2000 (J. Knetter, University of Wisconsin-Madison, pers. comm.).

Nest and chick predation, weather, human disturbance, and hydrologic cycles influence fledging success. If nest loss occurs early in the season, piping plovers will often re-nest. After later nest loss, chick loss, or fledging chicks, plovers begin their southerly migration from mid-July through early September. Piping plovers that breed in the Great Plains generally winter along the Gulf Coast from Mexico to Florida, but some occasionally winter along the southern Atlantic Coast from North Carolina to Florida (Haig and Plissner 1993).

Previous Federal Actions

On December 30, 1982, we published a notice of review in the **Federal Register** (47 FR 58454) identifying native vertebrate taxa being considered for addition to the List of Endangered and Threatened Wildlife. We included the piping plover in that review list as a category two species, indicating that we believed the species might warrant listing as threatened or endangered, but that we had insufficient data to support a proposal to list at that time. Subsequent review of additional data indicated that the piping plover warranted listing, and in November 1984 we published a proposal in the **Federal Register** (49 FR 44712) to list the piping plover as endangered in the Great Lakes watershed and as threatened along the Atlantic Coast, the northern Great Plains, and elsewhere in their ranges. The proposed listing was based on the decline of the species and existing threats, including habitat destruction, disturbance by humans and pets, high levels of predation, and contaminants.

After a review of the best scientific data available and all comments received in response to the proposed rule, we published the final rule (50 FR 50726) on December 11, 1985, designating the Great Lakes population (Illinois, Indiana, Michigan, northeastern Minnesota, New York, Ohio, Pennsylvania, Wisconsin, and Ontario) as endangered; and listing piping plovers along the Atlantic coast (Quebec, New Foundland, Maritime Provinces, and States from Maine to Florida), and in the northern Great Plains (Iowa, northwestern Minnesota, Montana, Nebraska, North Dakota, South Dakota, Alberta, Manitoba, and Saskatchewan) as threatened. All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are considered threatened. The Service did not designate critical habitat for the species at that time.

After 1986, we formed two recovery teams, the Great Lakes/Northern Great

Plains Piping Plover Recovery Team and the Atlantic Coast Piping Plover Recovery Team. In 1988 the Great Lakes and northern Great Plains (Service 1988b) and Atlantic Coast (Service 1988a) Recovery Plans were published. In 1994 the Great Lakes/Northern Great Plains Recovery Team began to revise the Recovery plan for the Great Lakes/Northern Great Plains populations (Service 1994). The 1994 draft included updated information on the species and was distributed for public comment. Subsequently, we decided that the recovery of these two inland populations would benefit from separate recovery plans. Separate recovery plans for the Great Lakes and northern Great Plains populations are presently under development.

The final listing rule for the piping plover indicated that designation of critical habitat was not determinable. Thus, designation was deferred. No further action was taken to designate critical habitat for piping plovers. On December 4, 1996, Defenders of Wildlife (Defenders) filed a suit (Defenders of Wildlife and Piping Plover v. Babbitt, Case No. 96CV02965) against the Department of the Interior and the Service over the lack of designation of critical habitat for the Great Lakes population of the piping plover. Defenders filed a similar suit (Defenders of Wildlife and Piping Plover v. Babbitt, Case No. 97CV000777) for the northern Great Plains piping plover population in 1997. During November and December 1999 and January 2000, we began negotiating with Defenders on a schedule for piping plover critical habitat designation. On February 7, 2000, before the settlement negotiations were concluded, the United States District Court for the District of Columbia issued an order directing us to publish a proposed critical habitat designation for nesting and wintering areas of the Great Lakes breeding population of the piping plover by June 30, 2000, and for nesting and wintering areas of the northern Great Plains population of the piping plover by May 31, 2001. A subsequent order, after we requested the court to reconsider its original order relating to final critical habitat designation, directed us to finalize the critical habitat designations for the Great Lakes population by April 30, 2001, and for the northern Great Plains population by March 15, 2002. For biological and practical reasons, we chose to propose critical habitat for the Great Lakes breeding birds and for all wintering birds in two separate documents; the Great Lakes breeding birds final critical habitat was published

on May 7, 2001 (66 FR 22983), and we intend to publish the wintering birds final critical habitat by June 29, 2001.

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 conserve 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 determination that such areas are essential to conserve 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 the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences with the Service 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 "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." 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 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 (or, in this case, a breeding population), we designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to conserve 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, "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species," (50CFR424.12(e)). Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of 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, procedures, and guidance to ensure 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, Tribes, and counties, scientific status surveys and studies, and biological assessments or other 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 designation of critical habitat may not include all habitat eventually determined as necessary to recover 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 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. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in likely-to-jeopardize 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 essential to conserve the northern Great Plains breeding population of piping plovers, we used the best scientific and commercial data available. We have reviewed the overall approach to the conservation of the northern Great Plains breeding population of piping plovers undertaken by the local, State, Tribal, and Federal agencies operating within the species' range since its listing in 1986, and the identified steps necessary for recovery outlined in the Great Lakes and Northern Great Plains Piping Plover Recovery Plan (Service 1988b).

We also have 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; the 1994 Technical/ Agency Review Draft Revised Recovery

Plan for Piping Plovers Breeding on the Great Lakes and Northern Great Plains (Service 1994); research published in peer-reviewed articles and presented in academic theses and agency reports; annual survey reports; regional Geographic Information System (GIS) coverages; and personal communications with knowledgeable biologists.

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 physical and biological features (primary constituent elements) that are essential to conservation of the species, and that may require special management considerations and protection. These include, but are not limited to—(1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing (or development) of offspring; and (5) habitats protected from disturbance or that are representative of the historic geographical and ecological distributions of a species.

Primary constituent elements for the northern Great Plains population of piping plovers are those habitat components essential for the biological needs of courtship, nesting, sheltering, brood-rearing, foraging, roosting, intraspecific communication, and migration. Proposed critical habitat for the northern Great Plains breeding population of piping plovers includes areas that—(1) are currently or recently used for breeding, or (2) were documented to have been occupied historically and still have most or all of the primary constituent elements, (3) are not specifically documented to have been occupied, but are deemed potential breeding habitat since these areas are part of a riverine system with documented nesting, and are within the historic geographic range and have recently developed primary constituent elements, or (4) include habitat complexes, including wetland and adjacent upland areas, essential to the conservation of this species (50 CFR 424.13(d)). Critical habitat is effective year-round. Therefore, an area that contains one or more of the primary constituent elements is considered to be critical habitat even if these elements

are temporarily obscured by snow, ice, or other temporary features.

Primary constituent elements are categorized by breeding habitat types found in the northern Great Plains, including mixosaline to hypersaline wetlands (Cowardin *et al.* 1979), rivers, reservoirs, and inland lakes. The habitat types and primary constituent elements necessary to sustain the northern Great Plains breeding population of piping plovers are described as follows:

On prairie alkali lakes and wetlands, the primary constituent elements include—(1) shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands 200 feet (61 meters) above the high water mark of the alkali lake or wetland.

On rivers the primary constituent elements include—sparsely vegetated channel sandbars, sand and gravel beaches on islands, temporary pools on sandbars and islands, and the interface with the river.

On reservoirs the primary constituent elements include—sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with the water bodies.

On inland lakes (Lake of the Woods) the primary constituent elements include—sparsely vegetated and windswept sandy to gravelly islands, beaches, and peninsulas, and their interface with the water body.

The dynamic ecological processes that create and maintain piping plover habitat also are important primary constituent elements. These processes develop a mosaic of habitats on the landscape that provide the essential combination of prey, forage, nesting, brooding and chick-rearing areas. The annual, seasonal, daily, and even hourly availability of the habitat patches is dependent on local weather, hydrological conditions and cycles, and geological processes.

For example, periodic disturbance of alkali lakes and wetlands and adjacent upland vegetation is important to minimize vegetation encroachment on beaches and are ecological processes with which the piping plover evolved. Historically, bison (*Bison bison*) grazed vegetation and fire burned off vegetation and plant litter on and around alkali lake beaches. Today both fire and livestock grazing are used to manage for periodic disturbance. Lack of such disturbances degrades the attractiveness of beaches to piping plovers and,

potentially, the security of these habitats for breeding adults and chicks.

Furthermore, suitability of beaches, sandbars, shoreline, and flats on the above-mentioned habitat types also is based on a dynamic hydrological system of wet-to-dry cycles. Habitat area, abundance and availability of insect foods, brood and nesting cover, and prevalence of vegetation are linked to these water cycles. On rivers, one site becomes flooded and erodes away as another is created. This dynamic nature of rivers, as well as flow-management of rivers like the Missouri River, is important to habitat creation and maintenance for piping plovers. On alkali lakes, the complex of different wetland types is especially important for providing areas for plovers in all years, as site availability cannot be predicted or selected at a given time, due to varying water cycles. Although not well documented by specific scientific research, biologists have noted a relationship appears to exist between availability of breeding habitat and wet-to-dry cycles. During droughts, lack of water reduces habitat for breeding pairs on alkali lakes and wetlands, while reduced river flows tend to produce more available habitat on rivers and associated reservoirs. Additionally, if smaller tributaries or wetlands are flooded during the early part of the breeding season, piping plovers often move to larger rivers to renest.

Because piping plovers evolved in this dynamic and complex system, and because they are dependent on it for their continued survival and eventual recovery, our proposed critical habitat boundaries incorporate natural processes inherent in the system and include sites that might not exhibit all appropriate habitat components in all years but have a documented history of such components. For example, in dry years, nesting areas lacking water may be unsuitable for piping plovers; conversely, in wet years, there may be a lack of exposed shoreline habitat for nesting plovers.

Criteria Used To Identify Critical Habitat

The Recovery Plan for the Great Lakes and Northern Great Plains Piping Plover (Service 1988) and the Technical/Agency Review Draft Revised Recovery Plan for Piping Plovers Breeding on the Great Lakes and Northern Great Plains (1994) identified the specific recovery needs of the northern Great Plains breeding population of the piping plover, and serve as starting points for identifying areas essential to its conservation.

Piping plovers are found in a variety of ecologically and geographically distinct areas within the northern Great Plains. In order to preserve this diversity, all of these areas are represented in either of the recovery plans. To recover the northern Great Plains breeding population of the piping plover to the point where it can be delisted, it is essential to preserve the population's genetic diversity as well as the habitat on which it persists. The areas identified in the recovery plans as necessary to achieve recovery of the population are generally reflected in this proposal.

However, the recovery plans did not include the most recent comprehensive breeding survey data for the northern Great Plains and did not identify all possible areas essential to the survival and recovery of the species. Thus, we identified additional areas in this proposal from surveys conducted in North Dakota from 1987 to 2000, in Montana from 1986 to 2000, in Minnesota from 1982 to 2000, on the Missouri River from 1986 to 2000, in Nebraska from 1986 to 2000, in Kansas from 1996 to 2000, in Colorado from 1990 to 2000, and in Iowa from 1986 to 2000; and data from the 1991 and 1996 International Piping Plover Censuses. We also removed some of the sites included in the 1994 draft recovery plan due to existing protection from current management practices or plans. Based on the primary constituent elements, we divided the habitat types used by the northern Great Plains breeding population of piping plovers into alkali lakes and wetlands, rivers, reservoirs, and inland lakes. We discuss our inclusions and exclusions of habitat below.

Alkali Lakes and Wetlands—We only mapped alkali lakes and wetlands that were observed with breeding pairs in at least 2 out of 10 survey years. The 10-year survey period encompassed both wet and dry cycles; therefore, the dynamic nature of prairie alkali lakes and wetlands, and the resulting shift in use by piping plovers of different habitat types, is reflected in the mapping. All alkali lakes and wetlands mapped exhibit one or more of the primary constituent elements. We did not include many areas that exhibited all of the primary constituent elements and periodically contained piping plovers because they did not meet the minimum 2 out of 10-year requirement. Our legal descriptions include all sections in which alkali lakes and wetlands and associated 200-foot (61-meter) upland habitat are found.

Missouri River and Reservoirs—We mapped the Missouri River from Fort

Peck Reservoir, Montana, to Ponca State Park, Nebraska. We identified two riverine reaches (a portion of Fort Peck riverine reach and the reach from Ponca State Park, Nebraska, to Plattsmouth, Nebraska), one reservoir reach (Lake Sharpe), and a portion of another reservoir (Fort Peck) on the Missouri River that we are not proposing as critical habitat, because they did not meet the definition of critical habitat. See discussion to follow.

The Fort Peck riverine reach of the Missouri River from the Fort Peck Dam to the confluence of the Milk River (RM 1712) is highly degraded and contains few sandbars due to sediments trapped behind the Fort Peck Dam. Sandbar formation begins further downstream due to sediments transported from the Milk River. The upstream section that we have not proposed does not contain, and is not likely to develop, the primary constituent elements needed for piping plover survival and recovery in the near future.

Although piping plovers have been documented as far south as Plattsmouth, Nebraska, on the Missouri River, very limited habitat currently exists for piping plovers below Ponca State Park, Nebraska. The Missouri River has little sandbar habitat in this reach due to the channelization of the river and bank stabilization projects which were created to support navigation. We are aware of efforts to restore some backwater areas along this reach which will likely create suitable habitat for the piping plover. We will continue to monitor these areas and may consider proposing them as critical habitat if they obtain the primary constituent elements needed for the piping plover in the future. Along the Iowa reach of the Missouri River, plovers exist on fly ash sites adjacent to the river, but these temporary habitats support few birds and, therefore, are not considered essential and do not meet the definition of critical habitat.

Lake Sharpe was not proposed because this reservoir reach has only supported a few pairs of birds on one beach since listing and, therefore, are not considered essential and do not meet the definition of critical habitat.

In Montana, piping plovers have been found on the Dry Arm, Duck Creek Bay, Bear Creek Bay, and Skunk Coulee of Fort Peck Reservoir. We are not proposing the entire Fort Peck Reservoir as plovers have never been reported on the western arm.

Including portions of the Missouri River that may not be occupied at this time is necessary because of the dynamic nature of the river. Sandbar/island habitats migrate up and down the

riverine sections of the river resulting in shifts in the location of primary constituent elements. Mainstem reservoir areas also change depending on water level management. Piping plovers opportunistically respond to these shifts from year to year. The entire length of mainstem reservoirs was included even though small areas of reservoirs may never contain the primary constituent elements due to high banks and steep slopes. We did not exclude these areas because it would require a minimum of 2 years to collect data necessary to map at that detail. However, Federal actions limited to these areas that do not contain the primary constituent elements would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in or adjacent to critical habitat.

In South Dakota, a 107.5-mile (172.9-kilometer) stretch from Big Bend Dam to Fort Randall (Lake Francis Case) was included despite the fact that nesting piping plovers have not been documented in this reach in recent times, as nesting surveys have not been conducted in this river since this habitat formed. We are including this area as proposed habitat because of the large delta forming at the confluence of the White River. This delta area recently (1999–2000) developed piping plover nesting habitat characteristics (C.D. Kruse, U.S. Army Corps of Engineers, pers. comm.) and primary constituent elements necessary for breeding piping plovers. In addition, this river reach, in combination with other Missouri River reaches, was identified as essential habitat to meet conservation and recovery goals for the northern Great Plains piping plover (Service 2000a).

Inland Lakes (Lake of the Woods)—In Minnesota, piping plovers appear to key in on sandy points or spits in large lakes. Although many sandy beach/large lakes exist, piping plovers are attracted to the rare combination of windswept islands or peninsulas with a lack of adjacent tree cover. Incidental observations have never yielded nesting observations on large lakes such as Upper and Lower Red Lakes or Lake Winnibigoshish. Therefore, we have limited our critical habitat proposal in Minnesota to three known sites on Lake of the Woods where the species has been observed nesting in more than 1 year. Zippel Bay on Lake of the Woods and Agassiz National Wildlife Refuge were not included because breeding pairs were only observed 1 year at these sites.

Nebraska Rivers—Portions of the Platte, Niobrara, and Loup Rivers were proposed where piping plover nesting

has been consistently documented since listing.

Similar to the Missouri River, portions of the Platte River that are included in the proposed critical habitat designation may not be occupied in a given year, but designation is necessary because of the dynamic nature of the river. Sandbar habitats migrate up and down the rivers resulting in shifts in the location of primary constituent elements.

The Elkhorn River was considered for this proposal but was not included at this time because there is limited documented nesting on this river. We do not consider the Elkhorn River to be essential at this time to the conservation and recovery of the northern Great Plains breeding population of the piping plover.

The shoreline along Lake McConaughy, Nebraska, has not been proposed for critical habitat due to the existence of two, draft conservation management plans developed by the Central Nebraska Public Power and Irrigation District to satisfy a Federal Energy Regulatory Commission (FERC) relicensing requirement for Project No. 1417. The "Land and Shoreline Management Plan" and the "Management Plan for Least Terns and Piping Plovers Nesting on the Shore of Lake McConaughy" were developed in coordination and in agreement with the Service and the Nebraska Game and Parks Commission. Both plans are being implemented on an interim basis while awaiting FERC approval. We believe that implementation of these conservation management plans is consistent with piping plover recovery. Therefore this area is not in need of special management and does not meet the definition of critical habitat. If conservation management plans are in place and meet the following three criteria, then we may exclude these areas from critical habitat. These conservation plans must—(1) provide a benefit to the species; (2) include implementation assurances; and (3) include features, such as an adaptive management plan, that will assure effectiveness. Therefore, despite the presence of nesting piping plovers at this site, it is eligible for exclusion from critical habitat on the basis of having conservation management plans that specifically address the conservation and recovery of the piping plover. However, if FERC should ultimately decide not to approve either or both of the aforementioned plans as currently drafted, we will need to reconsider whether the site should be excluded from the final rule for critical habitat designation.

Colorado and Kansas Nesting Sites—Nesting areas on the Kansas River in Kansas were considered for possible inclusion as critical habitat but were not included because at the present time these sites are not considered essential and, therefore, do not meet the requirements of critical habitat. The Kansas River nesting occurred for the first time in 1996 and is suspected to have occurred because of habitat created by historical flood events (1993 and 1995). We believe that a return to more normal flows will eliminate nesting habitat on this river. In 4 years of documented nesting on the Kansas River there was one pair of plovers the first year and never more than four pairs. Additionally, productivity has been very limited. However, the U.S. Army Corps of Engineers (Corps) and the Service will be monitoring the Kansas River for piping plovers during the nesting season (Service 2000a). If nesting birds persist on the Kansas River, then we may reevaluate this river's contribution to conservation and recovery of the northern Great Plains breeding population of piping plovers and the need to designate critical habitat in the future.

Six different reservoirs (Neenoshe, Neegrande, Neeskah, John Martin, Adobe Creek, and Verhoeff) in Bent, Otero, and Kiowa Counties, Colorado, have been monitored for 10 years (1990–2000) and have not been able to sustain a stable population. There was a high of nine pairs in 1994 and 1995 and only four pairs in 2000. Predation and water level fluctuations appear to be limiting factors affecting reproductive success. The Colorado Division of Wildlife is likely to continue monitoring the nesting plovers on the reservoir sites. In addition, the Colorado Department of Natural Resources approved a recovery plan for both the piping plover and interior least tern in 1994. Therefore, we are not proposing to include these areas in the critical habitat designation because at the present time we do not consider them to be essential and, therefore, do not meet the requirements of critical habitat.

To identify and map areas essential to the conservation of the species, we used the characteristics of essential habitat described above, data on known piping plover locations, and criteria in the recovery plans for reclassification of the species. We then evaluated areas based on survey and research data and the primary constituent elements, including hydrology, influences of ecological processes, and topographic features.

To map areas of critical habitat, we used the Service's National Wetland Inventory (NWI) digitized data and U.S.

Geological Survey public land surveys to develop regional GIS coverages; Environmental Systems Research Institute wetland data (where NWI data was unavailable); 1984 digital ortho quarter quads for all Nebraska River reaches, and Statewide and county maps for Nebraska; Central Public Power and Irrigation District Species Protection Zone maps of Lake McConaughy; and data from known piping plover breeding locations. We also solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species.

We could not depend solely on federally owned lands from critical habitat designation as these lands are limited in geographic location, size, and habitat quality within the current range of the northern Great Plains breeding population of the piping plover. In addition to the federally owned lands, we are proposing critical habitat on non-Federal public lands and privately owned lands, including land owned by the States of Minnesota, Montana, Nebraska, North Dakota, and South Dakota.

We also are including a portion of the Assiniboine and Sioux of Fort Peck Tribe's Reservation because it contains areas of habitat within the Missouri River that are essential to the recovery of the piping plover. We also coordinated with 11 other Tribes with lands adjacent to the proposed critical habitat. We initiated coordination with these 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), Executive Order 13175, and 512 DM 2, which requires us to coordinate with federally recognized Tribes on a Government-to-Government basis. However, due to the short amount of time allowed under the court order for preparation of this proposed rule, our contact with the Tribes has been limited to a meeting with the Tribal Chair from the Assiniboine and Sioux Tribes of Fort Peck, through written correspondence which resulted in no comments and informational presentations before the Great Plains Inter-Tribal Fish and Wildlife Commission. We plan continued consultation with the affected Tribes, before making a final critical habitat decision.

Section 4(b)(2) of the Act requires us to consider the economic and other relevant impacts of designating areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such

exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will make available for public review an economic analysis of this proposal; this economic analysis will serve as the basis of our 4(b)(2) analysis and any exclusions. However, this economic analysis is not yet completed; as a result, we are not able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will complete our economic analysis and review public comments before making a final determination of critical habitat. This review, combined with our assessment of the benefits of designating areas as critical habitat, may identify certain proposed areas should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from this proposal.

All non-Federal lands designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical area occupied by the species, are essential to the conservation of the species, and may require special management considerations or protection.

We described critical habitat as Township, Range, and Sections (TRS) for the legal descriptions because these are used and recognized locally. The maps depict the alkali lakes and wetlands and associated uplands, but they do not show the TRS boundaries. Due to time constraints and the use of TRS as our minimum mapping unit, in defining critical habitat boundaries, we were unable to exclude developed areas such as mainstem dam structures, buildings, marinas, boat ramps, bank stabilization and breakwater structures, row cropped or plowed agricultural areas, mines, roads and other lands (e.g., high bank bluffs along Missouri River reservoirs) unlikely to contain primary constituent elements essential for northern Great Plains piping plover conservation. In addition we included the entire length of mainstem reservoirs even though small areas of reservoirs may never contain the primary constituent elements due to high banks and steep slopes. We did not exclude these areas because it would require a minimum of 2 years to collect data necessary to map at that detail. These features will not themselves contain one or more of the primary constituent elements. Federal actions limited to those features, therefore, would not

trigger a section 7 consultation, unless they affect species and/or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

The proposed critical habitat contained within units discussed below constitutes our best evaluation of areas needed to conserve the northern Great Plains population of piping plovers. Proposed critical habitat may be revised should new information become available prior to the final rule, or may be revised through rule-making if new information becomes available after the final rule.

Table 1 provides a summary of land ownership and approximate acreage or river miles of proposed critical habitat for each State. Critical habitat for the northern Great Plains breeding population of the piping plover includes approximately 196,476.5 acres (79,553.1 hectares) of habitat in Minnesota, Montana, and North Dakota, and approximately 1,338 miles (2,152.9 kilometers) of river in Montana, North Dakota, South Dakota, and Nebraska. Table 2 provides land ownership and approximate acreage or river miles of proposed critical habitat for each critical habitat unit. Lands proposed as critical habitat are under private, Federal, Tribal, and State ownership. Estimates reflect the total area or river miles within critical habitat unit boundaries, without regard to the presence of primary constituent elements. Therefore, the area proposed for designation is less than indicated in Tables 1 and 2.

Lands proposed as critical habitat are divided into 16 critical habitat units containing one or more of the primary constituent elements for the northern Great Plains population of piping plovers. A brief description of each piping plover critical habitat unit is provided below and in Table 2.

Minnesota

Unit MN-1, Rocky Point, Pine and Curry Island, and Morris Point—This unit includes approximately 235.2 acres (95.1 hectares) of unique habitat, including sparsely vegetated wind-swept islands, peninsulas, and sandy points or spits that interface with Lake of the Woods in Lake of the Woods County. Although this unit is small in size, there have been up to 50 plovers found during the breeding season. Numbers have declined since the mid-1980s and there is a continued need for habitat and predator management. This unit represents the most eastern portion of the northern Great Plains population of breeding piping plovers and may be

an important link between the Great Lakes and northern Great Plains breeding populations. It is the only remaining breeding site for piping plovers in Minnesota. Approximately 100.4 acres (40.6 hectares) are designated within the 697-acre (282.3-hectare) Rocky Point Wildlife Management Area, which is in public ownership, managed by the Minnesota Department of Natural Resources. Rocky Point is located just east of Arneson on Lake of the Woods. Unit 1 also includes approximately 134.8 acres (54.5 hectares) within the Pine and Curry Island Scientific and Natural Area which is in public ownership, managed by the Minnesota Department of Natural Resources. Pine and Curry Island Scientific and Natural Area includes approximately 112.6 acres (45.6 hectares) of a sandy barrier island (Pine and Curry Island) and 22.2 acres (8.9 hectares) of an adjacent peninsula (Morris Point) located at the mouth of the Rainy River on Lake of the Woods.

Montana

Unit MT-1, Sheridan County—This unit includes approximately 19,445.7 acres (7,869.5 hectares) of 21 alkali lakes and wetlands in Sheridan County, located in the extreme northeast corner of Montana. These alkali lakes and wetlands are characterized as follows: shallow, seasonally to permanently flooded; mixosaline to hypersaline chemistry; sandy to gravelly, sparsely vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; 200 feet (61 meters) of uplands above the wetlands' high water mark including springs and fens, which provide foraging and protective habitat for piping plovers. Sites included in this unit are occupied by piping plovers. This unit requires special management including increasing reproductive success through predator exclusion devices, such as nest cages and electric fences, and reducing vegetation encroachment on nesting beaches through prescribed burning or grazing. Essential breeding habitat is dispersed throughout this unit which represents the largest portion (approximately 66 percent) of the plovers surveyed in Montana. This unit also links similar habitat in Canada and North Dakota. Approximately 5,793.7 acres (2,344.7 hectares) are in private ownership and 13,651.9 acres (5,524.8 hectares) are in public ownership. Of the lands in public ownership, 13,356.8 acres (5,405.4 hectares) are in Federal ownership and 295.1 acres (119.4 hectares) are in State ownership. Federal lands designated include piping plover populations on Medicine Lake

National Wildlife Refuge and several Waterfowl Production Areas, both owned and managed by the Service. State lands designated include land owned and managed by the Montana Department of Natural Resources and Conservation.

Unit MT-4, Nelson Reservoir and Bowdoin National Wildlife Refuge—This unit encompasses approximately 3,341.7 acres (1,352.4 hectares) on Nelson Reservoir and 3,294.5 acres (1,333.3 hectares) on Bowdoin National Wildlife Refuge with sparsely vegetated shoreline beaches, peninsulas, and islands composed of sand gravel, or shale that interface with these water bodies. Both sites are located in east-central Phillips County, approximately 170.8 miles (275 kilometers) west of the North Dakota border and 37.3 miles (60 kilometers) south of Canada. This unit represents the western edge of the northern Great Plains breeding population of the piping plover and requires special management including water level and predator management. Bowdoin National Wildlife Refuge is in public ownership (Federal) and managed by the Service. Nelson Reservoir, a Bureau of Reclamation project, is an 4,559-acre (1,845-hectare) irrigation reservoir approximately 2.5 miles (4 kilometers) northeast of Bowdoin National Wildlife Refuge. Lake Bowdoin and Nelson Reservoir are off stream facilities receiving water from the Milk River.

Nebraska

Unit NE-1, Platte, Loup, and Niobrara Rivers—This unit encompasses approximately 463 miles (745 kilometers) of river. The river habitat includes sparsely vegetated channel sandbars, sand and gravel beaches on islands for nesting, temporary pools on sandbars and islands, and the interface of sand and river where plovers forage. All three of these rivers are occupied by and provide essential habitat for the piping plover.

Niobrara River—The Niobrara River is a tributary of the Missouri River, originating in Wyoming and flowing through the northern part of the Nebraska Sandhills region. The portion of the Niobrara included in the proposed Critical Habitat starts a short distance east of the Cherry-Brown County line, and extends downstream approximately 129 miles (207.6 kilometers) to its confluence with the Missouri River. The Niobrara River is one of the most undeveloped rivers in the northern Great Plains and represents one of the last rivers with largely untouched piping plover habitat. The source of water for this river is largely

groundwater discharge which helps to provide a year-round base flow with few flood events which is essential to successful plover nesting. Essential nesting habitat is dispersed throughout this unit and this unit represents about 36 percent of Nebraska's plover population.

In 1991, the National Park Service designated 76 miles (122.3 kilometers) of the Niobrara River as a "National Scenic River," 50 miles (80.5 kilometers) of which are included in the proposed Critical Habitat designation. The National Scenic River reach ends where Highway 137 crosses the river. The Nature Conservancy owns and manages 9.5 miles (15.3 kilometers) along the Niobrara River which falls within both the National Scenic River reach and the proposed piping plover Critical Habitat. Other ownership and interests are principally private. The primary land use along the Niobrara River is farming (east along the river) and ranching (west along the river).

Loup River—The Loup River flows 68 miles (109.4 kilometers) to its confluence with the Platte River near Columbus. Ownership interests within this reach of proposed Critical Habitat are primarily private. Habitat on the Loup River proposed designation is part of the larger Platte River watershed and provides productive habitat for piping plovers. The Loup River is one of the Platte River's principal tributaries.

Platte River—The North and South Platte Rivers each originate in the Rocky Mountains of Colorado with snow melt, and flow east into Nebraska where they join forming the Platte River near the town of North Platte. The reach included in the proposed piping plover Critical Habitat begins near the town of Cozad and extends to the Platte's confluence with the Missouri River 266 miles (428 kilometers) downstream. About one-fourth of this part of the Platte is already designated as critical habitat for the whooping crane (*Grus americana*), including a 3-mile wide (4.8-kilometer) north-south buffer starting at a western boundary south of Lexington east to south of Shelton. Ownership is primarily private, including 28.5 miles (45.9 kilometers) which is managed as conservation land by The Nature Conservancy, Platte River Whooping Crane Habitat Maintenance Trust, Central Nebraska Public Power and Irrigation District, Nebraska Public Power District, and the National Audubon Society's Lillian Annette Rowe Sanctuary. The State of Nebraska owns 8 miles (12.9 kilometers) along the Platte River, which is primarily under the jurisdiction of the Nebraska Game and Parks Commission. Essential

nesting habitat is dispersed throughout this unit.

North Dakota

Units 1-7 in North Dakota (described below) include prairie alkali lakes and wetlands. These alkali lakes and wetlands are characterized as follows—shallow; seasonally to permanently flooded; mixosaline to hypersaline chemistry; sandy to gravelly, sparsely vegetated beaches, salt-encrusted mudflats, and/or gravelly salt flats; 200 feet (61 meters) of uplands above the wetlands' high water mark, including springs and fens which provide foraging and protective habitat for piping plovers. Sites included in this unit are occupied (determined to have nesting piping plovers 2 out of 10 years) by piping plovers. This unit requires special management including increasing reproductive success through predator exclusion devices, such as nest cages and electric fences, and reducing vegetation encroachment on nesting beaches through prescribed burning or grazing.

These essential breeding habitats in North Dakota can support more than 50 percent of the current known population of the northern Great Plains Piping Plover. The proximity of Units 1-7 to the Missouri River provides an important ecological link that may allow birds extra protection from a severe drought that results in dry wetlands basins. As birds experience drought in these units biologists believe birds move to the river. Conversely, birds may move to these units when Missouri River flows are high.

Unit ND-1—This unit encompasses approximately 7,480.3 acres (3,027.2 hectares) of 13 alkali lakes and wetlands in Divide and Williams Counties, located in the extreme northwestern corner of North Dakota. Approximately 1,765.4 acres (714.4 hectares) are in public ownership and 5,715 acres (2,312.8 hectares) are in private ownership. Of the lands in public ownership 1,338 acres (541.5 hectares) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 427.3 acres (172.9 hectares) are in State ownership. State lands designated include 3.1 acres (1.3 hectares) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 424.2 acres (171.7 hectares) of school lands owned and managed by the North Dakota Land Department.

Unit ND-2—This unit encompasses approximately 23,147.1 acres (9,367.5 hectares) of 24 alkali lakes and wetlands in Burke, Renville, Mountrail, and Ward Counties, located in northwestern North

Dakota. Approximately 14,541.2 acres (5,884.7 hectares) are in public ownership and 8,605.9 acres (3,482.8 hectares) are in private ownership. Of the lands in public ownership, 13,806.3 acres (5,587.3 hectares) are in Federal ownership and 734.9 acres (297.4 hectares) are in State ownership. Federal lands designated include Lostwood and Upper Souris National Wildlife Refuges and Waterfowl Productions Areas, both owned and managed by the Service. State lands designated include 320.4 acres (129.7 hectares) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 414.5 acres (167.7 hectares) of school lands owned and managed by the North Dakota Land Department.

Unit ND-3—This unit encompasses approximately 5,519.6 acres (2,233.8 hectares) of nine alkali lakes and wetlands in McLean County located in north-central North Dakota. Approximately 1,339.3 acres (542.1 hectares) are in public ownership and 4,180.3 acres (1,691.7 hectares) are in private ownership. Of the lands in public ownership, 798.8 acres (323.3 hectares) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 540.5 acres (218.8 hectares) are in State ownership. State lands designated include 435.6 acres (176.3 hectares) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 105 acres (42.5 hectares) of school lands owned and managed by the North Dakota Land Department. The John E. Williams Preserve, owned and managed by The Nature Conservancy (private), also is included in this unit.

Unit ND-4—This unit encompasses approximately 12,084.4 acres (4,890.4 hectares) of 24 alkali lakes and wetlands in McHenry, Pierce, Benson, and Sheridan Counties, located in north-central North Dakota. Approximately 1,563.1 acres (632.6 hectares) are in public ownership and 10,521.3 acres (4,257.8 hectares) are in private ownership. Of the lands in public ownership, 1,098.6 acres (444.6 hectares) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 464.5 acres (188 hectares) are in State ownership. State lands designated include 370.4 acres (149.9 hectares) of Wildlife Management Area owned and managed by the North Dakota Game and Fish Department and 94.1 acres (38.1 hectares) of school lands owned and managed by the North Dakota Land Department.

Unit ND-5—This unit encompasses approximately 1,351.4 acres (546.9 hectares) of one alkali lake in Eddy

County, located in northeastern North Dakota. Approximately 202.8 acres (85.1 hectares) are in public ownership and 1,148.6 acres (461.8 hectares) are in private ownership. Of the lands in public ownership, 196.3 acres (82.5 hectares) are in Federal ownership. Camp Grafton, a North Dakota National Guard training facility, comprises 189.4 acres (79.7 hectares) of the habitat in Federal ownership and 6.9 acres (2.8 hectares) are Waterfowl Production Areas managed by the Service. The remaining 6.5 acres (2.6 hectares) of Public lands are in State ownership (Wildlife Management Area owned and managed by the North Dakota Game and Fish Department).

Unit ND-6—This unit encompasses approximately 40,221.1 acres (16,277.2 hectares) of 24 alkali lakes and wetlands in Sheridan, Burleigh, Kidder, and Stutsman Counties, located in south-central North Dakota. Approximately 24,231.4 acres (9,806.3 hectares) are in public ownership and 15,989.7 acres (6,470.9 hectares) are in private ownership. Of the lands in public ownership, 22,269.2 acres (9,012.2 hectares) are in Federal ownership and 1,962.2 acres (794.1 hectares) are in State ownership. Federal lands designated include Long Lake, Chase Lake, and Arrowwood National Wildlife Refuges and Waterfowl Production Areas, all owned and managed by the Service. State lands designated include 1,297.8 acres (525.2 hectares) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 664.4 acres (268.9 hectares) of school lands owned and managed by the North Dakota Land Department.

Unit ND-7—This unit encompasses approximately 3,085.5 acres (1,248.7 hectares) of nine alkali lakes and wetlands in Emmons, Logan, and McIntosh Counties, located in south-central North Dakota. Approximately 786.5 acres (318.3 hectares) are in public ownership and 2,299 acres (930.4 hectares) are in private ownership. Of the lands in public ownership, 536.6 acres (217.2 hectares) are in Federal ownership (Waterfowl Production Areas managed by the Service) and 249.9 acres (101.1 hectares) are in State ownership. State lands designated include 234.8 acres (95 hectares) of Wildlife Management Areas owned and managed by the North Dakota Game and Fish Department and 15.2 acres (6.1 hectares) of school lands owned and managed by the North Dakota Land Department.

Missouri River Units—Missouri River units consist of riverine and reservoir (Fort Peck Lake, Lake Sakakawea and Lake Audubon, Lake Oahe, Lake Francis

Case, and Lewis and Clark Lake) reaches. All reservoirs except Lake Audubon are mainstem impoundments, constructed by dams, and regulated by the Corps. Lake Audubon is a sub-impoundment of Lake Sakakawea and is regulated by the Bureau of Reclamation through operation of the Snake Creek Pumping Plant. Overall the Missouri River has accounted for up to 31 percent of the northern Great Plains population of piping plovers. All of the units are occupied except Lake Francis Case. However, Lake Francis Case does contain the primary constituent elements.

Piping plover habitat within reservoir reaches is composed of shorelines, peninsulas, and islands, below the top of the maximum operating pool and is owned by the Federal government. These reservoir habitats include sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with the water. These reservoir reaches provide habitat for about 42 percent of the piping plovers on the Missouri River.

Piping plover habitat within riverine reaches consists of inter-channel islands and sandbars including their temporary pools and interface with the river. These habitats are sparsely vegetated and consist of sand and gravel substrates. Riverine reaches provide habitat for about 58 percent of the piping plovers on the Missouri River. Ownership of these sites varies by State. In Montana, islands and sandbars are recognized as owned by the State except along the reservation boundaries of the Assiniboine and Sioux Tribes of Fort Peck. The Assiniboine and Sioux Tribes of Fort Peck own land to the mid-channel of the Missouri River adjacent to the Reservation boundary.

In North Dakota and South Dakota, islands and sandbars are recognized as owned by the State. However, the Fort Laramie Treaty of 1868 recognizes the Missouri River's east bank as the boundary of the Great Sioux Reservation. The issues regarding treaties and litigation of property rights are beyond the scope of critical habitat designation but we recognize as their special importance to American Indian populations in the northern Great Plains.

In Nebraska, islands and sandbars are owned by the adjacent landowner. Fort Laramie Treaty issues also apply to tribes in Nebraska that were a part of the Great Sioux Nation.

Montana

Unit MT-2, Fort Peck Reservoir—This unit encompasses approximately 77,370

acres (31,311 hectares) of Fort Peck Reservoir, located entirely within the Charles M. Russell National Wildlife Refuge which is in Federal ownership, managed by the Service.

Unit MT-3—This unit encompasses approximately 125.4 miles (201.8 kilometers) of the Missouri River from just west of Wolf Point to the Montana/North Dakota border. The Missouri River in this unit flows through reservation lands of the Assiniboine and Sioux Tribes of Fort Peck (81.7 miles (131.5 kilometers)), State, and privately owned land.

North Dakota

Unit ND-8—This unit encompasses approximately 354.6 miles (570.6 kilometers) from the Montana/North Dakota border to the North Dakota/South Dakota border. Lake Sakakawea, Lake Audubon, and Lake Oahe are included in this unit, along with a free-

flowing stretch of the Missouri River from RM 1389 to 1302 (Garrison Reach). The North Dakota Game and Fish Department manages the north half of Audubon Reservoir and the Service manages the south half of Audubon Reservoir. The Missouri River and associated reservoirs in this unit are adjacent to reservation lands of the Three Affiliated Tribes of Fort Berthold and Standing Rock Sioux Tribe, State, and privately owned land.

South Dakota

Unit SD-1—This unit encompasses approximately 159.7 miles (257 kilometers) from the North Dakota/South Dakota border to RM 1072.3, just north of Oahe Dam (Oahe Reservoir). The Missouri River and associated reservoirs in this unit are adjacent to reservation lands of the Standing Rock Sioux and Cheyenne River Sioux Tribes, State, and privately owned land.

Unit SD-2—This unit encompasses approximately 235.3 miles (378.5 kilometers) from RM 987.5, just south of Big Bend Dam to RM 752.2 near Ponca, Nebraska. Two mainstem Missouri River reservoirs, Lake Francis Case and Lewis and Clark Lake, and two riverine reaches (Fort Randall and Gavins Point) are included in this unit. Approximately 120 miles (193.1 kilometers) of river border Nebraska; of that approximately 87 miles (140 kilometers) have shared ownership of sandbars and islands with adjacent private landowners in Nebraska (the other 33 miles (53.1 kilometers) are Lewis and Clark Lake). The Missouri River and associated reservoirs in this unit are adjacent to reservation lands of Lower Brule Sioux Tribe, Rosebud Sioux Tribe, Oglala Sioux Tribe, Santee Sioux Tribe, Crow Creek Sioux Tribe, and Yankton Sioux Tribe and privately owned land.

TABLE 1.—PROPOSED CRITICAL HABITAT UNITS FOR THE PIPING PLOVER IN UNITED STATES GREAT PLAINS STATES SUMMARIZED BY FEDERAL, STATE, COUNTY, PRIVATE, AND OTHER OWNERSHIP

	Ownership—linear river miles and acres (percentage within each State)				
	Federal	State	Tribal	Private	Total
Minnesota	0	235.2	0	0	235.2 ac (95.2 ha) (100%) ac ..
Montana	97,363.1 ac	295.1 ac	0	5793.7 ac	103,451.9 ac (39,402 ha) (94.1%) .. (2,344.7 ha) (5.6%) ...
—Ft Peck Res- ervoir (Missouri River).	77,370 ac	(31,311 ha).			
—All other habitat	19,993.1 ac	(8,091 ha).			
North Dakota	40,043.8 ac	4,385.8 ac	0	48,459.8 ac	92,889.4 ac (16,208.5 ha) (43.1%) (1,774.9 ha) (4.7%) ...
Missouri ¹	567.7	307.3 mi	81.7 mi	0	875 mi (913.4 km) (64.9%) (494.5 km) (35.1%) ...
	mi.		131.5 km) (0.09%) ² ..		(1407.9 km)
Nebraska	0	13 mi	0	450 mi	463 mi (20.9 km) (2.8%)
				(724.1 km) (97.2%) ...	(745 km)

¹ The Missouri River includes portions of Montana, North Dakota, South Dakota, and Nebraska. Ownership of these sites varies by State. The Federal government owns the reservoir shorelines below the maximum operating pool. In Montana, islands and sandbars are recognized as owned by the State except along the reservation boundaries of the Assiniboine and Sioux Tribes of Fort Peck. The Assiniboine and Sioux Tribes of Fort Peck own land to the mid-channel of the Missouri River adjacent to the Reservation boundary. In North Dakota and South Dakota, islands and sandbars are recognized as owned by the State. However, the Fort Laramie Treaty of 1868 recognizes the Missouri River's east bank as the boundary of the Great Sioux Reservation. The issues regarding treaties and litigation of property rights are beyond the scope of critical habitat designation, but are recognized as important to American Indian populations in the northern Great Plains. In Nebraska, islands and sandbars are owned by the adjacent landowner. Fort Laramie Treaty issues also apply to tribes in Nebraska that were a part of the Great Sioux Nation.

² 81.7 mi (131.5 km) of the Missouri River are shared with the State of Montana. Therefore, the percentages do not total 100 and the overall miles of river (875) is correct.

TABLE 2.—LOCATION, OWNERSHIP, AND ESTIMATED LENGTH (OR AREA) OF PIPING PLOVER CRITICAL HABITAT AREAS MAPPED WITHIN THE UNITED STATES GREAT PLAINS

Unit	Location	County	Land Ownership	Est Length (mi) or area (ac)
MN-1	Rocky Point	Lake of the Woods	State	112.6 ac (45.6 ha)
	Morris Point	Lake of the Woods	State	22.2 ac (9 ha)
	Pine & Curry Island	Lake of the Woods	State	100.4 ac (40.6 ha)
MT-1	Sheridan 1	Sheridan	State, Private	734 ac (297 ha)

TABLE 2.—LOCATION, OWNERSHIP, AND ESTIMATED LENGTH (OR AREA) OF PIPING PLOVER CRITICAL HABITAT AREAS MAPPED WITHIN THE UNITED STATES GREAT PLAINS—Continued

Unit	Location	County	Land Ownership	Est Length (mi) or area (ac)
	Sheridan 2 .....	.....	Private	270.9 ac (109.6 ha)
	Sheridan 3 .....	.....	State, Private	280.9 ac (113.7 ha)
	Sheridan 4 .....	.....	Private	452.9 ac (183.3 ha)
	Sheridan 5 .....	.....	Private, Federal	107.1 ac (43.4 ha)
	Sheridan 6 .....	.....	State, Private	507.1 ac (205.2 ha)
	Sheridan 7 .....	.....	Private, Federal	100.1 ac (40.5 ha)
	Sheridan 8 .....	.....	State, Private, Federal	500.2 ac (202.4 ha)
	Sheridan 9 .....	.....	Private, Federal	88.1 ac (35.7 ha)
	Sheridan 10 .....	.....	State, Private, Federal	562.1 ac (227.5 ha)
	Sheridan 11	Sheridan	Private	222.7 ac (90.1 ha)
	Sheridan 12 .....	.....	Private	431.4 ac (174.6 ha)
	Sheridan 13 .....	.....	State, Private	375.8 ac (152.1 ha)
	Sheridan 14 .....	.....	State, Private, Federal	1327.2 ac (537.1 ha)
	Sheridan 15 .....	.....	Private, Federal	482.7 ac (195.4 ha)
	Sheridan 16 .....	.....	Private	362.7 ac (146.8 ha)
	Sheridan 17 .....	.....	Federal	112.1 ac (45.4 ha)
	Sheridan 18 .....	.....	Private, Federal	565.7 ac (228.9 ha)
	Sheridan 19 .....	.....	State, Federal	388.9 ac (157.4 ha)
	Sheridan 20 .....	.....	Federal	151.9 ac (61.5 ha)
	Sheridan 21 .....	.....	Private, Federal	11,421 ac (4,622 ha)
MT-2	Missouri River	McCone, Richland, Roosevelt	State, Tribal	125.4 mi (201.8 km)
MT-3	Fort Peck Reservoir	Garfield, McCone, Valley	Federal	77,370 ac (31,311 ha)
MT-4	Nelson Reservoir	Phillips	Federal	3341.7 ac (1,352.4 ha)
	Bowdoin NWR	Phillips	Federal	3294.5 ac (1,333.3 ha)
ND-1	Divide	Divide	Private	429.1 ac (174 ha)
	Divide 2 .....	.....	Private, Federal	355 ac (144 ha)
	Divide 3 .....	.....	Private, Federal	485.6 ac (197 ha)
	Divide 4 .....	.....	Private	526.7 ac (213 ha)
	Divide 5 .....	.....	Private	421.9 ac (171 ha)
	Divide 6	Divide	Private	1278 ac (517 ha)
	Divide 7 .....	.....	Private	543.1 ac (220 ha)
	Divide 8 .....	.....	Private, Federal	130.1 ac (23 ha)
	Divide 9 .....	.....	Private, Federal	1028.8 ac (416 ha)
	Divide 10 .....	.....	Private	865.5 ac (350 ha)
	Williams 1	Williams	Private	162 ac (66 ha)
	Williams 2 .....	.....	State, Private	586.1 ac (237 ha)
	Williams 3 .....	.....	Private, Federal	668.4 ac (271 ha)
ND-2	Burke 1	Burke	Private, Federal	505.6 ac (205 ha)
	Burke 2 .....	.....	Private, Federal	1017.5 ac (412 ha)
	Mountrail 1	Mountrail	Private, Federal	726.2 ac (294 ha)
	Mountrail 2 .....	.....	State, Private, Federal	1633.9 ac (661 ha)
	Mountrail 3 .....	.....	Private	2829 ac (1145 ha)
	Mountrail 4 .....	.....	Private, Federal	227.1 ac (92 ha)
	Mountrail 5 .....	.....	Private, Federal	475.4 ac (192 ha)
	Mountrail 6 .....	.....	State, Private, Federal	1122.9 ac (454 ha)
	Mountrail 7 .....	.....	State, Private, Federal	457.5 ac (185 ha)
	Mountrail 8 .....	.....	Private, Federal	362.8 ac (147 ha)
	Mountrail 9 .....	.....	Private, Federal	503 ac (204 ha)
	Mountrail 10 .....	.....	Private, Federal	289.2 ac (117 ha)
	Mountrail 11	Mountrail	Private, Federal	436.5 ac (177 ha)
	Renville	Renville	Federal	10,472.4 ac (4238 ha)
	Ward 1	Ward	Private	270.6 ac (110 ha)
	Ward 2 .....	.....	Private	287.1 ac (116 ha)
	Ward 3 .....	.....	Private	69.7 ac (28 ha)
	Ward 4 .....	.....	Private, Federal	138.2 ac (56 ha)
	Ward 5 .....	.....	State, Private, Federal	135.5 ac (55 ha)
	Ward 6 .....	.....	Private	446 ac (180 ha)
	Ward 7 .....	.....	Private	56.9 ac (23 ha)
	Ward 8 .....	.....	Private, Federal	235.1 ac (95 ha)
	Ward 9 .....	.....	Private	134.7 ac (5 ha)
	Ward 10 .....	.....	Private, Federal	314.2 (127 ha)
ND-3	McLean 1	McClean	Private, Federal	368 ac (149 ha)
	McLean 2 .....	.....	Private, Federal	310.9 ac (126 ha)
	McLean 3 .....	.....	Private	245.2 ac (99.2 ha)
	McLean 4 .....	.....	State, Private, Federal	542.5 ac (219.5 ha)
	McLean 5 .....	.....	Private, Federal	476.7 ac (192.9 ha)
	McLean 6 .....	.....	State, Private, Federal	2,705.2 ac (1,094.8 ha)
	McLean 7 .....	.....	State, Private, Federal	620 ac (250.9 ha)
	McLean 8 .....	.....	State, Private	62.1 ac (25.1 ha)
	McLean 9 .....	.....	Private, Federal	188.3 ac (76.2 ha)
ND-4	Benson 1	Benson	State, Private, Federal	500.4 ac (202.5 ha)

TABLE 2.—LOCATION, OWNERSHIP, AND ESTIMATED LENGTH (OR AREA) OF PIPING PLOVER CRITICAL HABITAT AREAS MAPPED WITHIN THE UNITED STATES GREAT PLAINS—Continued

Unit	Location	County	Land Ownership	Est Length (mi) or area (ac)
	Benson 2 .....	.....	Private, Federal	172 ac (69.6 ha)
	Benson 3 .....	.....	Private, Federal	282.9 ac (114.5 ha)
	Benson 4 .....	.....	State, Private, Federal	474.5 ac (192 ha)
	Benson 5 .....	.....	Private, Federal	92.9 ac (37.6 ha)
	Benson 6 .....	.....	Private, Federal	254.5 ac (103 ha)
	Benson 7 .....	.....	Private, Federal	1,899.6 ac (768.7 ha)
	McHenry 1	McHenry	Private	1,152.3 ac (466.3 ha)
	McHenry 2 .....	.....	Private	690.9 ac (279.6 ha)
	McHenry 3 .....	.....	Private	400 ac (161.9 ha)
	McHenry 4 .....	.....	Private	149.5 ac (60.5 ha)
	McHenry 5 .....	.....	Private	238.8 ac (96.6 ha)
	Pierce 1	Pierce	State, Private, Federal	566.6 ac (229.3 ha)
	Pierce 2 .....	.....	Private, Federal	173.1 ac (70 ha)
	Pierce 3 .....	.....	Private, Federal	323.9 ac (131.1 ha)
	Pierce 4 .....	.....	Private	546.5 ac (221.2 ha)
	Pierce 5 .....	.....	Private	443.2 ac (179.4 ha)
	Pierce 6 .....	.....	Private, Federal	1,084.9 ac (439.1 ha)
	Sheridan 1	Sheridan	Private	488.2 ac (197.6 ha)
	Sheridan 2 .....	.....	Private, Federal	466.6 ac (188.8 ha)
	Sheridan 3 .....	.....	State	1,119.3 ac (453 ha)
	Sheridan 4 .....	.....	State	231.5 ac (93.7 ha)
	Sheridan 5	Sheridan	Private	214.3 ac (86.7 ha)
	Sheridan 6 .....	.....	State	118.1 ac (47.8 ha)
ND-5	Eddy 1	Eddy	State, Private, Federal	1351.4 ac (546.9 ha)
ND-6	Burleigh 1	Burleigh	Private	144.8 ac (58.6 ha)
	Burleigh 2 .....	.....	Private	848.2 ac (343.3 ha)
	Burleigh 3 .....	.....	Private	39.9 ac (16.2 ha)
	Burleigh 4 .....	.....	State, Private, Federal	1,061 ac (429.4 ha)
	Burleigh 5 .....	.....	Private, Federal	285.4 ac (115.5 ha)
	Burleigh 6 .....	.....	Private, Federal	293.9 ac (118.9 ha)
	Burleigh 7 .....	.....	State, Private, Federal	2,162.1 ac (875 ha)
	Burleigh 8 .....	.....	Private	1,136.4 ac (459.9 ha)
	Burleigh 9 .....	.....	State, Private State	10,558.7 ac (4273.1 ha)
	Kidder 1	Kidder	State, Private	5,375.1 ac (2,175.3 ha)
	Kidder 2 .....	.....	State, Private, Federal	629.2 ac (254.6 ha)
	Kidder 3 .....	.....	Private, Federal	1,251 ac (506.3 ha)
	Kidder 4 .....	.....	Private	265.7 ac (107.5 ha)
	Kidder 5 .....	.....	Private	2,36.2 ac (95.6 ha)
	Kidder 6 .....	.....	State, Private, Federal	7,658.9 ac (3099.5 ha)
	Kidder 7 .....	.....	Private, Federal	2,542.9 ac (1029.1 ha)
	Kidder 8 .....	.....	State, Private, Federal	1164.7 ac (471.3 ha)
	Kidder 9	Kidder	Private	181.2 ac (73.4 ha)
	Kidder 10 .....	.....	Private, Federal	2.5 ac (1 ha)
	Kidder 11 .....	.....	Private, Federal	133.2 ac (53.9 ha)
	Sheridan 7 .....	.....	Private	193.1 ac (78.1 ha)
	Stutsman 1	Sheridan	Federal	1,117.6 ac (452.3 ha)
	Stutsman 2	Stutsman	Federal	2,370.2 ac (959.2 ha)
	Stutsman 3 .....	.....	State, Private, Federal	569 ac (230.3 ha)
ND-7	Emmons 1	Emmons	State, Private, Federal	427.5 ac (173 ha)
	Logan 1	Logan	Private	295.1 ac (119.4 ha)
	Logan 2 .....	.....	Private, Federal	998.6 ac (404.1 ha)
	Logan 3 .....	.....	Private, Federal	254.4 ac (103 ha)
	Logan 4 .....	.....	State, Private	250.8 ac (101.5 ha)
	McIntosh 1	McIntosh	Private, Federal	501.9 ac (203.1 ha)
	McIntosh 2 .....	.....	Private	357.2 ac (144.5 ha)
ND-8	Missouri River.	.....	.....	.....
	—Fort Peck Reach	McKenzie, Williams	State	18.6 mi (29.9 km)
	—Lake Sakakawea & Lake Audubon.	Dunn, McKenzie, McLean	Federal	179 mi (288 km)
	—Garrison Reach	Mercer, Mountrial	State	87 mi (140 km)
	—Lake Oahe	Williams Burleigh, Mercer, Morton, Oliver Emmons, Morton, Sioux.	Federal	70 mi (112.6 km)
NE-1	Platte River	Buffalo, Butler, Cass, Colfax, Dawson, Dodge, Douglas, Gosper, Hall, Hamilton, Kearney.	State, Private	266 mi (428 km)
	Loup River	Merrick, Phelps, Platte	State, Private	68 mi (109.4 km)

TABLE 2.—LOCATION, OWNERSHIP, AND ESTIMATED LENGTH (OR AREA) OF PIPING PLOVER CRITICAL HABITAT AREAS MAPPED WITHIN THE UNITED STATES GREAT PLAINS—Continued

Unit	Location	County	Land Ownership	Est Length (mi) or area (ac)
SD-1	Niobrara River	Polk, Sarpy, Saunders Howard, Nance, Platte Boyd, Brown, Holt, Keya Paha, Knox, Rock.	State, Private	129 mi (207.6 km)
	Missouri River. —Lake Oahe	Campbell, Corson, Dewey, Hughes, Potter, Stanley, Sully, Walworth.	Federal	159.7 mi (257 km)
SD-2 ¹	Missouri River. —Lake Francis Case	Brule, Buffalo, Lyman, Charles Mix, Gregory.	Federal	107.5 mi (172.9 km)
	—Fort Randall Reach	Bon Homme, Charles Mix	State	36 mi (57.9 km)
	—Lewis and Clark Lake	Gregory	Federal	32.9 mi (52.9 km)
	—Gavins Point Reach	Bon Homme, Yankton Clay, Yankton.	State	58.9 mi (94.8 km)

¹ Approximately 120 mi (193.1 km) of river border Nebraska; of that approximately 87 mi (140 km) have shared ownership of sandbars and islands with adjacent private landowners in Nebraska (the other 33 mi (53.1 km) are Lewis and Clark Lake).

Effect of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans, and through section 7 consultation and section 10 permits.

However, designation of critical habitat can help focus conservation activities for listed species by identifying areas essential to conserve the species. Designation of critical habitat also alerts the public, as well as land-managing agencies, to the importance of these areas. As a result of critical habitat designation, Federal agencies may be able to prioritize landowner incentive programs such as Conservation Reserve Program enrollment, grassland easements, and private landowner agreements that benefit piping plovers. Critical habitat designation also may assist States and Tribes in prioritizing their conservation and land-management programs.

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 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. Individuals, organizations, States, Tribes, 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 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. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). 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, which 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 reinstate 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.

Activities on Federal lands that may affect the northern Great Plains breeding population of piping plovers or its critical habitat will require section 7 consultation. 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) Any activity that results in changes in the hydrology of the unit, including activities associated with drainage activities, flowage control (e.g., changes in releases) and operations, flooding, hydropower, irrigation, sediment transfer changes or removal, construction or maintenance of dams, construction of bridges and marinas, dredging, and bank stabilization;

(2) Any activity that results in development or alteration of the landscape within or immediately adjacent to a hydrologic component of the unit including activities associated with construction for urban and industrial development, roads, marinas, bridges, or bank stabilization; agricultural activities (e.g., plowing adjacent to prairie wetland); off-road vehicle activity; mining; sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded;

(3) Any activity that results in introducing significant amounts of emergent vegetation into the unit;

(4) Any activity that significantly and detrimentally alters water quality in the unit;

(5) Any activity that significantly and detrimentally alters the inputs of sediment and nutrients necessary for the maintenance of geomorphic and biologic processes that insure appropriately configured and productive systems; and

(6) Any activity that may reduce the value of a site by significantly and detrimentally disturbing plovers from such activities as foraging, brooding, and nesting.

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 on proposed critical habitat 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 the proposed critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the Federal action alter the content of the opinion (see 50 CFR 402.10(d)).

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 appreciably reduce the value of critical habitat for both the survival and recovery of the northern Great Plains piping plover. Within critical habitat, this pertains only to those areas containing primary constituent elements. We note that such activities also may 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 likely 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' 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.

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. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the northern Great Plains piping plover is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. In addition, the Corps requires review of most or all projects requiring permits in hydrological systems, whether or not northern Great Plains piping plovers are known to be present.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions are not likely to jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulations of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act;

(2) Road and bridge construction and maintenance, right of way designation, and regulation of agricultural activities;

(3) Activities on Federal lands including but not limited to the Corps, Bureau of Reclamation, National Park Service, and Bureau of Land Management;

(4) Licensing of construction of communication sites by the Federal Communications Commission;

(5) Operations and maintenance of dams by the Corps and Bureau of Reclamation;

(6) Licensing/Relicensing of dams by the Federal Energy and Regulatory Commission;

(7) Funding of activities by the U.S. Environmental Protection Agency, Natural Resource Conservation Service, or any other Federal agency; and

(8) Water development projects by Federal agencies including the Bureau of Reclamation, Bureau of Indian Affairs, and other Federal agencies.

All lands designated as critical habitat are within the geographic range of the species. In addition, all but one site (Lake Francis Case) are considered occupied by the species and are likely to be used by the piping plover whether for foraging, breeding, chick rearing, dispersal, migration, genetic exchange, and sheltering. Federal agencies already consult with us on activities currently occupied by the species, as well as on Lake Francis Case, 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.

If you have any questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact Pete Gober, Field Supervisor, South Dakota Field Office (see **ADDRESSES**). Requests for copies of regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 25486, DFC, Denver, Colorado 80225-0486 (telephone 303-236-7400; facsimile 303-236-0027).

Relationship to Habitat Conservation Plans

Section 10(a) of the Act authorizes us to issue permits for private actions which result in the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications 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. Currently, no approved HCPs cover the northern Great Plains piping plover or its habitat. In the event that HCPs covering the northern Great Plains piping plover are developed in the future within the proposed critical habitat, we will work with applicants to ensure the HCPs provide for protection and management of habitat areas essential for the conservation of the piping plover, 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 piping plover. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species.

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 these areas as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat 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, if necessary, reopen the comment period at the time to accept comments on the economic analysis or further comments on the proposed rule. The economic analysis will be available at <http://mountain-prairie.fws.gov/pipingplover/ch>. This economic analysis will serve as the basis of our analysis under section 4(b)(2), and of any exclusions. As this economic analysis is not yet completed,

we are not yet able to identify proposed exclusions under section 4(b)(2) in this proposed rule. We will review this analysis, public comments on the analysis and this proposed rule, and the benefits of designating areas as critical habitat; we may identify certain proposed areas that should be excluded from the final critical habitat designation, provided these exclusions will not result in the extinction of the species. As a result, the final critical habitat determination may differ from this proposal.

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) 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 piping plover (northern Great Plains region) habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for piping plover in the northern Great Plains region, such as those derived from non-consumptive uses (e.g., hiking, camping, birdwatching, 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 you would like to submit comments by electronic format, please submit them in

ASCII file format and avoid the use of special characters and encryption. Please include 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 South Dakota Field Office at (605) 224-8693.

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. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your 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 rule making. Accordingly, the final decision may differ from this proposal.

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 proposed rule easier to understand including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain

technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to Pete Gober, Field Supervisor, South Dakota Ecological Services Field Office, 420 S. Garfield, Suite 400, Pierre, South Dakota 57501.

Public Meetings

We have scheduled five informal public meetings at the following addresses on the dates indicated. Public meetings will run from 6–9 p.m., except for Yankton which will run from 5:30–8:30 p.m.

1. Cottonwood Inn Convention Center, U.S. Highway 2E, Glasgow, Montana, July 10, 2001.
2. Doublewood Inn, I-94 and Exit 159, Bismarck, North Dakota, July 12, 2001.
3. Pierre Chamber of Commerce, Community Room, 800 W. Dakota Avenue, Pierre, South Dakota, July 16, 2001.
4. Summit Activities Center, 1801 Summit Street, Yankton, South Dakota, July 17, 2001.

5. Central Community College, Main Building, Room 210, 3134 W. Highway 34, Grand Island, Nebraska, July 18, 2001.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866. 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 northern Great Plains breeding population of piping plover was listed as a threatened species in 1986. In Fiscal Years 1992 through 2000, we conducted 90 formal section 7 consultations with other Federal agencies (88 of these included minor water depletion work done in Nebraska, Colorado, and Wyoming which involved

the Platte River) to ensure that their actions are not likely to jeopardize the continued existence of the piping plover. Approximately 107.5 miles (172.9 kilometers) (Lake Francis Case) of the areas encompassing proposed critical habitat for the northern Great Plains breeding population of piping plovers are presently unoccupied by nesting piping plovers. The remaining 1,230.5 miles (1,980 kilometers) and 196,576.5 acres (79,553.1 hectares) of the total designated critical habitat area are currently occupied by piping plovers.

Under the Act, critical habitat may not be adversely modified or destroyed by a Federal agency action; the Act does not impose any restrictions through critical habitat designations on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 3 below). Section 7 requires Federal agencies to ensure that they are not likely to jeopardize the continued existence of the species. Based upon our experience with the northern Great Plains breeding population of the piping plover, we concluded that any Federal action or authorized action that could potentially cause adverse modification of the proposed critical habitat would almost always be considered as “jeopardy” under the Act (see Table 2).

TABLE 3.—ACTIVITIES POTENTIALLY IMPACTED BY PIPING PLOVER 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	Direct take and activities such as removing or destroying piping plover breeding habitat, whether by mechanical, chemical, or other means (e.g., construction, wetland drainage (subsurface or surface) road building, boat launch, and marina construction or maintenance, dam construction and management, bank stabilization); regulation of water flows, damming, diversion, and channelization; recreational activities that significantly deter the use of suitable habitat areas by piping plovers or alter habitat through associated maintenance activities (e.g., recreational vehicle access, walking paths); any activity that results in changing the hydrology of habitat areas (e.g., dam construction, changes in releases and dam operations, dredging, draining); sale, exchange, or lease of Federal land that contains suitable habitat that may result in the habitat being destroyed or appreciably degraded (e.g., shoreline development, building of recreational facilities, road building); activities that may result in increased human activity and disturbance).	None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected but consultation will be required on these activities in additional areas.
Private and other non-Federal Activities Potentially Affected. ⁴	Direct take and activities such as removing or destroying piping plover habitat, whether by mechanical, chemical or other means (e.g., construction, wetland drainage (subsurface and surface) road building, boat launch and marina construction or maintenance, dam construction and management, bank stabilization); any activity that results in changing the hydrology of habitat areas (e.g., dam construction, changes in releases and dam operations, dredging, draining) regulation of water flows, damming, diversion, and channelization; recreational activities that significantly deter the use of suitable habitat areas by piping plovers and appreciably decreasing habitat value or quality (e.g. increased predation, invasion of exotic species, increased human presence or disturbance) that require a Federal action (permit, authorization, or funding).	None in occupied habitat. In unoccupied habitat, no additional types of activities will be affected but consultation will be required on these activities in additional areas.

¹ This column represents impacts of the final rule listing the piping plover (December 11, 1985) (50 FR 50726) under the Endangered Species Act.

² This column represents impact of the critical habitat designation above and beyond those impacts resulting from listing the species.

³ Activities initiated by a Federal agency.

⁴ Activities initiated by a private entity that may need Federal authorization or funding.

Accordingly, the designation of currently occupied areas as critical habitat 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 who do not have a Federal connection to 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 unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding, but we expect little additional impact from designating these areas as critical habitat. The unoccupied areas exist on the Missouri River (Lake Francis Case) and all Federal activities on the Missouri River within the range of the northern Great Plains population of piping plovers are evaluated for potential impacts to the piping plovers. We will evaluate any potential impact through our economic analysis (see Economic Analysis section of this rule).

(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 are not likely to jeopardize the continued existence of piping plovers since the listing in 1985. The prohibition against adverse modification of critical habitat is not expected to impose any restriction in addition to those that currently exist in occupied areas of proposed critical habitat. Additional restrictions may be imposed in unoccupied areas proposed as critical habitat. However the unoccupied areas exist on the Missouri River and all Federal activities on the Missouri River within the range of the northern Great Plains population of the piping plover are evaluated for potential impacts to the piping plovers. We will evaluate any possibility of additional restrictions through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed 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 are not likely to 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 additional effects in areas of occupied habitat. The critical habitat designation may have some additional effects in the unoccupied areas of proposed critical habitat. We will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in the area of critical habitat with unknown occupancy.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, 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"), we designated property owned by Federal, State, and Tribal governments, and private entities.

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 Corps under section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act;
- (2) Regulation of water flows, water delivery, and diversion by Federal agencies;
- (3) Sale, exchange, or lease of lands owned by a Federal agency;
- (4) Road construction and maintenance and right-of-way designation;
- (5) Funding of low-interest loans to facilitate the construction of low-income housing by the Department of Housing and Urban Development;
- (6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;
- (7) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the

cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency;

(8) Issuance of Endangered Species Act section 10(a)(1)(B) permits by the Fish and Wildlife Service; and

(9) Activities funded, carried out, or authorized by any Federal agency.

Many of these activities sponsored by Federal agencies within the proposed 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 in areas of critical habitat occupied by the species. We expect little additional effect for the unoccupied areas of proposed critical habitat. In the economic analysis, we will evaluate whether designation of critical habitat in the unoccupied areas will have an effect on activities carried out by small entities.

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 will determine whether designation of critical habitat will cause—(a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, Tribal, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (EO 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this proposed rule is not expected to

significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

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 of their actions involving Federal funding or authorization must not destroy or adversely modify 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, 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 for the piping plover imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This determination will not "take" private property and will not alter the long-term value of private property. 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 piping plovers as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Due to current public knowledge of the species' protection, the prohibition against take of piping plovers 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 habitat conservation plans and issuance of incidental take

permits. Landowners in areas that are included in the designated critical habitat will continue to utilize their property in ways consistent with the conservation of the piping plover.

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, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Minnesota, Montana, North Dakota, South Dakota, Nebraska, Iowa, Kansas, and Colorado as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the northern Great Plains piping plover with the appropriate State agencies. The designation of critical habitat for the piping plover imposes few 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 conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so 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 Act and plan public meetings on the proposed designation during the comment period. 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 northern Great Plains breeding population of piping plover.

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

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in Catron County Board of Commissioners v. U.S. Fish and Wildlife Service, 75 F.3d 1429 (10th Cir. 1996), we will complete a NEPA analysis with an Environmental Assessment. The range of the northern Great Plains breeding population of the piping plover includes States within the Tenth Circuit, therefore, we are completing an Environmental Assessment and will announce its availability in the **Federal Register**.

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 readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are required to assess the effects of critical habitat designation on tribal lands and tribal trust resources. We believe certain Tribal trust resources may be essential for the conservation of the piping plover. In Montana, plovers have nested on alkali wetlands within the Blackfeet Reservation. However, nesting on the Blackfeet Reservation is rare and none of this habitat was proposed for critical habitat.

Many Native American people live adjacent to the Missouri River and are dependent on the natural resources of the Missouri River Basin. However, proposed critical habitat on the Missouri River includes reservoir beaches below the top of the maximum operating pool and on sandbars and

islands in river reaches below dams. Land below the top of the maximum operating pool on the Missouri River reservoirs is in federal ownership and managed by the Corps. Therefore, no Tribal lands have been proposed as critical habitat on Missouri River reservoirs.

On the riverine reaches of the Missouri River, sandbars and islands in the river below the dams are claimed by the states of Montana, North Dakota, South Dakota and private landowners in Nebraska. However, the state of Montana recognizes that the Assiniboine and Sioux Tribes of Ft. Peck have ownership of sandbars and islands of the Missouri River from the north shoreline of the Missouri River to the mid-channel of the river where their Reservation borders the river. The Reservation borders the Missouri River for 81.7 miles (131.5 kilometers) in Missouri River Unit MT-3. Piping plovers nest on sandbars and islands of the Assiniboine and Sioux Tribes of Ft. Peck. We believe that these Tribal lands are essential for the conservation of the piping plover and we have proposed designating critical habitat for the piping plover on these lands of the Assiniboine and Sioux Tribes of Ft. Peck. Therefore, the only Tribe with lands within the proposed critical habitat designation for the northern Great Plains piping plover population are the Assiniboine and Sioux Tribes of Ft. Peck in Montana.

Other tribes recognizing the Ft. Laramie Treaty of 1868 or presently living adjacent to the Missouri River and proposed critical habitat designation include the Assiniboine and Sioux Tribes of Ft. Peck in Montana; the Three Affiliated Tribes and the Standing Rock Tribe in North Dakota, the Standing Rock Tribe, Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, Crow Creek Sioux Tribe, Pine Ridge Sioux Tribe, Rosebud Sioux Tribe, and Yankton Sioux Tribe in South Dakota and the Santee Sioux Tribe in Nebraska. The Tribes in the Missouri River Basin are involved with natural resource management and several are already involved with the management of federally listed species. Tribes have participated in both the Missouri River Basin Association and the Missouri

River Natural Resource Committee and many are actively involved with the Mni Sose Coalition.

Additionally, in 1999, the "Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe, State of South Dakota Terrestrial Wildlife Habitat Restoration" was passed into law under Title VI of the Water Resources Development Act. This Act will transfer much of the Federal land and recreation areas in South Dakota managed by the Corps to the State and the Bureau of Indian Affairs (for the Cheyenne River and Lower Brule Sioux Tribes). Although land to be transferred in fee title is above the top of the maximum operating pool on Missouri River reservoirs, and not likely to have the primary constituent elements for piping plover critical habitat, under this legislation the Bureau of Indian Affairs will obtain, via easement, the management authority to the water's edge, an area which is likely to contain the primary constituent elements. This transfer of lands is proposed to occur by 2002. Only a small portion of land adjacent to the Lower Brule Sioux Tribe Reservation is proposed for critical habitat designation. This includes approximately a stretch of the Missouri River on Lake Francis Case from Big Bend Dam to about 10 miles downstream. Land adjacent to the Cheyenne River Sioux and Lower Brule Sioux Tribes above the top of the maximum operating pool will be transferred to the Bureau of Indian Affairs.

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 if doing so will result in the extinction of the species. Due to the short amount of time allowed under the court order for preparation of this proposed rule, our contact with the Tribes has only been through written correspondence which resulted in no comments and informational presentations before the Great Plains Inter-Tribal Fish and Wildlife Commission. We plan continued consultation with the affected Tribes, before making a final critical habitat decision.

Relationship to Canada

In the 1988 Recovery Plan, one of our criteria for recovery and delisting of the piping plover is that the Canadian Recovery Objective must be met for the prairie region. Because of this, we have some joint conservation projects ongoing with Canada. However, 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." Since the areas of joint conservation do not fall within the United States jurisdiction, they are not included in this critical habitat proposal.

References Cited

A complete list of all references cited in this final rule is available upon request from the South Dakota Fish and Wildlife Service Field Office (see "ADDRESSES").

Authors

The primary author of this proposed rule is Nell McPhillips, Biologist, of the South Dakota Fish and Wildlife Service Field Office (see "ADDRESSES").

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 "piping plover" under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
BIRDS							
*	*	*	*	*	*	*	*
Plover, piping	<i>Charadrius melodus</i>	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf Coasts, PR, VI) Canada, Mexico, Bahamas, West Indies.	Great Lakes, watershed in States of IL, IN, MI, MN, NY, OH, PA, and WI and Canada (Ont.).	E	211	17.95(b)	NA
Plover, piping	<i>Charadrius melodus</i>	U.S.A. (Great Lakes, northern Great Plains, Atlantic and Gulf Coasts, PR, VI) Canada, Mexico, Bahamas, West Indies.	Northern Great Plains in States of MN, MT, ND, NE, and SD.	T	211	17.95(b)	NA
Do	<i>Charadrius melodus</i>	do	Entire, except those areas where listed as endangered above..	T	211	NA	NA
*	*	*	*	*	*	*	*

3. Amend § 17.95(b) by adding critical habitat for the northern Great Plains piping plover (*Charadrius melodus*) in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Piping Plover (*Charadrius melodus*)—Northern Great Plains Breeding Population

1. Critical habitat units are depicted for Minnesota, Montana, Nebraska, North Dakota, and South Dakota. Maps and description follow.

2. The primary constituent elements required to sustain the northern Great Plains breeding population of piping plovers are categorized by breeding habitat types found in the northern Great Plains. The habitat types and primary constituent elements necessary to sustain the northern Great Plains breeding population of piping plovers are described as follows:

i. On prairie alkali lakes and wetlands, the primary constituent elements include—(1) shallow, seasonally to permanently flooded, mixosaline to hypersaline wetlands with sandy to gravelly, sparsely

vegetated beaches, salt-encrusted mud flats, and/or gravelly salt flats; and (2) springs and fens along edges of alkali lakes and wetlands; and (3) adjacent uplands within 200 feet (61 meters) of the high water mark of the alkali lake or wetland.

ii. On rivers, the primary constituent elements include—sparsely vegetated channel sandbars, sand and gravel beaches on islands, temporary pools on sandbars and islands, and the interface with the river.

iii. On reservoirs, the primary constituent elements include—sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with the water bodies.

iv. On inland lakes (Lake of the Woods), the primary constituent elements include—sparsely vegetated and windswept sandy to gravelly islands, beaches, and peninsulas, and their interface with the water body.

v. The dynamic ecological processes that create and maintain piping plover habitat also are important primary constituent elements. Because piping plovers evolved in this dynamic and complex system, these processes develop a mosaic of habitats on the landscape that provide the essential combination of prey, forage, nesting,

brooding and chick-rearing areas for their continued survival and eventual recovery. The annual, seasonal, daily, and hourly availability of the habitat patches is dependent on local weather, hydrological conditions and cycles, and geological processes.

3. Critical habitat does not include existing developed areas such as mainstem dam structures, buildings, marinas, boat ramps, bank stabilization and breakwater structures, row cropped or plowed agricultural areas, roads and other lands (e.g., high bank bluffs along Missouri River) unlikely to contain primary constituent elements essential for northern Great Plains piping plover conservation.

Minnesota

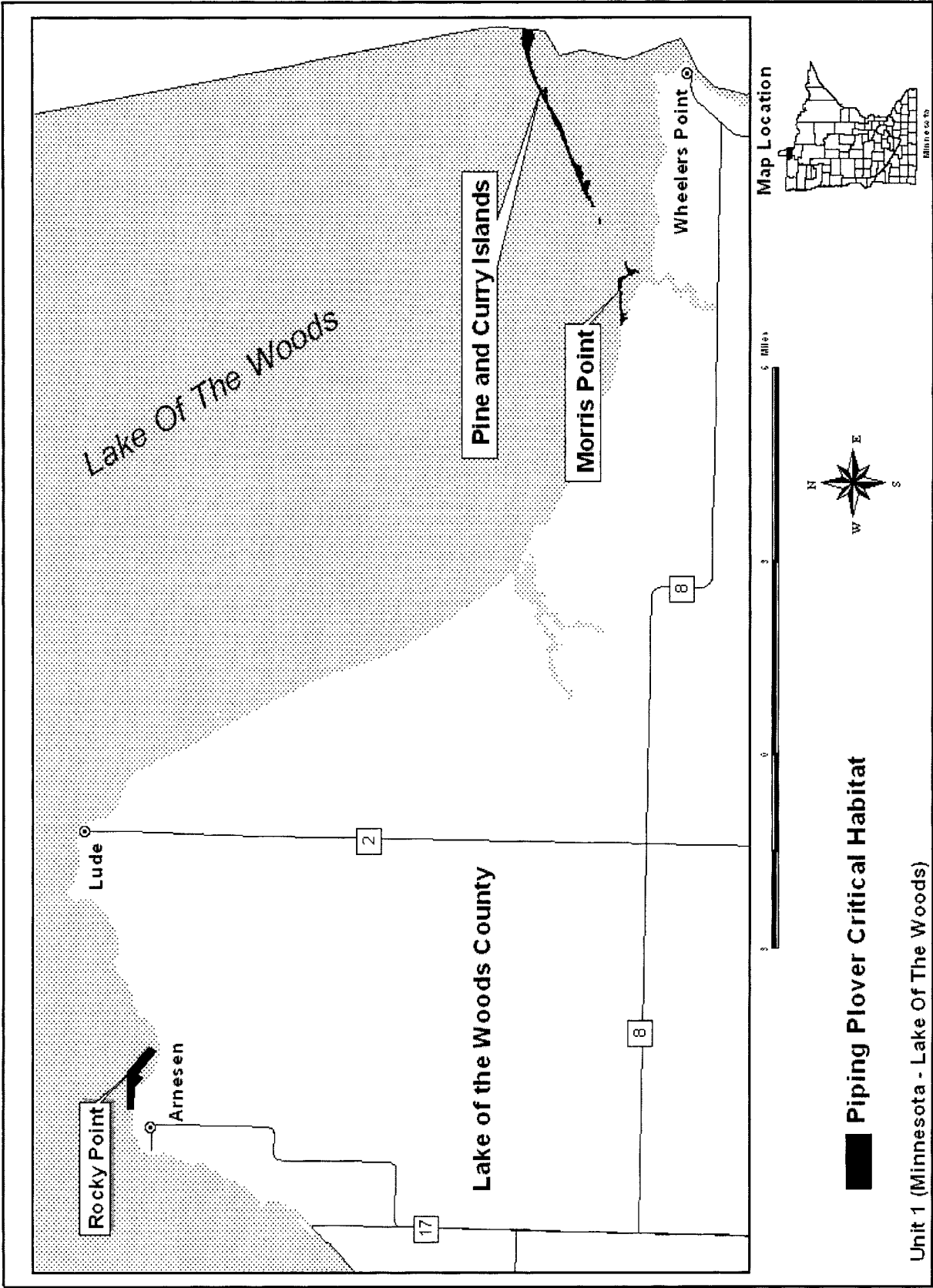
Projection: UTM Zone 15, NAD83, GRS 1980

Unit MN–1: Rocky Point, Morris Point, and Pine and Curry Island

This unit consists of the following Township, Range, and Sections:

Pine and Curry Islands: T. 162 N., R. 31 W., Sec. 1, T.162 N., R.32 W., Sec. 6, T.162 N., R.32 W., Sec. 10–12; Morris Point: T. 162 N., R. 32 W., Sec. 15–16; Rocky Point: T. 163 N., R. 34 W., Sec. 4–5, T.163 N., R.34 W., Sec. 9.

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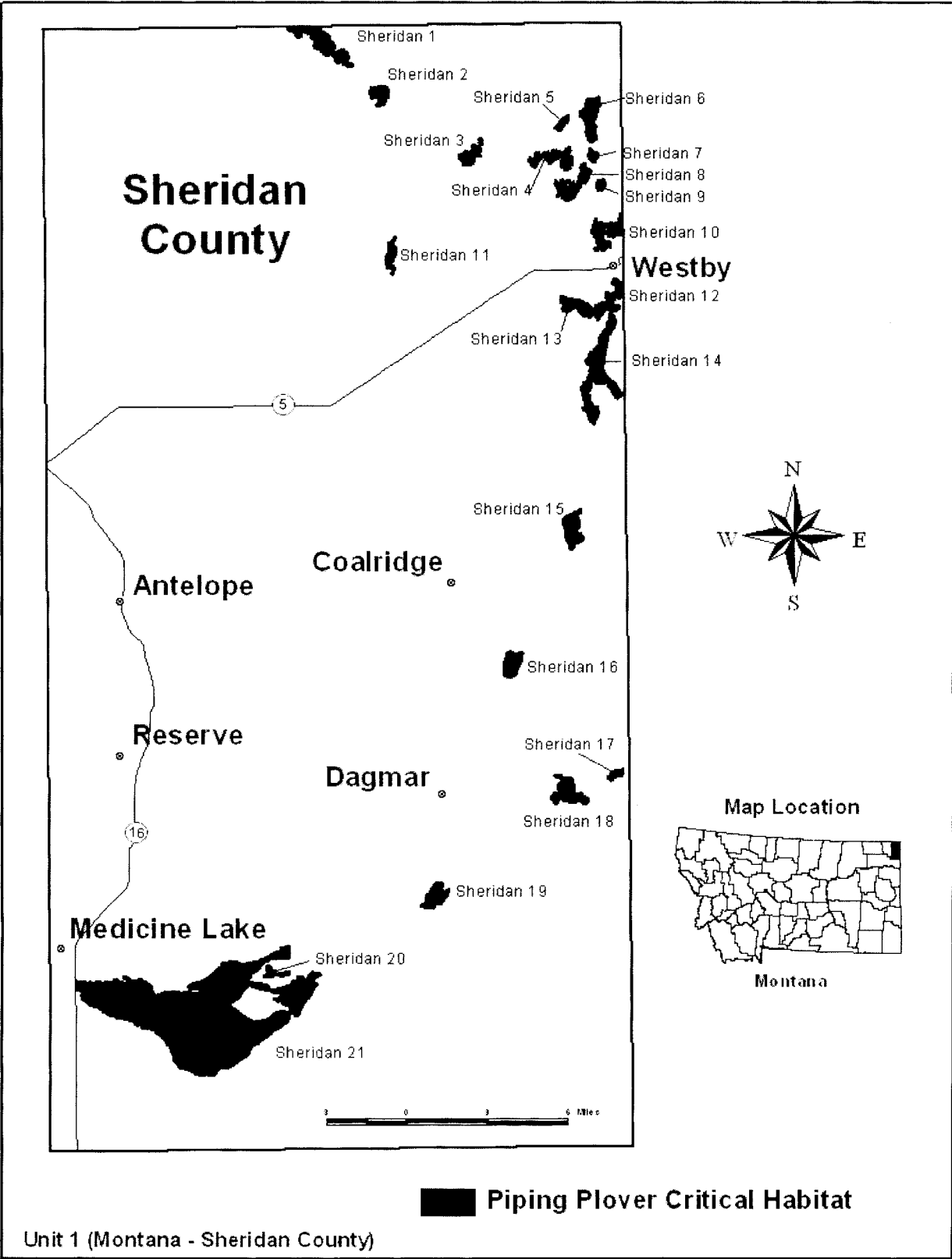
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Montana

Projection: UTM Zone 13, NAD27,
Clarke 1866

Unit MT-1: Sheridan 1-21

This unit consists of the following
Township, Range, and Sections:T. 31 N., R. 56 E., Sec. 1-2, T. 31 N.,
R. 56 E., Sec. 4-6, T. 31 N., R. 56 E., Sec.
8-15.T. 31 N., R. 56 E., Sec. 23-24, T. 31
N., R. 56 E., Sec. 30, T. 31 N., R. 57 E.,
Sec. 4-8.T. 31 N., R. 57 E., Sec. 18, T. 32 N.,
R. 55 E., Sec. 36, T. 32 N., R. 56 E., Sec.
25, T. 32 N., R. 56 E., Sec. 31-36, T. 32
N., R. 57 E., Sec. 28-34, T. 32 N., R. 58
E., Sec. 4, T. 32 N., R. 58 E., Sec. 8-10,
T. 32 N., R. 58 E., Sec. 16-18, T. 32 N.,
R. 58 E., Sec. 30, T. 33 N., R. 58 E., Sec.
4-5, T. 33 N., R. 58 E., Sec. 22, T. 33
N., R. 58 E., Sec. 24-27, T. 33 N., R. 58
E., Sec. 34-35, T. 34 N., R. 58 E., Sec.
2, T. 34 N., R. 58 E., Sec. 11, T. 34 N.,
R. 58 E., Sec. 30, T. 34 N., R. 58 E., Sec.
32-33, T. 35 N., R. 58 E., Sec. 1-2, T.
35 N., R. 58 E., Sec. 11-14, T. 35 N., R.
58 E., Sec. 35, T. 36 N., R. 57 E., Sec.10, T. 36 N., R. 57 E., Sec. 15, T. 36 N.,
R. 57 E., Sec. 22, T. 36 N., R. 58 E., Sec.
1-2, T. 36 N., R. 58 E., Sec. 12-13, T.
36 N., R. 58 E., Sec. 22-27, T. 36 N., R.
58 E., Sec. 30, T. 36 N., R. 58 E., Sec.
36, T. 37 N., R. 56 E., Sec. 1-3, T. 37
N., R. 56 E., Sec. 12, T. 37 N., R. 57 E.,
Sec. 7-8, T. 37 N., R. 57 E., Sec. 17-18,
T. 37 N., R. 57 E., Sec. 23, T. 37 N., R.
57 E., Sec. 25-27, T. 37 N., R. 57 E., Sec.
35, T. 37 N., R. 58 E., Sec. 15-16, T. 37
N., R. 58 E., Sec. 20-22, T. 37 N., R. 58
E., Sec. 27-34.**BILLING CODE 4310-55-P**



Unit MT-2: Missouri River

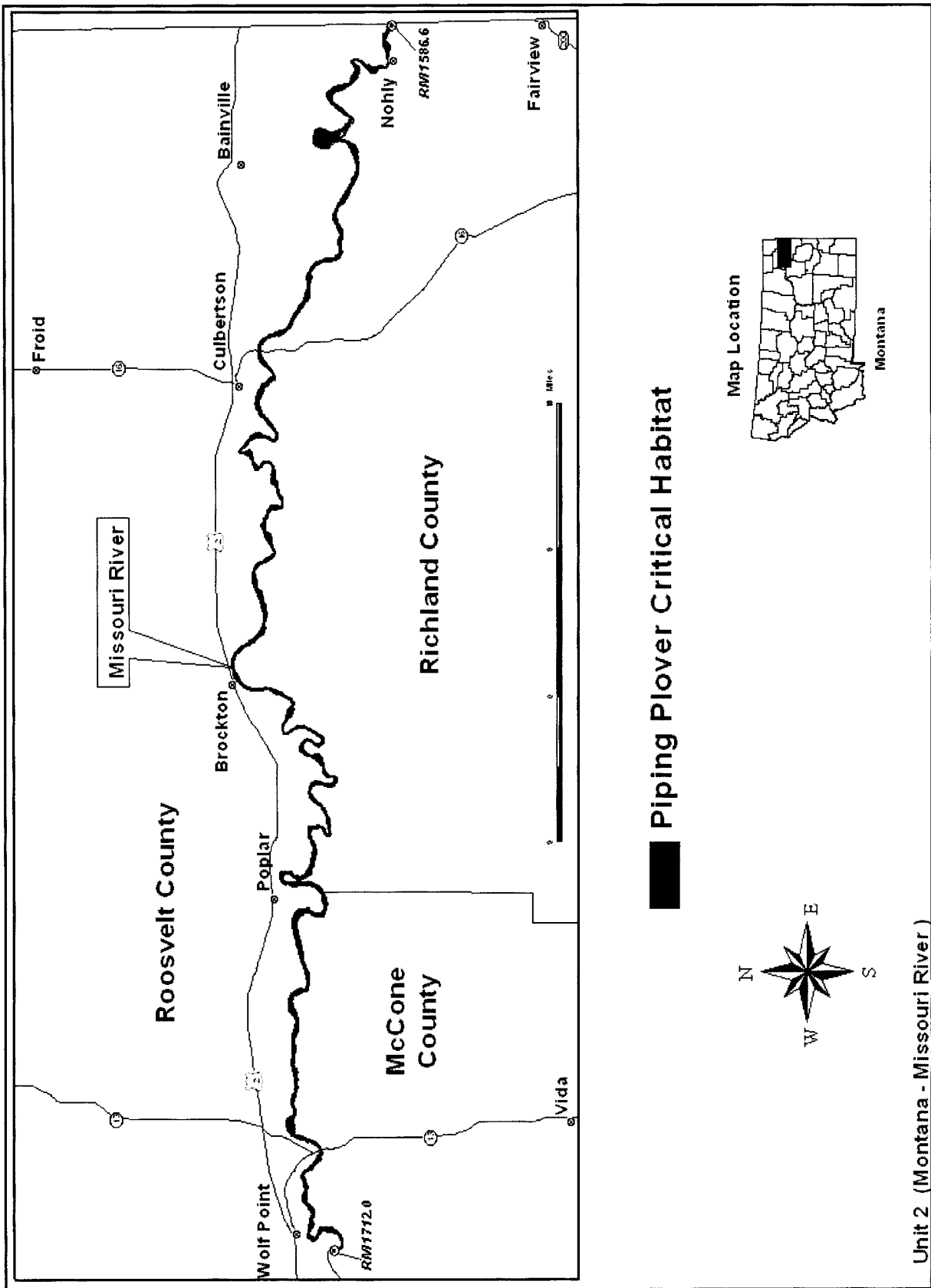
This unit consists of the following Township, Range, and Sections:

T. 26 N., R. 58 E., Sec. 1-6, T. 26 N., R. 59 E., Sec. 3-6, T. 26 N., R. 59 E., Sec. 9-10, T. 26 N., R. 59 E., Sec. 13-16, T. 26 N., R. 59 E., Sec. 22-24, T. 27 N., R. 47 E., Sec. 21-24, T. 27 N., R. 47 E., Sec. 27-28, T. 27 N., R. 47 E., Sec. 33-34, T. 27 N., R. 48 E., Sec. 13-16, T. 27 N., R. 48 E., Sec. 19-22, T. 27 N., R. 48 E., Sec. 28-29, T. 27 N., R. 49 E., Sec. 13-18, T. 27 N., R. 49 E., Sec. 24, T. 27 N., R. 50

E., Sec. 14-21, T. 27 N., R. 50 E., Sec. 23-26, T. 27 N., R. 51 E., Sec. 7-8, T. 27 N., R. 51 E., Sec. 17-27, T. 27 N., R. 51 E., Sec. 30, T. 27 N., R. 52 E., Sec. 10-16, T. 27 N., R. 52 E., Sec. 19, T. 27 N., R. 52 E., Sec. 21-23, T. 27 N., R. 52 E., Sec. 27-32, T. 27 N., R. 53 E., Sec. 1-3, T. 27 N., R. 53 E., Sec. 6-7, T. 27 N., R. 53 E., Sec. 18, T. 27 N., R. 54 E., Sec. 1-6, T. 27 N., R. 54 E., Sec. 9-12, T. 27 N., R. 55 E., Sec. 1-5, T. 27 N., R. 55 E., Sec. 7-11, T. 27 N., R. 56 E., Sec. 2-6, T. 27 N., R. 56 E., Sec. 8-9,

T. 27 N., R. 56 E., Sec. 11, T. 27 N., R. 56 E., Sec. 13-14, T. 27 N., R. 56 E., Sec. 24, T. 27 N., R. 57 E., Sec. 18-21, T. 27 N., R. 57 E., Sec. 27-28, T. 27 N., R. 57 E., Sec. 33-36, T. 27 N., R. 58 E., Sec. 23, T. 27 N., R. 58 E., Sec. 25-27, T. 27 N., R. 58 E., Sec. 31-32, T. 27 N., R. 58 E., Sec. 34-36, T. 27 N., R. 59 E., Sec. 29-32, T. 28 N., R. 53 E., Sec. 27-31, T. 28 N., R. 53 E., Sec. 33-34, T. 28 N., R. 54 E., Sec. 31-33, T. 28 N., R. 55 E., Sec. 33-35.

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Unit MT-3: Fort Peck Reservoir

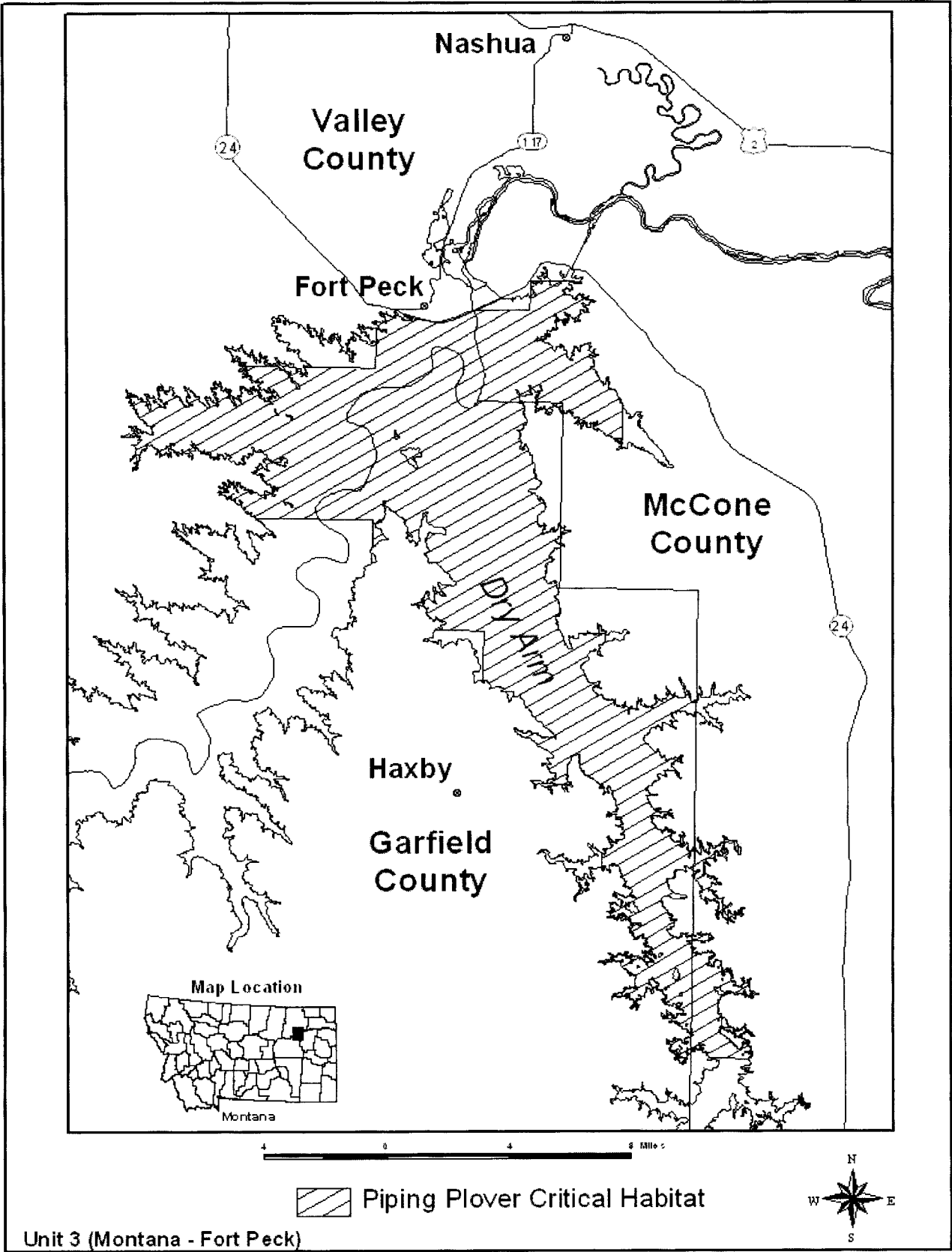
This unit consists of the following Township, Range, and Sections:

T. 22 N., R. 42 E., Sec. 1-3, T. 22 N., R. 42 E., Sec. 10-15, T. 22 N., R. 42 E., Sec. 24, T. 22 N., R. 43 E., Sec. 6-8, T. 22 N., R. 43 E., Sec. 18-20, T. 23 N., R. 42 E., Sec. 15, T. 23 N., R. 42 E., Sec. 10-15, T. 23 N., R. 42 E., Sec. 22-27, T.

23 N., R. 42 E., Sec. 34-36, T. 23 N., R. 43 E., Sec. 18-19, T. 23 N., R. 43 E., Sec. 30-31, T. 24 N., R. 41 E., Sec. 1-3, T. 24 N., R. 41 E., Sec. 10-13, T. 24 N., R. 41 E., Sec. 24, T. 24 N., R. 42 E., Sec. 5-8, T. 24 N., R. 42 E., Sec. 16-21, T. 24 N., R. 42 E., Sec. 25-36, T. 25 N., R. 39 E., Sec. 1-2, T. 25 N., R. 39 E., Sec. 11-12, T. 25 N., R. 40 E., Sec. 1-17, T.

25 N., R. 40 E., Sec. 20-24, T. 25 N., R. 41 E., Sec. 1-36, T. 25 N., R. 42 E., Sec. 5-6, T. 26 N., R. 39 E., Sec. 35-36, T. 26 N., R. 40 E., Sec. 31-36, T. 26 N., R. 41 E., Sec. 13-17, T. 26 N., R. 41 E., Sec. 19-36, T. 26 N., R. 41 E., Sec. 20-36, T. 26 N., R. 42 E., Sec. 17-19, T. 26 N., R. 42 E., Sec. 29-32.

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Unit MT-4: Nelson Reservoir and
Bowdoin NWR

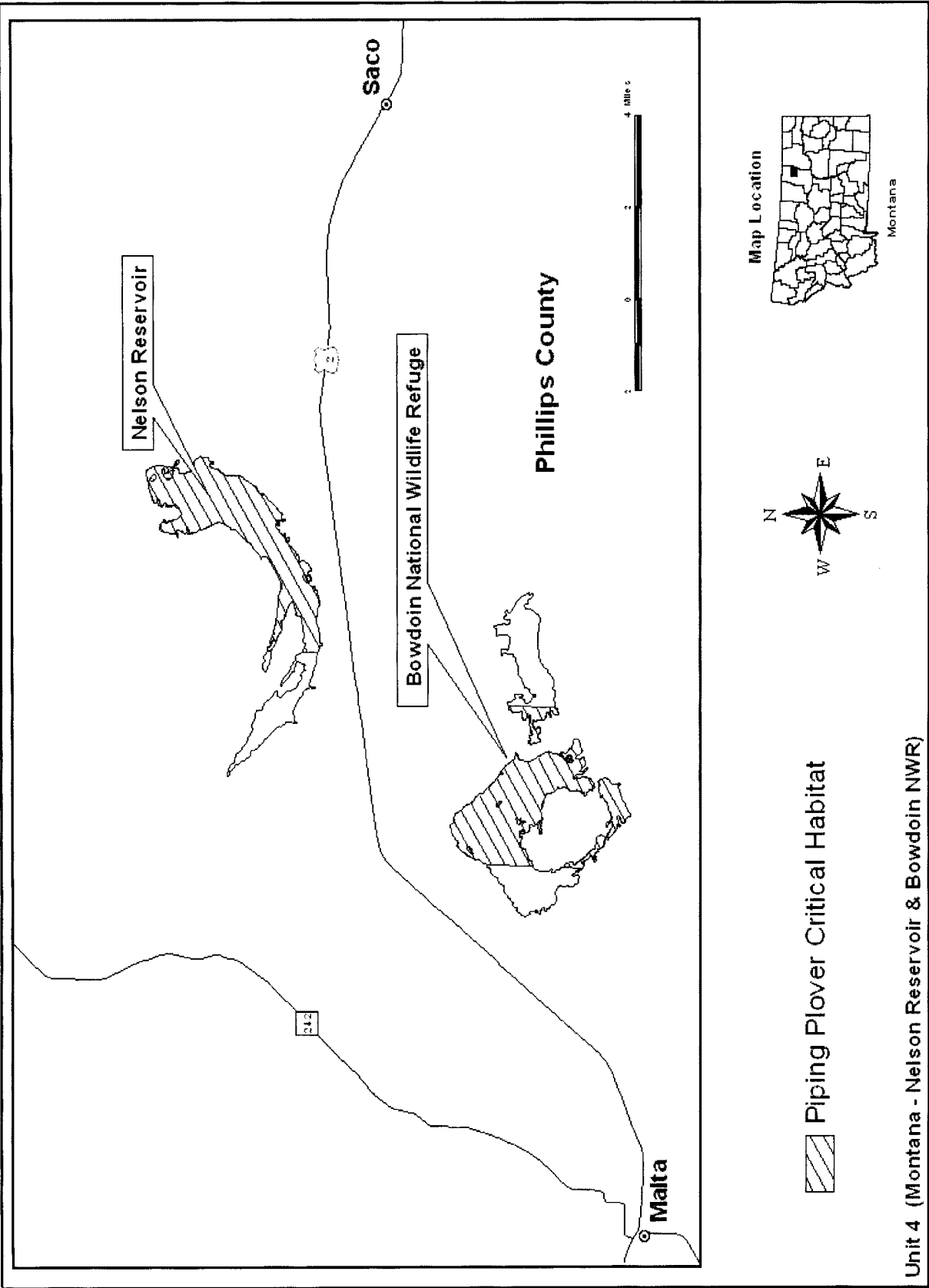
This unit consists of the following
Township, Range, and Sections:

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1-2, T. 30 N., R. 31 E., Sec. 4, T. 30 N.,

R. 31 E., Sec. 9-11, T. 31 N., R. 31 E.,
Sec. 21-22, T. 31 N., R. 31 E., Sec. 25-
28, T. 31 N., R. 31 E., Sec. 33-36; Nelson
Reservoir: T. 31 N., R. 32 E. Sec. 3-5,
T. 32 N., R. 32 E., Sec. 14-15, T. 32 N.,
R. 32 E., Sec. 22-24, T. 32 N., R. 32 E.,

Sec. 26-27, T. 32 N., R. 32 E., Sec. 32-
35.

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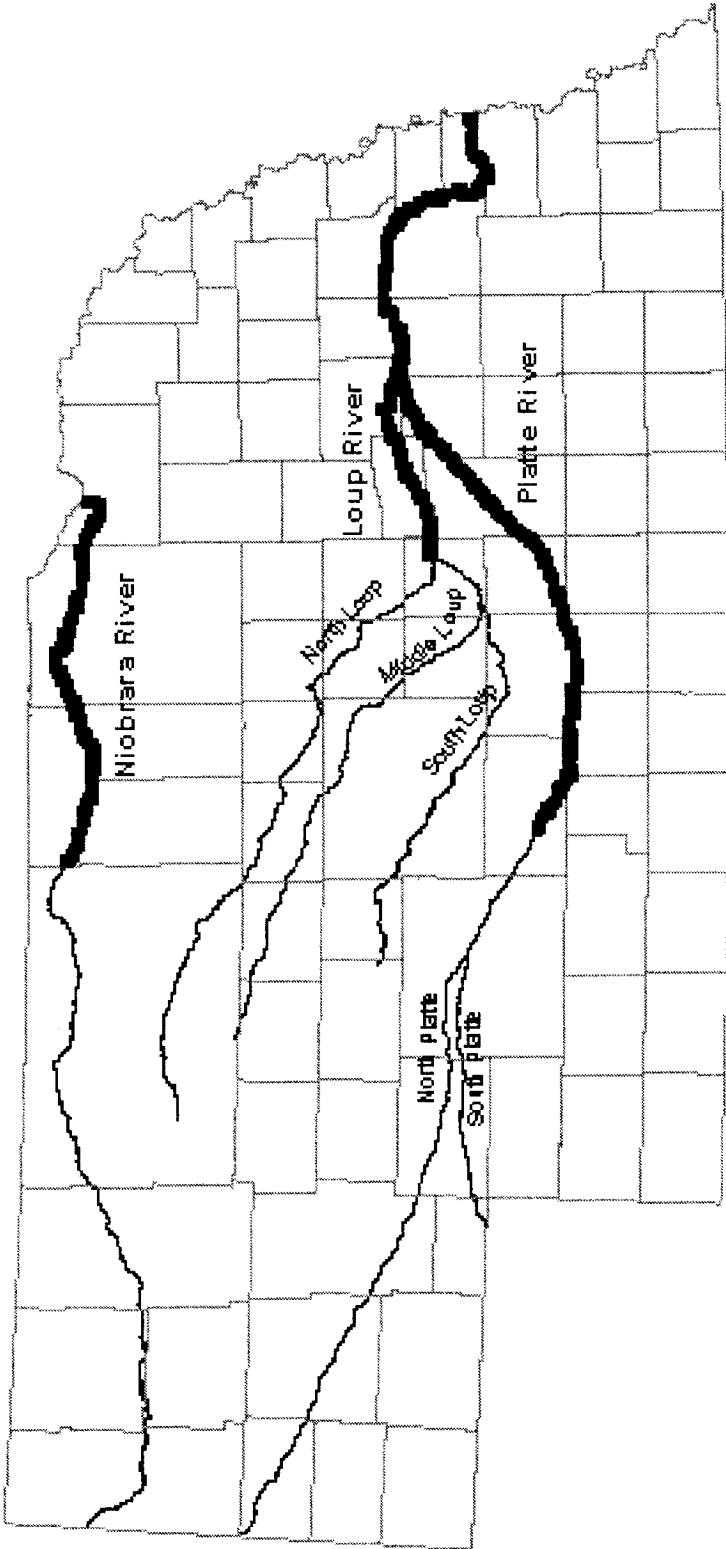
Sec. 25; T.13 N., R.12 E., Sec. 26; T.13 N., R.12 E., Sec. 27; T.13 N., R.12 E., Sec. 28; T.13 N., R.12 E., Sec. 31; T.13 N., R.12 E., Sec. 32; T.13 N., R.12 E., Sec. 33; T.13 N., R.12 E., Sec. 34; T.13 N., R.12 E., Sec. 36; T.13 N., R.13 E., Sec. 25; T.13 N., R.13 E., Sec. 26; T.13 N., R.13 E., Sec. 30; T.13 N., R.13 E., Sec. 31; T.13 N., R.13 E., Sec. 32; T.13 N., R.13 E., Sec. 33; T.13 N., R.13 E., Sec. 34; T.13 N., R.13 E., Sec. 35; T.13 N., R.13 E., Sec. 36; T.14 N., R.09 E., Sec. 01; T.14 N., R.09 E., Sec. 12; T.14 N., R.10 E., Sec. 06; T.14 N., R.10 E., Sec. 07; T.14 N., R.10 E., Sec. 08; T.14 N., R.10 E., Sec. 17; T.14 N., R.10 E., Sec. 18; T.14 N., R.10 E., Sec. 20; T.14 N., R.10 E., Sec. 29; T.14 N., R.10 E., Sec. 32; T.15 N., R.09 E., Sec. 01; T.15 N., R.09 E., Sec. 02; T.15 N., R.09 E., Sec. 03; T.15 N., R.09 E., Sec. 11; T.15 N., R.09 E., Sec. 12; T.15 N., R.09 E., Sec. 13; T.15 N., R.09 E., Sec. 24; T.15 N., R.09 E., Sec. 25; T.15 N., R.09 E., Sec. 36; T.15 N., R.10 E., Sec. 19; T.16 N., R.01 E., Sec. 01; T.16 N., R.01 E., Sec. 02; T.16 N., R.01 E., Sec. 04; T.16 N., R.01 E., Sec. 05; T.16 N., R.01 E., Sec. 06; T.16 N., R.01 E., Sec. 12; T.16 N., R.02 E., Sec. 01; T.16 N., R.02 E., Sec. 02; T.16 N., R.02 E., Sec. 03; T.16 N., R.02 E., Sec. 04; T.16 N., R.02 E.,

Sec. 05; T.16 N., R.02 E., Sec. 06; T.16 N., R.02 E., Sec. 07; T.16 N., R.02 E., Sec. 08; T.16 N., R.02 E., Sec. 09; T.16 N., R.02 E., Sec. 10; T.16 N., R.02 E., Sec. 11; T.16 N., R.02 E., Sec. 12; T.16 N., R.03 E., Sec. 04; T.16 N., R.03 E., Sec. 05; T.16 N., R.03 E., Sec. 06; T.16 N., R.08 E., Sec. 01; T.16 N., R.08 E., Sec. 02; T.16 N., R.08 E., Sec. 12; T.16 N., R.09 E., Sec. 06; T.16 N., R.09 E., Sec. 07; T.16 N., R.09 E., Sec. 08; T.16 N., R.09 E., Sec. 09; T.16 N., R.09 E., Sec. 16; T.16 N., R.09 E., Sec. 17; T.16 N., R.09 E., Sec. 21; T.16 N., R.09 E., Sec. 22; T.16 N., R.09 E., Sec. 27; T.16 N., R.09 E., Sec. 28; T.16 N., R.09 E., Sec. 33; T.16 N., R.09 E., Sec. 34; T.17 N., R.01 E., Sec. 29; T.17 N., R.01 E., Sec. 30; T.17 N., R.01 E., Sec. 31; T.17 N., R.01 E., Sec. 32; T.17 N., R.01 E., Sec. 33; T.17 N., R.01 E., Sec. 34; T.17 N., R.01 E., Sec. 35; T.17 N., R.01 E., Sec. 36; T.17 N., R.03 E., Sec. 25; T.17 N., R.03 E., Sec. 26; T.17 N., R.03 E., Sec. 27; T.17 N., R.03 E., Sec. 31; T.17 N., R.03 E., Sec. 32; T.17 N., R.03 E., Sec. 33; T.17 N., R.03 E., Sec. 34; T.17 N., R.04 E., Sec. 09; T.17 N., R.04 E., Sec. 10; T.17 N., R.04 E., Sec. 11; T.17 N., R.04 E., Sec. 12; T.17 N., R.04 E., Sec. 14; T.17 N., R.04 E., Sec. 15; T.17 N., R.04 E., Sec. 16; T.17 N., R.04 E.,

Sec. 17; T.17 N., R.04 E., Sec. 20; T.17 N., R.04 E., Sec. 21; T.17 N., R.04 E., Sec. 29; T.17 N., R.04 E., Sec. 30; T.17 N., R.05 E., Sec. 07; T.17 N., R.05 E., Sec. 08; T.17 N., R.05 E., Sec. 09; T.17 N., R.05 E., Sec. 10; T.17 N., R.05 E., Sec. 13; T.17 N., R.05 E., Sec. 14; T.17 N., R.05 E., Sec. 15; T.17 N., R.06 E., Sec. 07; T.17 N., R.06 E., Sec. 08; T.17 N., R.06 E., Sec. 09; T.17 N., R.06 E., Sec. 14; T.17 N., R.06 E., Sec. 15; T.17 N., R.06 E., Sec. 16; T.17 N., R.06 E., Sec. 17; T.17 N., R.06 E., Sec. 18; T.17 N., R.06 E., Sec. 22; T.17 N., R.06 E., Sec. 23; T.17 N., R.06 E., Sec. 24; T.17 N., R.07 E., Sec. 13; T.17 N., R.07 E., Sec. 14; T.17 N., R.07 E., Sec. 15; T.17 N., R.07 E., Sec. 16; T.17 N., R.07 E., Sec. 17; T.17 N., R.07 E., Sec. 18; T.17 N., R.07 E., Sec. 19; T.17 N., R.07 E., Sec. 20; T.17 N., R.07 E., Sec. 21; T.17 N., R.07 E., Sec. 22; T.17 N., R.07 E., Sec. 23; T.17 N., R.07 E., Sec. 24; T.17 N., R.08 E., Sec. 20; T.17 N., R.08 E., Sec. 21; T.17 N., R.08 E., Sec. 27; T.17 N., R.08 E., Sec. 28; T.17 N., R.08 E., Sec. 29; T.17 N., R.08 E., Sec. 34; T.17 N., R.08 E., Sec. 35; T.17 N., R.08 E., Sec. 36.

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Nebraska Piping Plover Critical Habitat



70 0 70 Miles



Piping Plover Critical Habitat



North Dakota

Projection: UTM Zone 14, NAD27,
Clarke 1866

Unit ND-1: Divide 1-10, Williams 1-3

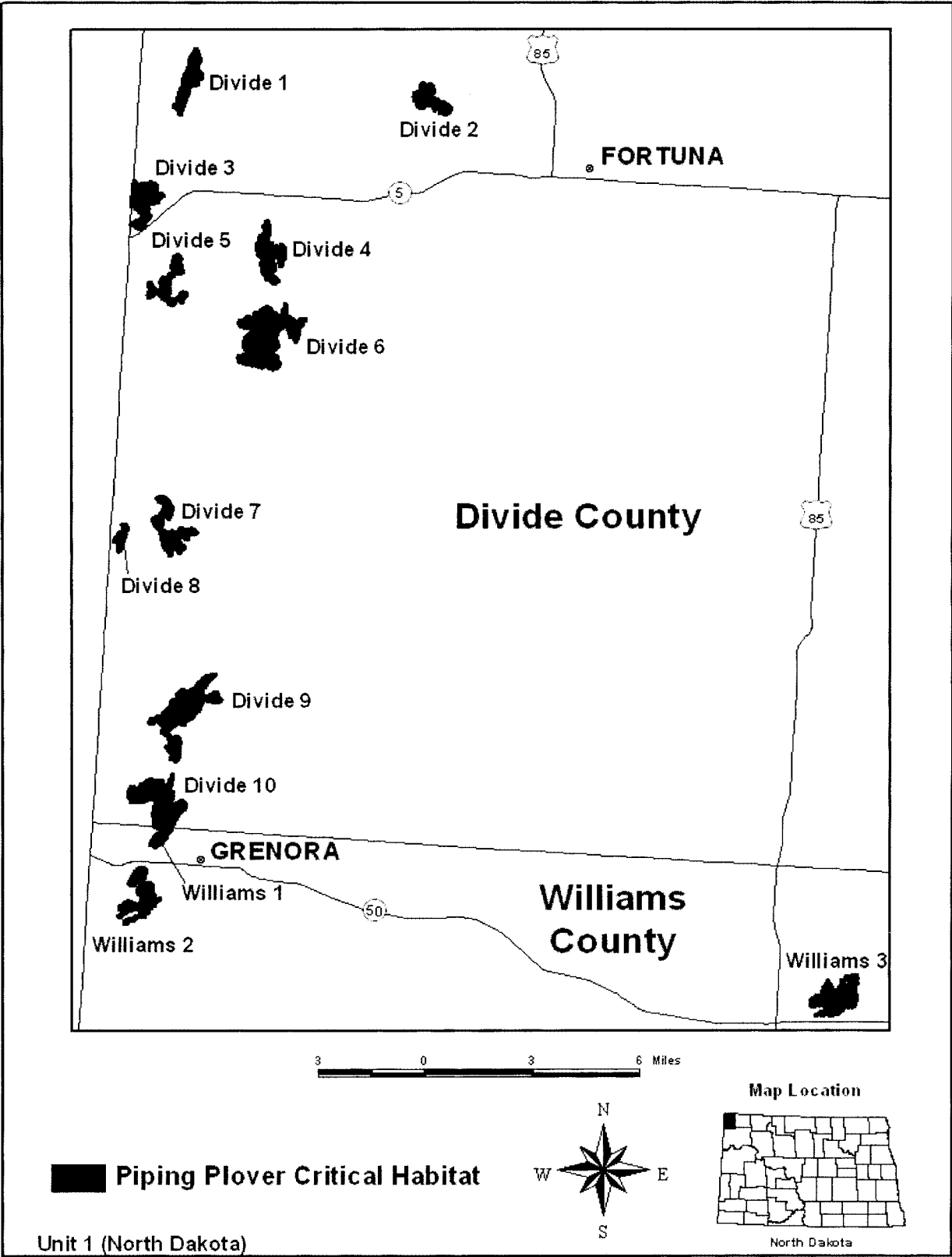
This unit consists of the following
Township, Range, and Sections:

Divide 1 T. 163 N., R. 103 W., Sec. 11,
13, 14, 23, 24; Divide 2 T. 163 N., R. 101

W., Sec. 19, T. 163 N., R. 102 W., Sec.
13, 14, 23, 24; Divide 3 T. 162 N., R. 103
W., Sec. 2, 3, 10, T. 163 N., R. 103 W.,
Sec. 34, 35; Divide 4 T. 162 N., R. 102
W., Sec. 5, 7, 8, 17; Divide 5 T. 162 N.,
R. 103 W., Sec. 11, 13-15, 22-24; Divide
6 T. 162 N., R. 102 W., Sec. 19-21, 28-
30; Divide 7 T. 161 N., R. 103 W., Sec.
13, 14, 23-26; Divide 8 T. 161 N., R. 103

W., Sec. 22, 27; Divide 9 T. 160 N., R.
103 W., Sec. 10, 15-17, 20, 21, 28;
Divide 10 T. 160 N., R. 103 W., Sec. 28,
29, 32-34; Williams 1 T. 159 N., R. 103
W., Sec. 4; Williams 2 T. 159 N., R. 103
W., Sec. 8, 9, 16, 17; Williams 3 T. 159
N., R. 100 W., Sec. 14, 15, 21-23, 27.

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Unit ND-2: Burke 1-2, Mountrail 1-10, Renville 1, Ward 1-10

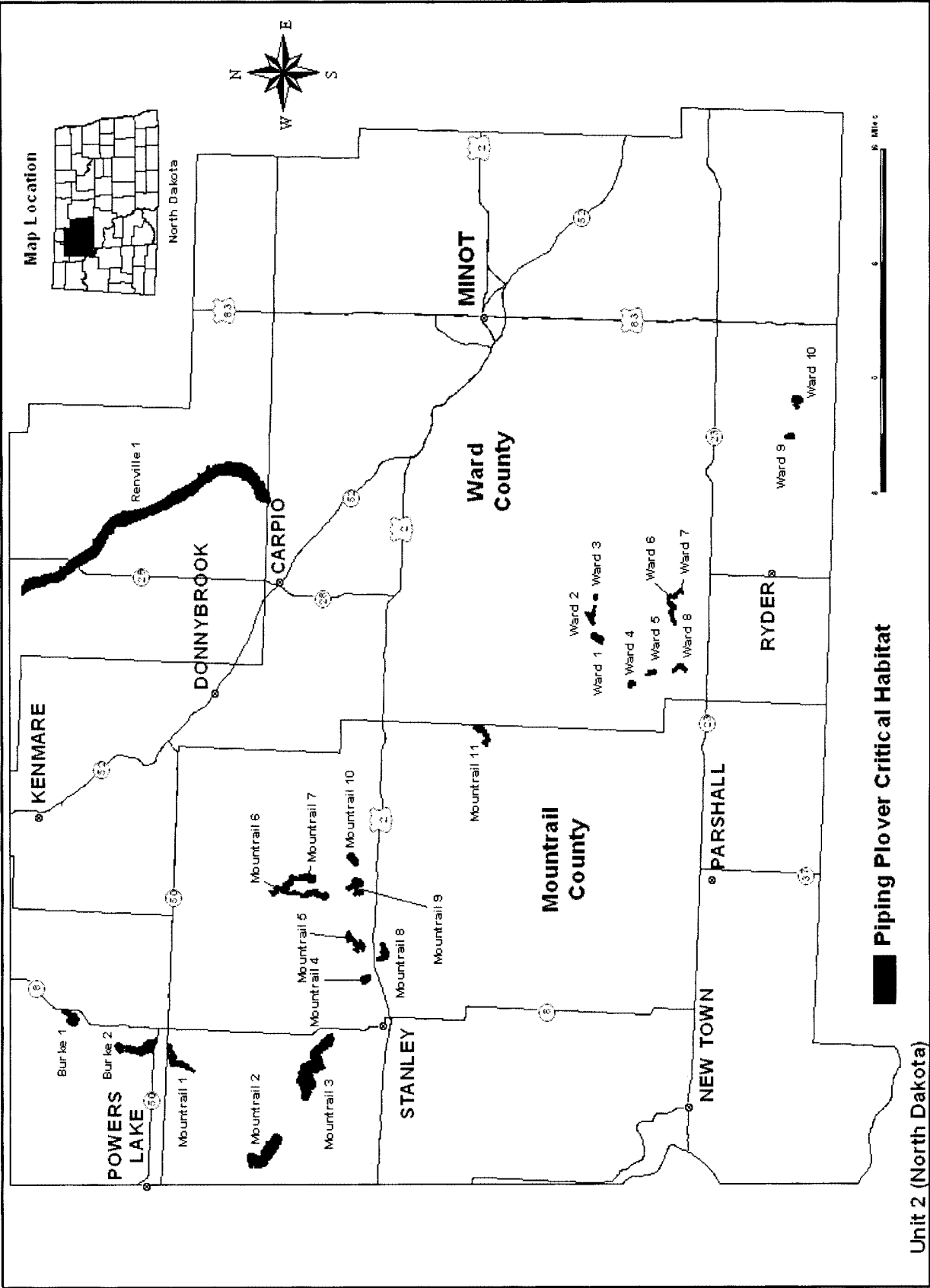
This unit consists of the following Township, Range, and Sections:

Burke 1 T. 160 N., R. 91 W., Sec. 23, 25-27, 34, 35; Burke 2 T. 159 N., R. 91 W., Sec. 16, 21, 27, 28, 33, 34; Mountrail 1 T. 158 N., R. 91 W., Sec. 4, 5, 8, 17, T. 159 N., R. 91 W., Sec. 33; Mountrail 2 T. 157 N., R. 92 W., Sec. 5-9, 16, 17; Mountrail 3 T. 156 N., R. 91 W., Sec. 5, 6, T. 157 N., R. 91 W., Sec. 19, 20, 27-35, T. 157 N., R. 92 W., Sec. 25; Mountrail 4 T. 156 N., R. 91 W., Sec. 13; Mountrail 5 T. 156 N., R. 90 W., Sec. 4, 8-10, 16, 17; Mountrail 6 T. 157 N., R.

89 W., Sec. 8, 9, 16, 17, 20, 21, 28, 29, 32, 33; Mountrail 7 T. 157 N., R. 89 W., Sec. 15, 16, 21, 22, 27, 28; Mountrail 8 T. 156 N., R. 90 W., Sec. 19-21, 29; Mountrail 9 T. 156 N., R. 89 W., Sec. 6, 7, 18, T. 156 N., R. 90 W., Sec. 1, 12, 13; Mountrail 10 T. 156 N., R. 89 W., Sec. 4, 5, 8, 9; Mountrail 11 T. 155 N., R. 87 W., Sec. 19, 30, T. 155 N., R. 88 W., Sec. 24-26, 35, 36; Renville 1 T. 157 N., R. 84 W., Sec. 6, T. 157 N., R. 85 W., Sec. 1, T. 158 N., R. 84 W., Sec. 5-9, 16, 17, 20, 21, 28-32, T. 158 N., R. 85 W., Sec. 1, 36, T. 159 N., R. 84 W., Sec. 30, 31, T. 159 N., R. 85 W., Sec. 2-4, 10, 11, 14, 15, 24-26, 36, T. 160 N., R. 85 W.,

Sec. 18-20, 29, 30, 32, 33, 34, T. 160 N., R. 86 W., Sec. 1, 2, 11-13, 24, T. 161 N., R. 85 W., Sec. 31, 32; Ward 1 T. 153 N., R. 86 W., Sec. 6, 7; Ward 2 T. 153 N., R. 86 W., Sec. 4, 5, T. 154 N., R. 86 W., Sec. 33; Ward 3 T. 153 N., R. 86 W., Sec. 3; Ward 4 T. 153 N., R. 87 W., Sec. 22; Ward 5 T. 153 N., R. 87 W., Sec. 26, 27, 35; Ward 6 T. 152 N., R. 86 W., Sec. 5, 6, T. 152 N., R. 87 W., Sec. 1, T. 153 N., R. 86 W., Sec. 34; Ward 7 T. 152 N., R. 86 W., Sec. 5, 8; Ward 8 T. 152 N., R. 87 W., Sec. 4, 5, 8, 9; Ward 9 T. 151 N., R. 84 W., Sec. 17-20; Ward 10 T. 151 N., R. 84 W., Sec. 15, 21, 22.

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Unit ND-3: McLean 1-9

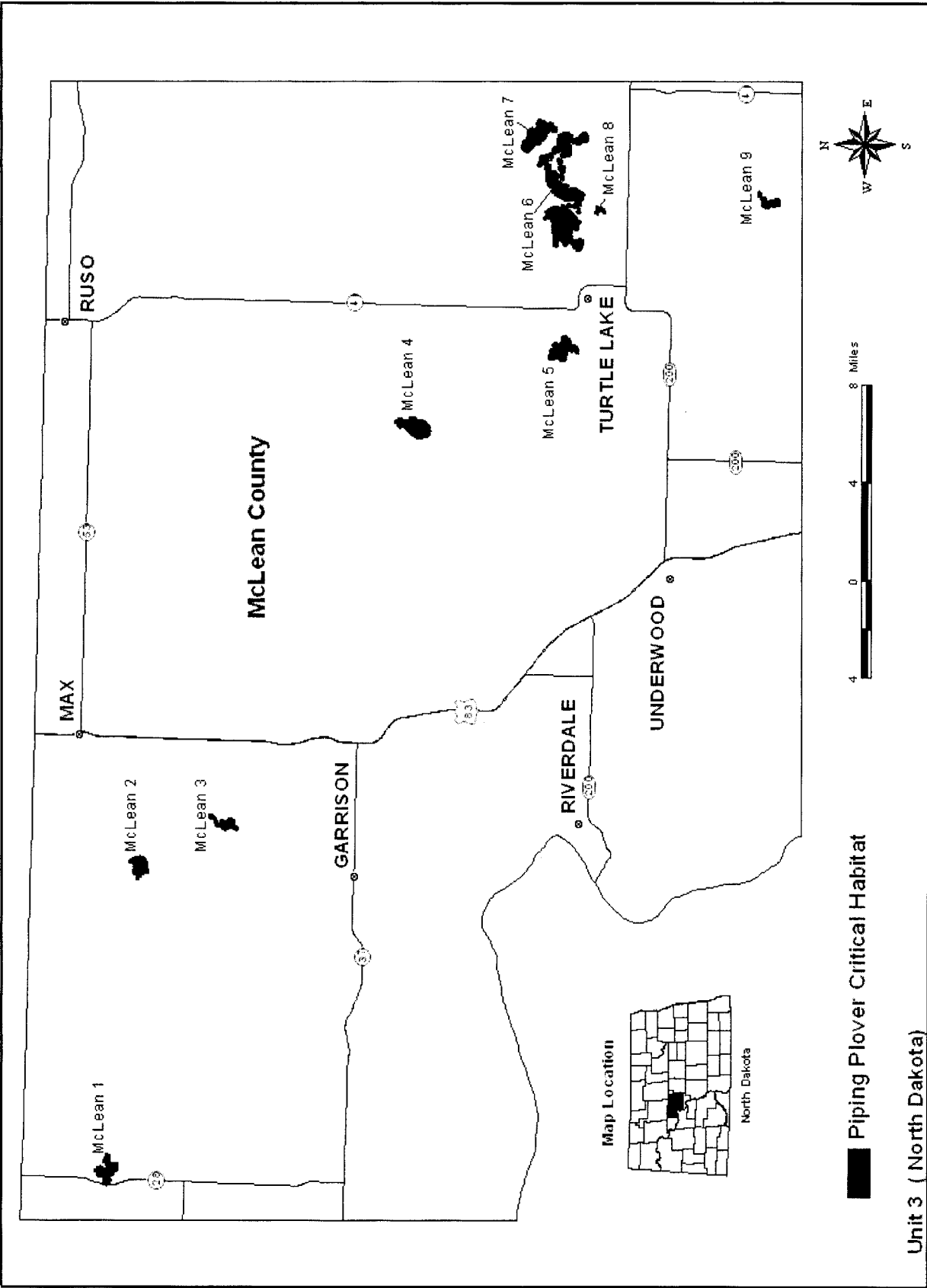
This unit consists of the following
Township, Range, and Sections:

McLean 1 T. 150 N., R. 86 W., Sec. 21,
22, 27; McLean 2 T. 150 N., R. 84 W.,
Sec. 26, 27, 34; McLean 3 T. 149 N., R.

84 W., Sec. 12, 13; McLean 4 T. 148 N.,
R. 81 W., Sec. 20, 21, 28, 29; McLean
5 T. 147 N., R. 81 W., Sec. 23-26, 36;
McLean 6 T. 147 N., R. 79 W., Sec. 19-
21, 28-30, 32, 33, T. 147 N., R. 80 W.,
Sec. 22-27, 34, 36; McLean 7 T. 147 N.,

R. 79 W., Sec. 16, 17, 20, 21; McLean
8 T. 146 N., R. 80 W., Sec. 1, 2, 35, 36;
McLean 9 T. 145 N., R. 80 W., Sec. 1,
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Unit ND-4: Benson 1-7, McHenry 1-5, Pierce 1-6, Sheridan 1-6

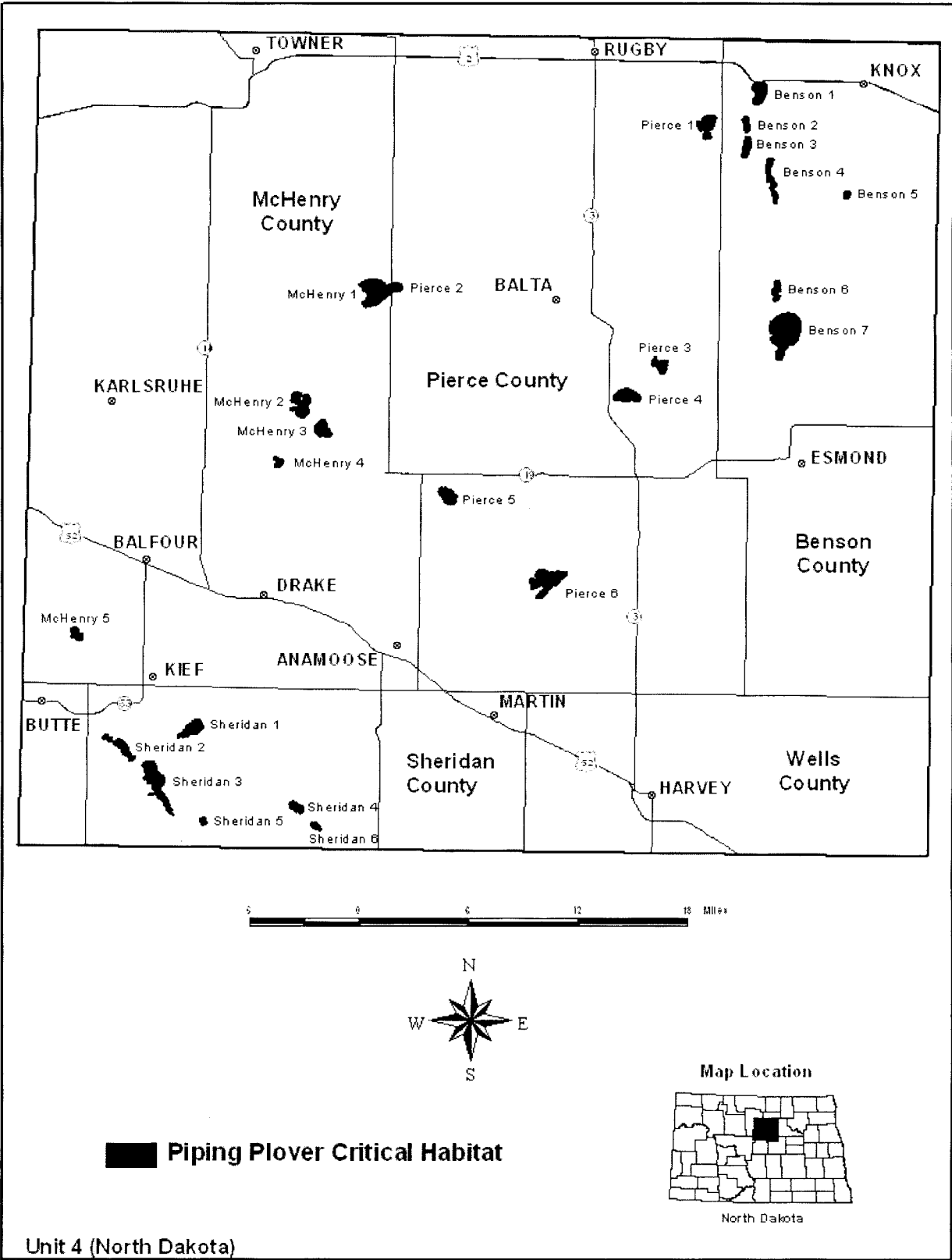
This unit consists of the following Township, Range, and Sections:

Benson 1 T. 156 N., R. 71 W., Sec. 16, 17, 20, 21; Benson 2 T. 156 N., R. 71 W., Sec. 20, 29; Benson 3 T. 155 N., R. 71 W., Sec. 5, T. 156 N., R. 71 W., Sec. 32; Benson 4 T. 155 N., R. 71 W., Sec. 4, 9, 10, 15, 16; Benson 5 T. 155 N., R. 70 W., Sec. 17, 18; Benson 6 T. 154 N., R. 71 W., Sec. 9, 10, 15, 16; Benson 7 T. 154 N., R. 71 W., Sec. 14, 15, 21-23, 26-28,

34; McHenry 1 T. 154 N., R. 75 W., Sec. 11-14; McHenry 2 T. 153 N., R. 75 W., Sec. 7, 8, 17, 18, 20; McHenry 3 T. 153 N., R. 75 W., Sec. 20, 21, 28; McHenry 4 T. 153 N., R. 75 W., Sec. 31, T. 153 N., R. 76 W., Sec. 36; McHenry 5 T. 151 N., R. 78 W., Sec. 13, 14, 23, 24; Pierce 1 T. 156 N., R. 72 W., Sec. 24-26, 35, 36; Pierce 2 T. 154 N., R. 74 W., Sec. 7, 18; Pierce 3 T. 153 N., R. 72 W., Sec. 3, 4, T. 154 N., R. 72 W., Sec. 33, 34; Pierce 4 T. 153 N., R. 72 W., Sec. 7, 8; Pierce 5 T. 152 N., R. 74 W., Sec. 5-9; Pierce

6 T. 151 N., R. 73 W., Sec. 5, 6, T. 152 N., R. 73 W., Sec. 31-33; Sheridan 1 T. 150 N., R. 76 W., Sec. 7, 18, T. 150 N., R. 77 W., Sec. 12-14; Sheridan 2 T. 150 N., R. 77 W., Sec. 17-21, 28; Sheridan 3 T. 149 N., R. 77 W., Sec. 2, 3, 11, T. 150 N., R. 77 W., Sec. 26, 27, 34, 35; Sheridan 4 T. 149 N., R. 76 W., Sec. 1; Sheridan 5 T. 149 N., R. 76 W., Sec. 7, 8; Sheridan 6 T. 149 N., R. 75 W., Sec. 7.

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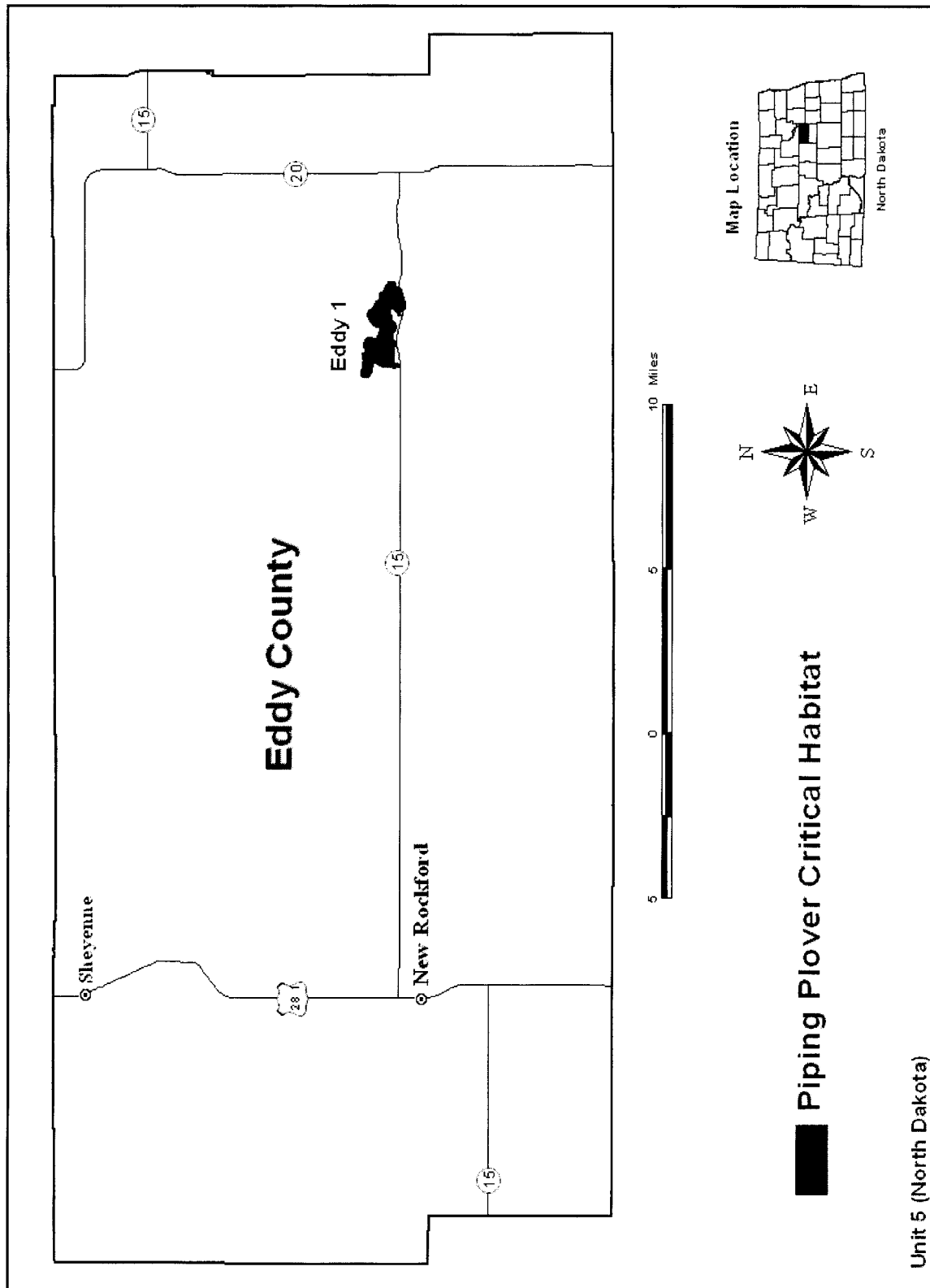
Unit ND-5: Eddy 1

This unit consists of the following
Township, Range, and Sections:

T. 149 N., R. 63 W., Sec. 21, T. 149
N., R. 63 W., Sec. 22-23, T. 149 N., R.

63 W., Sec. 25-28, T. 149 N., R. 63 W.,
Sec. 35-36.

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Unit ND-6: Burleigh 1-8, Kidder 1-11, Sheridan 7, Stutsman 1-3

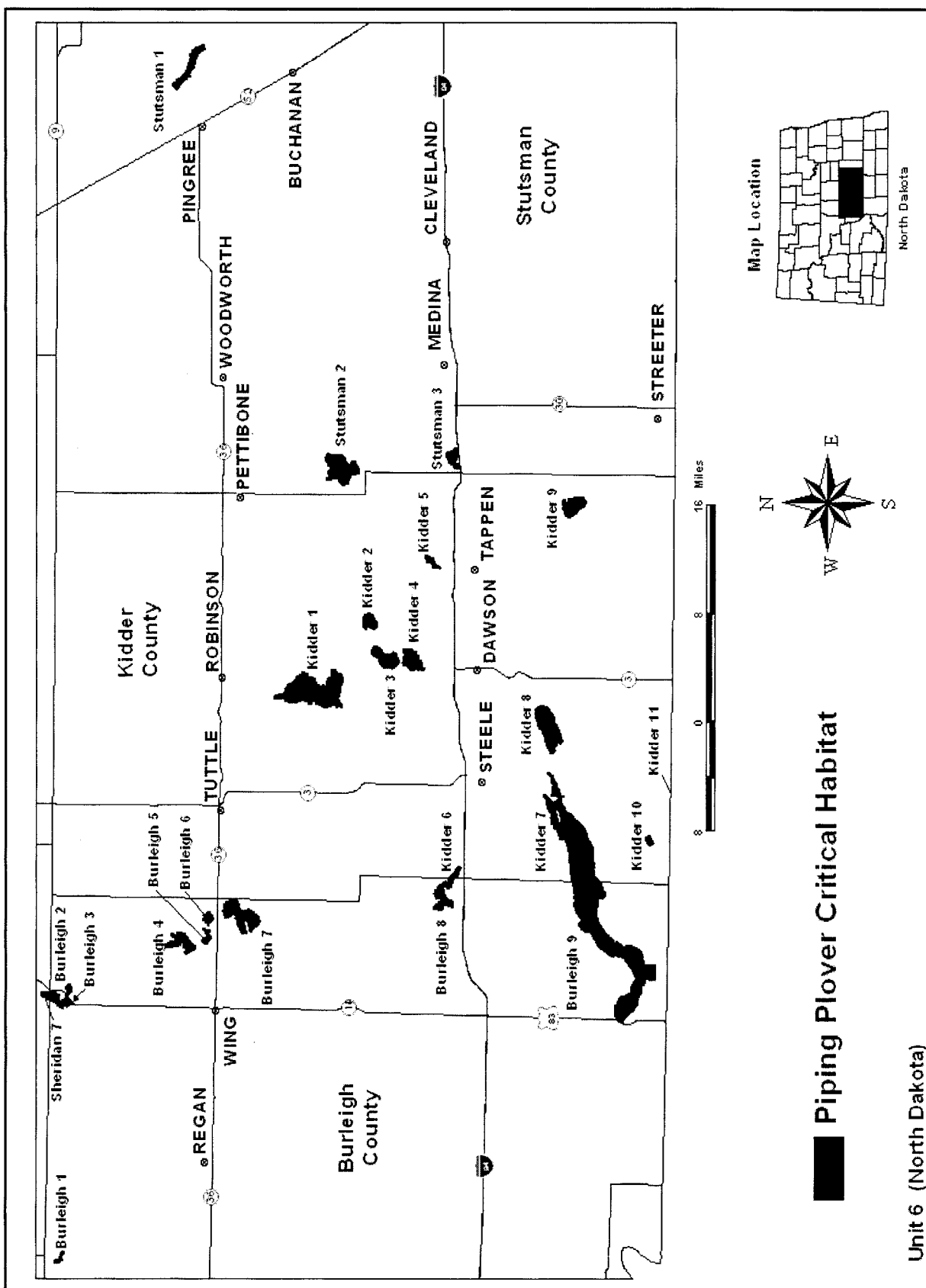
This unit consists of the following Township, Range, and Sections:

Burleigh 1 T. 144 N., R. 79 W., Sec. 3, 10; Burleigh 2 T. 144 N., R. 76 W., Sec. 2, 3, 10-12; Burleigh 3 T. 144 N., R. 76 W., Sec. 11, 14; Burleigh 4 T. 143 N., R. 75 W., Sec. 16, 21, 22, 27-29, 33; Burleigh 5 T. 142 N., R. 75 W., Sec. 3, 4, T. 143 N., R. 75 W., Sec. 33, 34, Burleigh 6 T. 142 N., R. 75 W., Sec. 2, 3, T. 143 N., R. 75 W., Sec. 35, Burleigh 7 T. 142 N., R. 75 W., Sec. 11-15, 22-24, 26, 27, Burleigh 8 T. 139 N., R. 75

W., Sec. 1-3, 10-12, T. 140 N., R. 75 W., Sec. 34-36; Burleigh 9 T. 137 N., R. 75 W., Sec. 1-12, 17-20, 30, 31, T. 138 N., R. 75 W., Sec. 25-27, 33-36, T. 137 N., R. 76 W., Sec. 9, 10, 13, 15-17, 21-27, 35, 36; Kidder 1 T. 141 N., R. 72 W., Sec. 2-4, 9-11, 14-16, 21-24, 26-28, T. 142 N., R. 72 W., Sec. 33, 34; Kidder 2 T. 140 N., R. 71 W., Sec. 5-7, T. 141 N., R. 71 W., Sec. 33; Kidder 3 T. 140 N., R. 72 W., Sec. 1, 2, 10-12, 14, 15; Kidder 4 T. 140 N., R. 71 W., Sec. 25, 35, 36; Kidder 5 T. 139 N., R. 74 W., Sec. 6, 7; Kidder 6 T. 137 N., R. 74 W., Sec. 5, 6, T. 138 N., R. 73 W., Sec. 16-20, T. 138

N., R. 74 W., Sec. 13-15, 21-24, 26-35; Kidder 7 T. 138 N., R. 72 W., Sec. 7, 18, T. 138 N., R. 73 W., Sec. 11-15, 23, 24; Kidder 8 T. 138 N., R. 70 W., Sec. 21-23, 26-28, 34, 35; Kidder 9 T. 137 N., R. 74 W., Sec. 27, 28; Kidder 10 T. 137 N., R. 73 W., Sec. 31; Kidder 11 T. 137 N., R. 70 W., Sec. 33; Sheridan 7 T. 145 N., R. 75 W., Sec. 31, 32; Stutsman 1 T. 143 N., R. 64 W., Sec. 18-20, 28-30, 33, 34, T. 143 N., R. 65 W., Sec. 24; Stutsman 2 T. 141 N., R. 69 W., Sec. 16, 17, 19-21, 28-30, 32, 33; Stutsman 3 T. 139 N., R. 69 W., Sec. 5-8.

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Unit ND-7: Emmons 1, Logan 1-5,
McIntosh 1-2

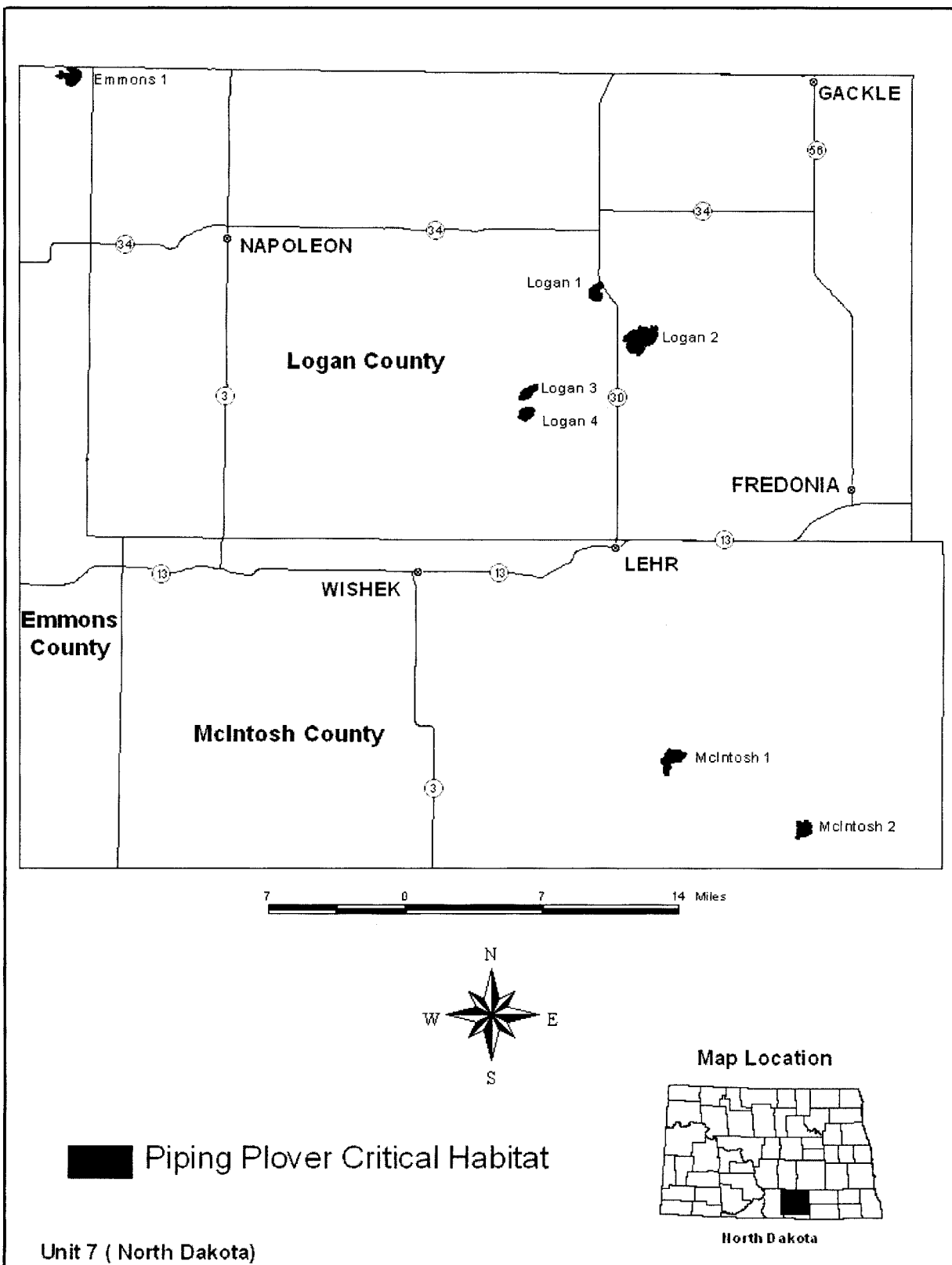
This unit consists of the following
Township, Range, and Sections:

Emmons 1 T. 136 N., R. 74 W., Sec.
1, 2; Logan 1 T. 136 N., R. 73 W., Sec.

2; Logan 2 T. 136 N., R. 70 W., Sec. 5,
6; Logan 3 T. 135 N., R. 69 W., Sec. 28,
29, 32, 33; Logan 4 T. 134 N., R. 69 W.,
Sec. 2, 3, 10, 11, 14, 15; Logan 5 T. 134
N., R. 70 W., Sec. 23, 26, 27; Logan 6
T. 134 N., R. 70 W., Sec. 34, 35;

McIntosh 1 T. 130 N., R. 69 W., Sec. 2,
3, T. 131 N., R. 69 W., Sec. 34, 35;
McIntosh 2 T. 130 N., R. 68 W., Sec. 13,
14, 23, 24.

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Unit ND-8: Missouri River

This unit consists of the following Township, Range, and Sections:

T. 129 N., R. 78 W., Sec. 19, T. 129 N., R. 78 W., Sec. 29-32, T. 129 N., R. 79 W., Sec. 3-6, T. 129 N., R. 79 W., Sec. 8-11, T. 129 N., R. 79 W., Sec. 13-16, T. 129 N., R. 79 W., Sec. 21-27, T. 129 N., R. 79 W., Sec. 35-36, T. 129 N., R. 80 W., Sec. 1, T. 130 N., R. 79 W., Sec. 3-9, T. 130 N., R. 79 W., Sec. 17-21, T. 130 N., R. 79 W., Sec. 27-34, T. 130 N., R. 80 W., Sec. 1-3, T. 130 N., R. 80 W., Sec. 10-14, T. 130 N., R. 80 W., Sec. 23-26, T. 130 N., R. 80 W., Sec. 36, T. 131 N., R. 79 W., Sec. 4-9, T. 131 N., R. 79 W., Sec. 17-20, T. 131 N., R. 79 W., Sec. 29-32, T. 131 N., R. 80 W., Sec. 1, T. 131 N., R. 80 W., Sec. 11-15, T. 131 N., R. 80 W., Sec. 22-26, T. 131 N., R. 80 W., Sec. 35-36, T. 132 N., R. 78 W., Sec. 15-22, T. 132 N., R. 79 W., Sec. 3-5, T. 132 N., R. 79 W., Sec. 8-10, T. 132 N., R. 79 W., Sec. 13-16, T. 132 N., R. 79 W., Sec. 21-24, T. 132 N., R. 79 W., Sec. 26-29, T. 132 N., R. 79 W., Sec. 32-36, T. 133 N., R. 78 W., Sec. 5-8, T. 133 N., R. 78 W., Sec. 18-19, T. 133 N., R. 78 W., Sec. 30, T. 133 N., R. 79 W., Sec. 1-2, T. 133 N., R. 79 W., Sec. 11-13, T. 133 N., R. 79 W., Sec. 23-28, T. 133 N., R. 79 W., Sec. 34-36, T. 134 N., R. 78 W., Sec. 31, T. 134 N., R. 79 W., Sec. 2-3, T. 134 N., R. 79 W., Sec. 10-16, T. 134 N., R. 79 W., Sec. 22-26, T. 134 N., R. 79 W., Sec. 35-36, T. 135 N., R. 78 W., Sec. 6-7, T. 135 N., R. 79 W., Sec. 1-2, T. 135 N., R. 79 W., Sec. 11-15, T. 135 N., R. 79 W., Sec. 22-24, T. 135 N., R. 79 W., Sec. 26-27, T. 135 N., R. 79 W., Sec. 34-35, T. 136 N., R. 78 W., Sec. 18-19, T. 136 N., R. 78 W., Sec. 30-31, T. 136 N., R. 79 W., Sec. 1-3, T. 136 N., R. 79 W., Sec. 5-6, T. 136 N., R. 79 W., Sec. 8-16, T. 136 N., R. 79 W., Sec. 22-27, T. 136 N., R. 79 W., Sec. 35-36, T. 137 N., R. 79 W., Sec. 8, T. 137 N., R. 79 W., Sec. 14-23, T. 137 N., R. 79 W., Sec. 26-36, T. 137 N., R. 80 W., Sec. 3-5, T. 137 N., R. 80 W., Sec. 8-11, T. 137 N., R. 80 W., Sec. 13-17, T. 137 N., R. 80 W., Sec. 22-26, T. 137 N., R. 80 W., Sec. 36, T. 138 N., R. 80 W., Sec. 5-7, T. 138 N., R. 80 W., Sec. 18-19, T. 138 N., R. 80 W., Sec. 28-34, T. 138 N., R. 81 W., Sec. 13, T. 138 N., R. 81 W., Sec. 24-25, T. 139 N., R. 80 W., Sec. 30-31, T. 139 N., R. 81 W., Sec. 3-4, T. 139 N., R. 81 W., Sec. 10-11, T. 139 N., R. 81 W., Sec. 14, T. 139 N., R. 81 W., Sec. 23-26, T. 140 N., R. 81 W., Sec. 5, T. 140 N., R. 81 W., Sec. 8-9, T. 140 N., R. 81 W., Sec. 16, T. 140 N., R. 81 W., Sec. 21, T. 140 N., R. 81 W., Sec. 27-28, T. 140 N., R. 81 W., Sec. 33, T. 141 N., R. 80 W., Sec. 7, T. 141 N., R. 80 W., Sec. 18, T. 141 N., R. 81 W., Sec. 1-3, T. 141 N., R. 81 W., Sec.

11-13, T. 141 N., R. 81 W., Sec. 24-27, T. 141 N., R. 81 W., Sec. 33-35, T. 142 N., R. 81 W., Sec. 4-5, T. 142 N., R. 81 W., Sec. 9-10, T. 142 N., R. 81 W., Sec. 15-16, T. 142 N., R. 81 W., Sec. 21-22, T. 142 N., R. 81 W., Sec. 27-28, T. 142 N., R. 81 W., Sec. 34-35, T. 143 N., R. 81 W., Sec. 5-8, T. 143 N., R. 81 W., Sec. 18-19, T. 143 N., R. 81 W., Sec. 29-33, T. 144 N., R. 81 W., Sec. 30-32, T. 144 N., R. 82 W., Sec. 14-18, T. 144 N., R. 82 W., Sec. 23-25, T. 144 N., R. 83 W., Sec. 13-14, T. 144 N., R. 83 W., Sec. 21-24, T. 144 N., R. 83 W., Sec. 27-34, T. 144 N., R. 84 W., Sec. 5-9, T. 144 N., R. 84 W., Sec. 14-17, T. 144 N., R. 84 W., Sec. 22-25, T. 145 N., R. 84 W., Sec. 5, T. 145 N., R. 84 W., Sec. 8-9, T. 145 N., R. 84 W., Sec. 15-16, T. 145 N., R. 84 W., Sec. 21-22, T. 145 N., R. 84 W., Sec. 27, T. 145 N., R. 84 W., Sec. 34-35, T. 146 N., R. 84 W., Sec. 4-7, T. 146 N., R. 84 W., Sec. 18-20, T. 146 N., R. 84 W., Sec. 29-30, T. 146 N., R. 84 W., Sec. 32, T. 146 N., R. 85 W., Sec. 12-13, T. 146 N., R. 85 W., Sec. 24, T. 146 N., R. 86 W., Sec. 3, T. 146 N., R. 86 W., Sec. 6-7, T. 146 N., R. 87 W., Sec. 1-10, T. 146 N., R. 87 W., Sec. 18, T. 146 N., R. 88 W., Sec. 1-14, T. 146 N., R. 88 W., Sec. 16-18, T. 146 N., R. 88 W., Sec. 20-21, T. 146 N., R. 88 W., Sec. 24, T. 146 N., R. 89 W., Sec. 1-2, T. 146 N., R. 89 W., Sec. 10-12, T. 147 N., R. 82 W., Sec. 2-6, T. 147 N., R. 82 W., Sec. 8-11, T. 147 N., R. 82 W., Sec. 15-18, T. 147 N., R. 83 W., Sec. 1-9, T. 147 N., R. 83 W., Sec. 16-20, T. 147 N., R. 84 W., Sec. 1-24, T. 147 N., R. 85 W., Sec. 26-35, T. 147 N., R. 85 W., Sec. 1-27, T. 147 N., R. 85 W., Sec. 29-31, T. 147 N., R. 85 W., Sec. 34-36, T. 147 N., R. 86 W., Sec. 1-3, T. 147 N., R. 86 W., Sec. 7, T. 147 N., R. 86 W., Sec. 9-36, T. 147 N., R. 87 W., Sec. 7-36, T. 147 N., R. 88 W., Sec. 6-11, T. 147 N., R. 88 W., Sec. 13-36, T. 147 N., R. 89 W., Sec. 1-29, T. 147 N., R. 89 W., Sec. 34-36, T. 147 N., R. 90 W., Sec. 1-18, T. 147 N., R. 90 W., Sec. 20, T. 147 N., R. 90 W., Sec. 23-27, T. 147 N., R. 91 W., Sec. 1-7, T. 147 N., R. 91 W., Sec. 11-12, T. 147 N., R. 92 W., Sec. 1-9, T. 147 N., R. 92 W., Sec. 12-13, T. 147 N., R. 92 W., Sec. 16-20, T. 147 N., R. 92 W., Sec. 29-30, T. 147 N., R. 92 W., Sec. 32, T. 147 N., R. 93 W., Sec. 1-2, T. 147 N., R. 93 W., Sec. 12-13, T. 148 N., R. 82 W., Sec. 17-20, T. 148 N., R. 82 W., Sec. 28-34, T. 148 N., R. 83 W., Sec. 11-15, T. 148 N., R. 83 W., Sec. 19-36, T. 148 N., R. 84 W., Sec. 18-19, T. 148 N., R. 84 W., Sec. 22-27, T. 148 N., R. 84 W., Sec. 29-36, T. 148 N., R. 85 W., Sec. 19-20, T. 148 N., R. 85 W., Sec. 24-25, T. 148 N., R. 85 W., Sec. 27, T. 148 N., R. 85 W., Sec. 29-36, T. 148 N., R. 86 W., Sec. 23-

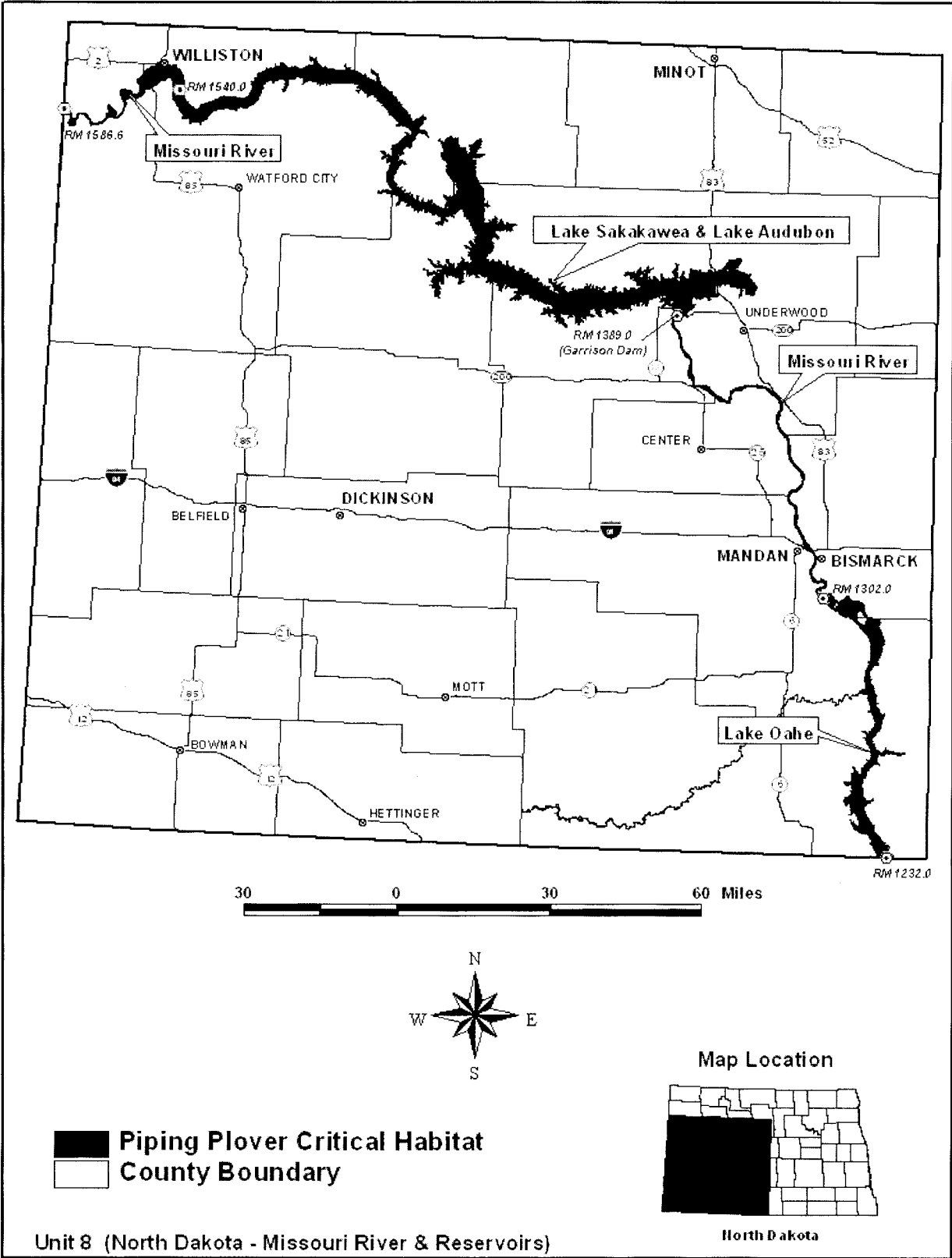
28, T. 148 N., R. 86 W., Sec. 33-36, T. 148 N., R. 89 W., Sec. 30-32, T. 148 N., R. 90 W., Sec. 6, T. 148 N., R. 90 W., Sec. 19-21, T. 148 N., R. 90 W., Sec. 25-36, T. 148 N., R. 91 W., Sec. 1-12, T. 148 N., R. 91 W., Sec. 14-17, T. 148 N., R. 91 W., Sec. 19-36, T. 148 N., R. 92 W., Sec. 13, T. 148 N., R. 92 W., Sec. 20-22, T. 148 N., R. 92 W., Sec. 24-36, T. 148 N., R. 93 W., Sec. 24-25, T. 148 N., R. 93 W., Sec. 35-36, T. 149 N., R. 89 W., Sec. 7, T. 149 N., R. 89 W., Sec. 18, T. 149 N., R. 90 W., Sec. 3-24, T. 149 N., R. 90 W., Sec. 27-33, T. 149 N., R. 91 W., Sec. 1-4, T. 149 N., R. 91 W., Sec. 6, T. 149 N., R. 91 W., Sec. 9-15, T. 149 N., R. 91 W., Sec. 23-26, T. 149 N., R. 91 W., Sec. 34-36, T. 149 N., R. 92 W., Sec. 1-6, T. 149 N., R. 92 W., Sec. 10-12, T. 149 N., R. 92 W., Sec. 14-16, T. 149 N., R. 93 W., Sec. 1-2, T. 150 N., R. 90 W., Sec. 18-19, T. 150 N., R. 90 W., Sec. 29-31, T. 150 N., R. 91 W., Sec. 1-36, T. 150 N., R. 92 W., Sec. 13-14, T. 150 N., R. 92 W., Sec. 19-20, T. 150 N., R. 92 W., Sec. 23-36, T. 150 N., R. 93 W., Sec. 6-9, T. 150 N., R. 93 W., Sec. 13-36, T. 150 N., R. 94 W., Sec. 1-2, T. 150 N., R. 94 W., Sec. 12-15, T. 150 N., R. 94 W., Sec. 22, T. 150 N., R. 94 W., Sec. 24, T. 151 N., R. 91 W., Sec. 1-11, T. 151 N., R. 91 W., Sec. 14-23, T. 151 N., R. 91 W., Sec. 26-35, T. 151 N., R. 92 W., Sec. 1-3, T. 151 N., R. 92 W., Sec. 10-14, T. 151 N., R. 92 W., Sec. 23-26, T. 151 N., R. 92 W., Sec. 36, T. 151 N., R. 93 W., Sec. 5-8, T. 151 N., R. 93 W., Sec. 16-21, T. 151 N., R. 93 W., Sec. 30-31, T. 151 N., R. 94 W., Sec. 1-3, T. 151 N., R. 94 W., Sec. 10-15, T. 151 N., R. 94 W., Sec. 24-26, T. 151 N., R. 94 W., Sec. 35-36, T. 152 N., R. 91 W., Sec. 19, T. 152 N., R. 91 W., Sec. 22-28, T. 152 N., R. 91 W., Sec. 30-35, T. 152 N., R. 92 W., Sec. 18-19, T. 152 N., R. 92 W., Sec. 21-28, T. 152 N., R. 92 W., Sec. 34-36, T. 152 N., R. 93 W., Sec. 1-16, T. 152 N., R. 93 W., Sec. 20-23, T. 152 N., R. 93 W., Sec. 27-34, T. 152 N., R. 94 W., Sec. 1, T. 152 N., R. 94 W., Sec. 36, T. 152 N., R. 99 W., Sec. 2-6, T. 152 N., R. 100 W., Sec. 1-12, T. 152 N., R. 100 W., Sec. 14-18, T. 152 N., R. 100 W., Sec. 20, T. 152 N., R. 100 W., Sec. 22, T. 152 N., R. 101 W., Sec. 1-2, T. 152 N., R. 101 W., Sec. 12-13, T. 152 N., R. 102 W., Sec. 6-7, T. 152 N., R. 103 W., Sec. 3-4, T. 152 N., R. 103 W., Sec. 9-16, T. 152 N., R. 103 W., Sec. 20-23, T. 152 N., R. 103 W., Sec. 28-30, T. 152 N., R. 104 W., Sec. 7-8, T. 152 N., R. 104 W., Sec. 13-15, T. 152 N., R. 104 W., Sec. 17-18, T. 152 N., R. 104 W., Sec. 20-25, T. 152 N., R. 104 W., Sec. 28-29, T. 152 N., R. 104 W., Sec. 32-33, T. 153 N., R. 92 W., Sec. 31-33, T. 153 N., R. 93 W., Sec. 5-9, T. 153 N., R. 93 W., Sec. 15-23, T. 153 N., R.

93 W., Sec. 26–30, T. 153 N., R. 93 W., Sec. 32–36, T. 153 N., R. 94 W., Sec. 1–14, T. 153 N., R. 94 W., Sec. 16, T. 153 N., R. 94 W., Sec. 24, T. 153 N., R. 95 W., Sec. 5–6, T. 153 N., R. 96 W., Sec. 1, T. 153 N., R. 96 W., Sec. 4–5, T. 153 N., R. 97 W., Sec. 1–2, T. 153 N., R. 97 W., Sec. 4–7, T. 153 N., R. 97 W., Sec. 11, T. 153 N., R. 98 W., Sec. 1–3, T. 153 N., R. 98 W., Sec. 11–15, T. 153 N., R. 98 W., Sec. 19–35, T. 153 N., R. 99 W., Sec. 22–29, T. 153 N., R. 99 W., Sec. 31–36, T. 153 N., R. 100 W., Sec. 4–9, T.

153 N., R. 100 W., Sec. 16–21, T. 153 N., R. 100 W., Sec. 27–30, T. 153 N., R. 100 W., Sec. 32–35, T. 153 N., R. 101 W., Sec. 1–11, T. 153 N., R. 101 W., Sec. 15–20, T. 153 N., R. 101 W., Sec. 30, T. 153 N., R. 102 W., Sec. 1, T. 153 N., R. 102 W., Sec. 12–13, T. 153 N., R. 102 W., Sec. 21–28, T. 153 N., R. 102 W., Sec. 33–36, T. 154 N., R. 93 W., Sec. 31, T. 154 N., R. 94 W., Sec. 15, T. 154 N., R. 94 W., Sec. 19–23, T. 154 N., R. 94 W., Sec. 25–36, T. 154 N., R. 95 W., Sec. 11, T. 154 N., R. 95 W., Sec. 13–14, T.

154 N., R. 95 W., Sec. 17–36, T. 154 N., R. 96 W., Sec. 2–3, T. 154 N., R. 96 W., Sec. 10–11, T. 154 N., R. 96 W., Sec. 13–16, T. 154 N., R. 96 W., Sec. 18–36, T. 154 N., R. 97 W., Sec. 13–16, T. 154 N., R. 97 W., Sec. 19–36, T. 154 N., R. 98 W., Sec. 25, T. 154 N., R. 98 W., Sec. 35–36, T. 154 N., R. 100 W., Sec. 19, T. 154 N., R. 100 W., Sec. 29–33, T. 154 N., R. 101 W., Sec. 22–29, T. 154 N., R. 101 W., Sec. 31–36.

BILLING CODE 4310–55–P



South Dakota

Projection: UTM Zone 14, NAD 27,
Clarke 1866

Unit SD-1: Missouri River

This unit consists of the following
Township, Range, and Sections:

T. 6 N., R. 29 E., Sec. 1-6, T. 6 N., R. 29 E., Sec. 8-11, T. 6 N., R. 29 E., Sec. 14-16, T. 6 N., R. 29 E., Sec. 21-23, T. 6 N., R. 29 E., Sec. 25-27, T. 6 N., R. 29 E., Sec. 35-36, T. 6 N., R. 30 E., Sec. 22-34, T. 6 N., R. 31 E., Sec. 19, T. 7 N., R. 28 E., Sec. 1, T. 7 N., R. 28 E., Sec. 12-13, T. 7 N., R. 28 E., Sec. 36, T. 7 N., R. 29 E., Sec. 5-9, T. 7 N., R. 29 E., Sec. 15-17, T. 7 N., R. 29 E., Sec. 20-28, T. 7 N., R. 29 E., Sec. 31-32, T. 7 N., R. 29 E., Sec. 34-36, T. 7 N., R. 29 E., Sec. **, T. 7 N., R. 30 E., Sec. 19-20, T. 7 N., R. 30 E., Sec. 29-32, T. 8 N., R. 23 E., Sec. 1, T. 8 N., R. 24 E., Sec. 4-6, T. 8 N., R. 26 E., Sec. 4, T. 8 N., R. 28 E., Sec. 1, T. 8 N., R. 28 E., Sec. 11-14, T. 8 N., R. 28 E., Sec. 23-25, T. 8 N., R. 29 E., Sec. 4-9, T. 8 N., R. 29 E., Sec. 16-20, T. 8 N., R. 29 E., Sec. 29-31, T. 9 N., R. 23 E., Sec. 36, T. 9 N., R. 24 E., Sec. 12-15, T. 9 N., R. 24 E., Sec. 22-28, T. 9 N., R. 24 E., Sec. 31-34, T. 9 N., R. 25 E., Sec. 1-2, T. 9 N., R. 25 E., Sec. 7-18, T. 9 N., R. 25 E., Sec. 20-25, T. 9 N., R. 25 E., Sec. 27, T. 9 N., R. 26 E., Sec. 1-9, T. 9 N., R. 26 E., Sec. 10-23, T. 9 N., R. 26 E., Sec. 26, T. 9 N., R. 26 E., Sec. 28-30, T. 9 N., R. 26 E., Sec. 32-33, T. 9 N., R. 27 E., Sec. 1-12, T. 9 N., R. 28 E., Sec. 3-9, T. 9 N., R. 28 E., Sec. 13-20, T. 9 N., R. 28 E., Sec. 22-26, T. 9 N., R. 28 E., Sec. 35-36, T. 9 N., R. 29 E., Sec. 1-4, T. 9 N., R. 29 E., Sec. 18-20, T. 9 N., R. 29 E., Sec. 29-32, T. 9 N., R. 30 E., Sec. 6, T. 10 N., R. 26 E., Sec. 10, T. 10 N., R. 26 E., Sec. 13, T. 10 N., R. 26 E., Sec. 15-16, T. 10 N., R. 26 E., Sec. 19-20, T. 10 N., R. 26 E., Sec. 22-29, T. 10 N., R. 26 E., Sec. 32-36, T. 10 N., R. 27 E., Sec. 9, T. 10 N., R. 27 E., Sec. 15-16, T. 10 N., R. 27 E., Sec. 21-36, T. 10 N., R. 28 E., Sec. 1-6, T. 10 N., R. 28 E., Sec. 8-17, T. 10 N., R. 28 E., Sec. 19-21, T. 10 N., R. 28 E., Sec. 24, T. 10 N., R. 28 E., Sec. 29-33, T. 10 N., R. 29 E., Sec. 1, T. 10 N., R. 29 E., Sec. 4-9, T. 10 N., R. 29 E., Sec. 12-13, T. 10 N., R. 29 E., Sec. 16-22, T. 10 N., R. 29 E., Sec. 24-25, T. 10 N., R. 29 E., Sec. 27-30, T. 10 N., R. 29 E., Sec. 32-36, T. 10 N., R. 30 E., Sec. 1-12, T. 10 N., R. 30 E., Sec. 14-19, T. 10 N., R. 30 E., Sec. 20, T. 10 N., R. 30 E., Sec. 29, T. 10 N., R. 30 E., Sec. 30-31, T. 10 N., R. 31 E., Sec. 6, T. 11 N., R. 27 E., Sec. 36, T. 11 N., R. 28 E., Sec. 25, T. 11 N., R. 28 E., Sec. 27-36, T. 11 N., R. 29 E., Sec. 24-26, T. 11 N., R. 29 E., Sec. 31, T. 11 N., R. 29 E., Sec. 36, T. 11 N., R. 30 E., Sec. 1-2, T. 11 N., R. 30 E., Sec. 11-14, T. 11 N., R. 30 E., Sec. 23-26, T. 11 N., R.

30 E., Sec. 31-33, T. 11 N., R. 30 E., Sec. 35-36, T. 11 N., R. 31 E., Sec. 30-31, T. 12 N., R. 30 E., Sec. 1-4, T. 12 N., R. 30 E., Sec. 10-14, T. 12 N., R. 30 E., Sec. 22-28, T. 12 N., R. 30 E., Sec. 34-36, T. 12 N., R. 31 E., Sec. 1-7, T. 12 N., R. 31 E., Sec. 10-12, T. 13 N., R. 30 E., Sec. 1, T. 13 N., R. 30 E., Sec. 31-34, T. 13 N., R. 30 E., Sec. 36, T. 13 N., R. 31 E., Sec. 3-10, T. 13 N., R. 31 E., Sec. 16-17, T. 13 N., R. 31 E., Sec. 20-21, T. 13 N., R. 31 E., Sec. 27-28, T. 13 N., R. 31 E., Sec. 30-35, T. 14 N., R. 30 E., Sec. 36, T. 14 N., R. 31 E., Sec. 1-5, T. 14 N., R. 31 E., Sec. 9-11, T. 14 N., R. 31 E., Sec. 14-15, T. 14 N., R. 31 E., Sec. 22-23, T. 14 N., R. 31 E., Sec. 26-28, T. 14 N., R. 31 E., Sec. 31-35, T. 15 N., R. 30 E., Sec. 1, T. 15 N., R. 31 E., Sec. 4-6, T. 15 N., R. 31 E., Sec. 10-11, T. 15 N., R. 31 E., Sec. 13-15, T. 15 N., R. 31 E., Sec. 23-27, T. 15 N., R. 31 E., Sec. 32-33, T. 15 N., R. 31 E., Sec. 35-36, T. 16 N., R. 28 E., Sec. 13-14, T. 16 N., R. 28 E., Sec. 21-24, T. 16 N., R. 28 E., Sec. 26-28, T. 16 N., R. 29 E., Sec. 1-3, T. 16 N., R. 29 E., Sec. 7-22, T. 16 N., R. 29 E., Sec. 24, T. 16 N., R. 29 E., Sec. 29-30, T. 16 N., R. 30 E., Sec. 1-13, T. 16 N., R. 30 E., Sec. 16-18, T. 16 N., R. 30 E., Sec. 36, T. 16 N., R. 31 E., Sec. 1-2, T. 16 N., R. 31 E., Sec. 6-8, T. 16 N., R. 31 E., Sec. 10-11, T. 16 N., R. 31 E., Sec. 14-19, T. 16 N., R. 31 E., Sec. 20-22, T. 16 N., R. 31 E., Sec. 27-34, T. 17 N., R. 29 E., Sec. 36, T. 17 N., R. 30 E., Sec. 1, T. 17 N., R. 30 E., Sec. 28, T. 17 N., R. 30 E., Sec. 31, T. 17 N., R. 30 E., Sec. 33-34, T. 17 N., R. 31 E., Sec. 6-8, T. 17 N., R. 31 E., Sec. 16-18, T. 17 N., R. 31 E., Sec. 20-21, T. 17 N., R. 31 E., Sec. 27-28, T. 17 N., R. 31 E., Sec. 33-34, T. 18 N., R. 29 E., Sec. 1-2, T. 18 N., R. 29 E., Sec. 12-13, T. 18 N., R. 30 E., Sec. 18-27, T. 18 N., R. 30 E., Sec. 35-36, T. 18 N., R. 31 E., Sec. 31, T. 19 N., R. 28 E., Sec. 2-6, T. 19 N., R. 29 E., Sec. 1-18, T. 19 N., R. 29 E., Sec. 20-26, T. 19 N., R. 29 E., Sec. 34-36, T. 19 N., R. 30 E., Sec. 4, T. 19 N., R. 30 E., Sec. 7-9, T. 19 N., R. 30 E., Sec. 16-21, T. 19 N., R. 30 E., Sec. 28-32, T. 20 N., R. 27 E., Sec. 25, T. 20 N., R. 27 E., Sec. 36, T. 20 N., R. 28 E., Sec. 24-27, T. 20 N., R. 28 E., Sec. 30-36, T. 20 N., R. 29 E., Sec. 19, T. 20 N., R. 29 E., Sec. 29-32, T. 20 N., R. 29 E., Sec. 34, T. 20 N., R. 30 E., Sec. 22, T. 20 N., R. 30 E., Sec. 24-27, T. 20 N., R. 30 E., Sec. 32-34, T. 20 N., R. 30 E., Sec. 36, T. 20 N., R. 31 E., Sec. 4-6, T. 20 N., R. 31 E., Sec. 8-9, T. 20 N., R. 31 E., Sec. 16, T. 20 N., R. 31 E., Sec. 19-21, T. 20 N., R. 31 E., Sec. 28-32, T. 21 N., R. 30 E., Sec. 2-4, T. 21 N., R. 30 E., Sec. 10-11, T. 21 N., R. 30 E., Sec. 14, T. 21 N., R. 30 E., Sec. 23-26, T. 21 N., R. 30 E., Sec. 36, T. 21 N., R. 31 E., Sec. 31, T. 22 N., R.

29 E., Sec. 1-2, T. 22 N., R. 29 E., Sec. 11-12, T. 22 N., R. 30 E., Sec. 5-8, T. 22 N., R. 30 E., Sec. 14-17, T. 22 N., R. 30 E., Sec. 21-23, T. 22 N., R. 30 E., Sec. 27-28, T. 22 N., R. 30 E., Sec. 33-34, T. 22 N., R. 30 E., Sec. **, T. 23 N., R. 29 E., Sec. 20-22, T. 23 N., R. 29 E., Sec. 27-28, T. 23 N., R. 29 E., Sec. 33-36, T. 23 N., R. 29 E., Sec. **, T. 23 N., R. 30 E., Sec. 29-32, T. 107 N., R. 71 W., Sec. 30-32, T. 111 N., R. 80 W., Sec. 1-3, T. 111 N., R. 80 W., Sec. 6, T. 111 N., R. 81 W., Sec. 1-4, T. 112 N., R. 79 W., Sec. 31, T. 112 N., R. 80 W., Sec. 4-9, T. 112 N., R. 80 W., Sec. 17-18, T. 112 N., R. 80 W., Sec. 23, T. 112 N., R. 80 W., Sec. 25-36, T. 112 N., R. 81 W., Sec. 1, T. 112 N., R. 81 W., Sec. 12-15, T. 112 N., R. 81 W., Sec. 22-28, T. 112 N., R. 81 W., Sec. 33-36, T. 113 N., R. 80 W., Sec. 3-4, T. 113 N., R. 80 W., Sec. 9-10, T. 113 N., R. 80 W., Sec. 16-21, T. 113 N., R. 80 W., Sec. 28-34, T. 113 N., R. 80 W., Sec. 4, T. 113 N., R. 80 W., Sec. 9, T. 113 N., R. 81 W., Sec. 5-8, T. 113 N., R. 81 W., Sec. 13, T. 113 N., R. 81 W., Sec. 15-17, T. 113 N., R. 81 W., Sec. 20-29, T. 113 N., R. 81 W., Sec. 34-36, T. 114 N., R. 80 W., Sec. 33-34, T. 114 N., R. 81 W., Sec. 4-5, T. 114 N., R. 81 W., Sec. 9-10, T. 114 N., R. 81 W., Sec. 16-17, T. 114 N., R. 81 W., Sec. 20-21, T. 114 N., R. 81 W., Sec. 27-29, T. 114 N., R. 81 W., Sec. 31-33, T. 115 N., R. 80 W., Sec. 2-5, T. 115 N., R. 80 W., Sec. 7-10, T. 115 N., R. 80 W., Sec. 16-20, T. 115 N., R. 81 W., Sec. 6-7, T. 115 N., R. 81 W., Sec. 16-21, T. 115 N., R. 81 W., Sec. 25-30, T. 115 N., R. 81 W., Sec. 32-33, T. 115 N., R. 81 W., Sec. 35-36, T. 115 N., R. 82 W., Sec. 1-4, T. 115 N., R. 82 W., Sec. 9-16, T. 115 N., R. 82 W., Sec. 22-25, T. 116 N., R. 79 W., Sec. 4-9, T. 116 N., R. 79 W., Sec. 17-20, T. 116 N., R. 80 W., Sec. 24-27, T. 116 N., R. 80 W., Sec. 33-35, T. 116 N., R. 82 W., Sec. 33-36, T. 117 N., R. 79 W., Sec. 5-8, T. 117 N., R. 79 W., Sec. 17-18, T. 117 N., R. 79 W., Sec. 20, T. 117 N., R. 79 W., Sec. 29, T. 117 N., R. 79 W., Sec. 32-33, T. 117 N., R. 79 W., Sec. **, T. 118 N., R. 78 W., Sec. 3-10, T. 118 N., R. 78 W., Sec. 16-18, T. 118 N., R. 78 W., Sec. 20-21, T. 118 N., R. 78 W., Sec. 29-30, T. 118 N., R. 79 W., Sec. 1, T. 118 N., R. 79 W., Sec. 12, T. 118 N., R. 79 W., Sec. 20-32, T. 119 N., R. 79 W., Sec. 3-5, T. 119 N., R. 78 W., Sec. 7-9, T. 119 N., R. 78 W., Sec. 17-20, T. 119 N., R. 78 W., Sec. 30-31, T. 119 N., R. 79 W., Sec. 24-25, T. 119 N., R. 79 W., Sec. 36, T. 120 N., R. 78 W., Sec. 2-4, T. 120 N., R. 78 W., Sec. 9-11, T. 120 N., R. 78 W., Sec. 15-17, T. 120 N., R. 78 W., Sec. 20-22, T. 120 N., R. 78 W., Sec. 27-29, T. 120 N., R. 78 W., Sec. 32-34, T. 120 N., R. 78 W., Sec. **, T. 121 N., R. 78 W., Sec. 3-11, T. 121 N.,

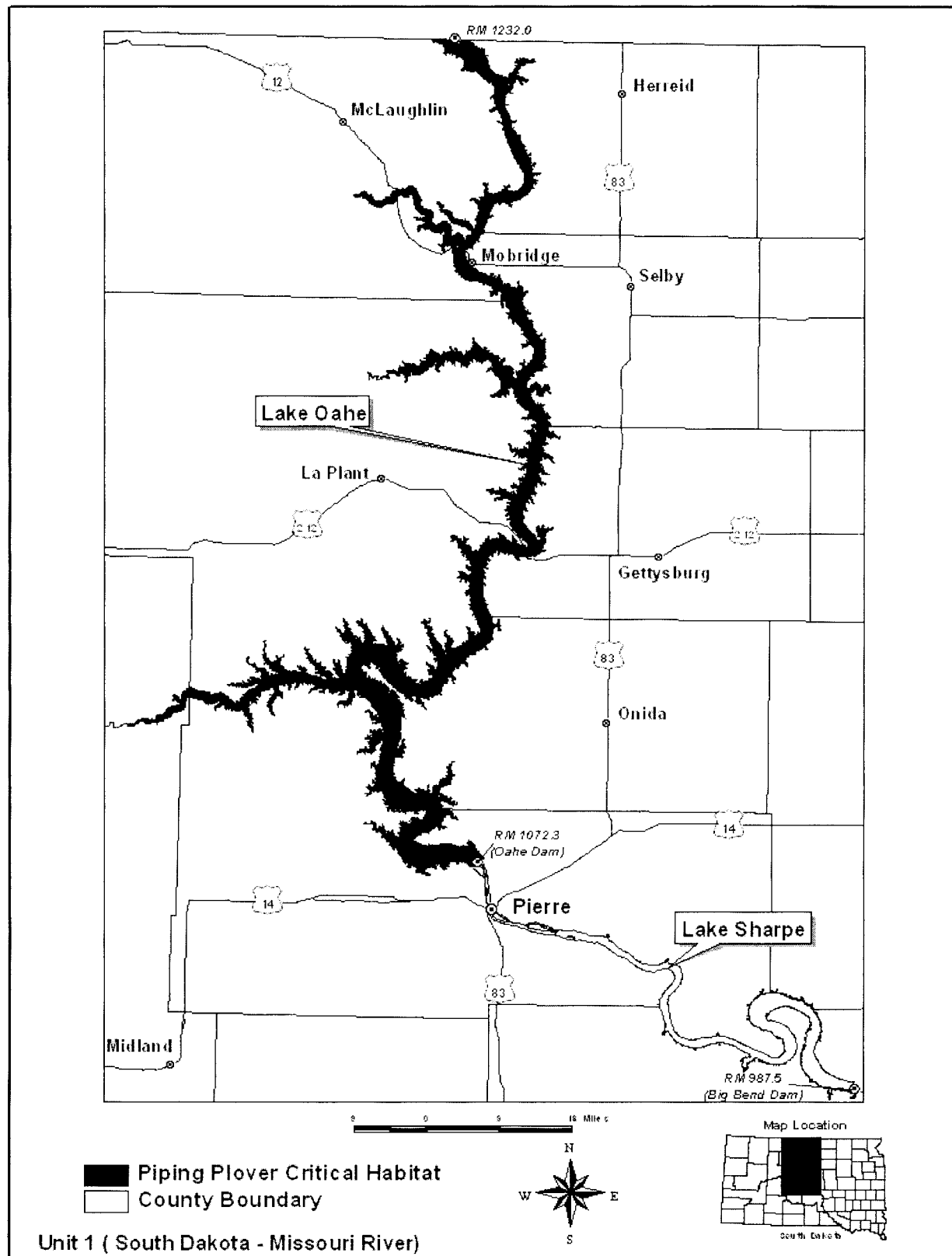
R. 78 W., Sec. 15–18, T. 121 N., R. 78 W., Sec. 20–22, T. 121 N., R. 78 W., Sec. 26–28, T. 121 N., R. 78 W., Sec. 34–35, T. 122 N., R. 78 W., Sec. 3–5, T. 122 N., R. 78 W., Sec. 9, T. 122 N., R. 78 W., Sec. 15–16, T. 122 N., R. 78 W., Sec. 21–22, T. 122 N., R. 78 W., Sec. 27–28, T. 122 N., R. 78 W., Sec. 32–34, T. 123 N., R. 78 W., Sec. 6–8, T. 123 N., R. 78 W., Sec. 18–20, T. 123 N., R. 78 W., Sec. 29–33, T. 123 N., R. 79 W., Sec. 1–3, T. 123 N., R. 79 W., Sec. 11–13, T. 123 N., R. 79 W., Sec. 24–25, T. 124 N., R. 78 W., Sec. 31, T. 124 N., R. 79 W., Sec. 5–7, T. 124 N., R. 79 W., Sec. 18, T. 124 N., R. 79 W., Sec. 29–34, T. 124 N., R. 80 W., Sec. 12–14, T. 124 N., R. 80 W., Sec.

23–26, T. 124 N., R. 80 W., Sec. 35–36, T. 125 N., R. 78 W., Sec. 4–5, T. 125 N., R. 78 W., Sec. 7–8, T. 125 N., R. 79 W., Sec. 9–17, T. 125 N., R. 79 W., Sec. 20–22, T. 125 N., R. 79 W., Sec. 27–29, T. 125 N., R. 79 W., Sec. 32–33, T. 125 N., R. 79 W., Sec. **, T. 126 N., R. 78 W., Sec. 5–8, T. 126 N., R. 78 W., Sec. 17–18, T. 126 N., R. 78 W., Sec. 20–21, T. 126 N., R. 78 W., Sec. 27–29, T. 126 N., R. 78 W., Sec. 32–33, T. 126 N., R. 79 W., Sec. 1, T. 126 N., R. 79 W., Sec. 12, T. 127 N., R. 78 W., Sec. 31, T. 127 N., R. 79 W., Sec. 1–2, T. 127 N., R. 79 W., Sec. 11, T. 127 N., R. 79 W., Sec. 14, T. 127 N., R. 79 W., Sec. 23–26, T. 127 N., R. 79 W., Sec. 36, T. 128 N., R. 78 W.,

Sec. 16–19, T. 128 N., R. 78 W., Sec. 29–31, T. 128 N., R. 79 W., Sec. 5–9, T. 128 N., R. 79 W., Sec. 13, T. 128 N., R. 79 W., Sec. 16–17, T. 128 N., R. 79 W., Sec. 20–22, T. 128 N., R. 79 W., Sec. 24–29, T. 128 N., R. 79 W., Sec. 35–36, T. 128 N., R. 80 W., Sec. 1–3, T. 128 N., R. 80 W., Sec. 10–12.

** Undefined. These are “lands” which were not surveyed during the original Government Land Office survey of South Dakota. They are now inundated and appear to fall in what was the described river channel at that time.

BILLING CODE 4310–55–P



Unit SD-2: Missouri River

This unit consists of the following Township, Range, and Sections:

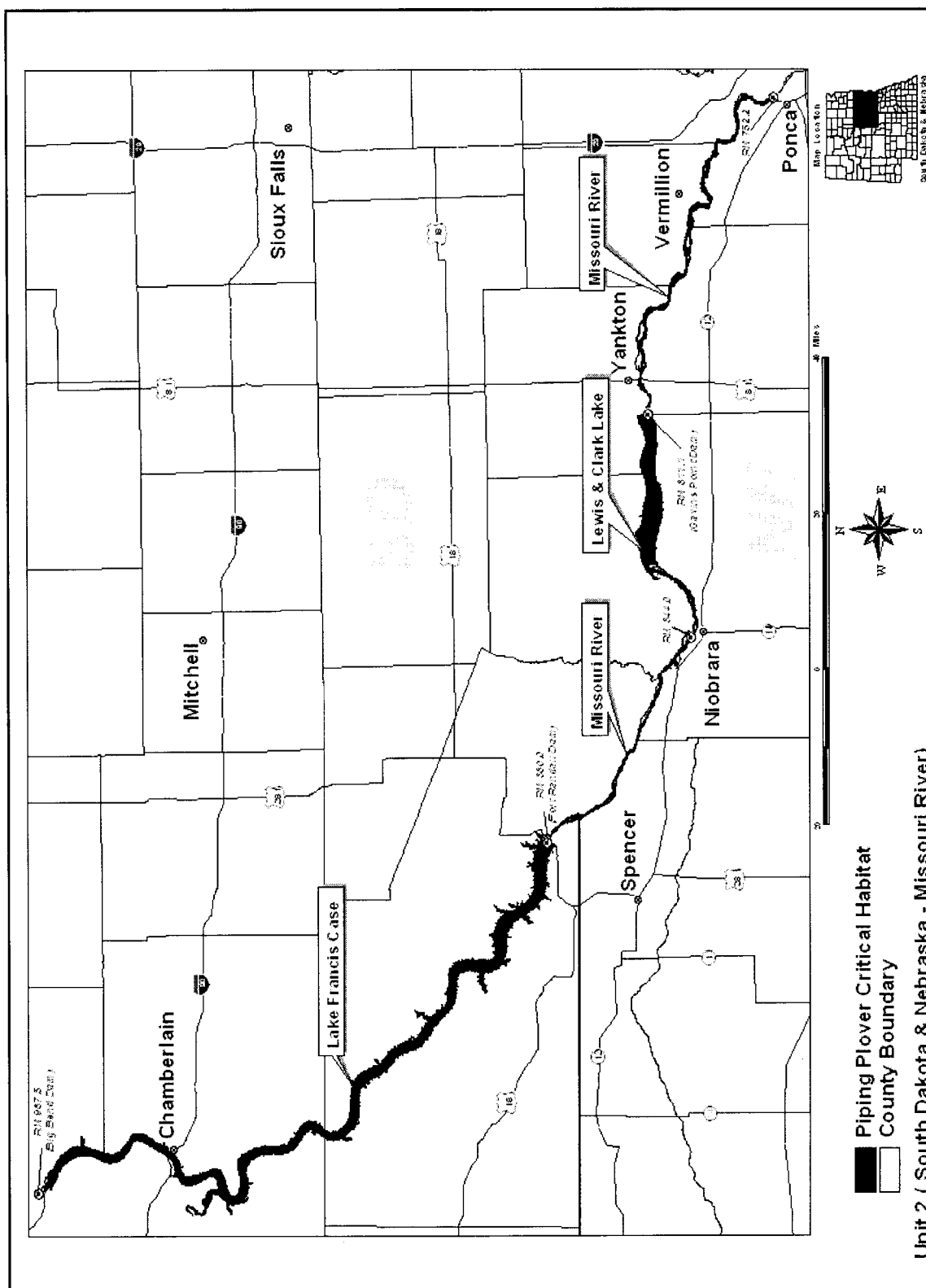
T. 90 N., R. 49 W., Sec. 6, T. 90 N., R. 50 W., Sec. 1, T. 90 N., R. 50 W., Sec. 11-14, T. 90 N., R. 50 W., Sec. 23-25, T. 91 N., R. 49 W., Sec. 31, T. 91 N., R. 50 W., Sec. 7, T. 91 N., R. 50 W., Sec. 18-19, T. 91 N., R. 50 W., Sec. 25-26, T. 91 N., R. 50 W., Sec. 28-30, T. 91 N., R. 50 W., Sec. 35-36, T. 91 N., R. 50 W., Sec. **, T. 91 N., R. 51 W., Sec. 3-6, T. 91 N., R. 51 W., Sec. 10-13, T. 91 N., R. 52 W., Sec. 1-3, T. 91 N., R. 52 W., Sec. 10-12, T. 92 N., R. 51 W., Sec. 31-32, T. 92 N., R. 52 W., Sec. 19-21, T. 92 N., R. 52 W., Sec. 26-30, T. 92 N., R. 52 W., Sec. 34-36, T. 92 N., R. 53 W., Sec. 7-8, T. 92 N., R. 53 W., Sec. 17-18, T. 92 N., R. 53 W., Sec. 20-24, T. 92 N., R. 54 W., Sec. 3, T. 92 N., R. 54 W., Sec. 10-12, T. 92 N., R. 60 W., Sec. 1-2, T. 92 N., R. 60 W., Sec. 10-11, T. 92 N., R. 60 W., Sec. 15-17, T. 92 N., R. 60 W., Sec. 19-21, T. 92 N., R. 61 W., Sec. 6-8, T. 92 N., R. 61 W., Sec. 15-17, T. 92 N., R. 61 W., Sec. 21-24, T. 92 N., R. 62 W., Sec. 1-2, T. 93 N., R. 54 W., Sec. 18-21, T. 93 N., R. 54 W., Sec. 27-28, T. 93 N., R. 54 W., Sec. 34, T. 93 N., R. 55 W., Sec. 13-14, T. 93 N., R. 55 W., Sec. 17-19, T. 93 N., R. 55 W., Sec. 23-24, T. 93 N., R. 56 W., Sec. 13-14, T. 93 N., R. 56 W., Sec. 17-21, T. 93 N., R. 56 W., Sec. 23-24, T. 93 N., R. 56 W., Sec. 26-28, T. 93 N., R. 57 W., Sec. 16-24, T. 93 N., R. 57 W., Sec. 28-29, T. 93 N., R. 58 W., Sec. 17-28, T. 93 N., R. 58 W., Sec. 30, T. 93 N., R. 58 W., Sec. 34-35, T. 93 N., R. 59 W., Sec. 10-11, T. 93 N., R. 59 W., Sec. 13-19, T. 93 N., R. 59 W., Sec. 21-27, T. 93 N., R. 60 W., Sec. 24-26, T. 93 N., R. 60 W., Sec. 35-36, T. 93 N., R. 62 W., Sec. 19-20, T. 93 N., R. 62 W., Sec. 26-30, T. 93 N., R. 62 W., Sec. 35-36, T. 93 N., R. 63 W., Sec. 6-10, T. 93 N., R. 63 W., Sec. 15, T. 93 N., R. 64 W., Sec. 1, T. 94 N., R. 64 W., Sec. 19-20, T. 94 N., R. 64 W., Sec. 27-30, T. 94 N., R. 64 W., Sec. 34-36, T. 94 N., R. 65 W., Sec. 2, T. 94 N., R. 65 W., Sec. 11-13, T. 94 N., R. 65 W., Sec. 24, T. 95 N., R. 65 W., Sec. 15-18, T. 95 N., R. 65 W., Sec. 4-9, T. 95 N., R. 65 W., Sec. 21-23, T. 95 N., R. 65 W., Sec. 26-27, T. 95 N., R. 65 W., Sec. 34-35, T. 95 N., R. 66 W., Sec. 1-13, T. 95 N., R. 67 W., Sec. 1-2, T. 95 N., R. 67 W., Sec. 12-13, T. 96 N., R. 65 W., Sec. 29-31, T. 96 N., R. 66 W., Sec. 26-27, T. 96 N., R. 66 W., Sec. 31-36, T. 96 N., R. 67 W., Sec. 1-11, T. 96

N., R. 67 W., Sec. 13-18, T. 96 N., R. 67 W., Sec. 21-28, T. 96 N., R. 67 W., Sec. 33-36, T. 96 N., R. 68 W., Sec. 1-4, T. 96 N., R. 68 W., Sec. 10-15, T. 97 N., R. 67 W., Sec. 32, T. 97 N., R. 68 W., Sec. 3-11, T. 97 N., R. 68 W., Sec. 14-16, T. 97 N., R. 68 W., Sec. 21-23, T. 97 N., R. 68 W., Sec. 26-35, T. 97 N., R. 69 W., Sec. 1-3, T. 97 N., R. 69 W., Sec. 12, T. 97 N., R. 69 W., Sec. 25, T. 97 N., R. 69 W., Sec. 36, T. 98 N., R. 68 W., Sec. 31-33, T. 98 N., R. 69 W., Sec. 6-7, T. 98 N., R. 69 W., Sec. 9-10, T. 98 N., R. 69 W., Sec. 15-22, T. 98 N., R. 69 W., Sec. 27-29, T. 98 N., R. 69 W., Sec. 33-36, T. 98 N., R. 70 W., Sec. 1-2, T. 98 N., R. 70 W., Sec. 11-13, T. 98 N., R. 70 W., Sec. 24, T. 99 N., R. 70 W., Sec. 4-10, T. 99 N., R. 70 W., Sec. 15-17, T. 99 N., R. 70 W., Sec. 20-23, T. 99 N., R. 70 W., Sec. 25-28, T. 99 N., R. 70 W., Sec. 34-36, T. 99 N., R. 71 W., Sec. 1, T. 100 N., R. 70 W., Sec. 30-32, T. 100 N., R. 71 W., Sec. 7, T. 100 N., R. 71 W., Sec. 18-20, T. 100 N., R. 71 W., Sec. 25-36, T. 100 N., R. 72 W., Sec. 12-14, T. 100 N., R. 72 W., Sec. 23-26, T. 101 N., R. 70 W., Sec. 19, T. 101 N., R. 70 W., Sec. 30, T. 101 N., R. 71 W., Sec. 3-5, T. 101 N., R. 71 W., Sec. 8-9, T. 101 N., R. 71 W., Sec. 10-11, T. 101 N., R. 71 W., Sec. 13-16, T. 101 N., R. 71 W., Sec. 22-26, T. 101 N., R. 71 W., Sec. 34-36, T. 102 N., R. 71 W., Sec. 5-9, T. 102 N., R. 71 W., Sec. 16-18, T. 102 N., R. 71 W., Sec. 20-22, T. 102 N., R. 71 W., Sec. 28-29, T. 102 N., R. 71 W., Sec. 32-34, T. 102 N., R. 72 W., Sec. 1-5, T. 102 N., R. 72 W., Sec. 8-12, T. 102 N., R. 72 W., Sec. 15, T. 103 N., R. 71 W., Sec. 18-19, T. 103 N., R. 72 W., Sec. 1-3, T. 103 N., R. 72 W., Sec. 6-9, T. 103 N., R. 72 W., Sec. 11-18, T. 103 N., R. 72 W., Sec. 21-29, T. 103 N., R. 72 W., Sec. 30-34, T. 103 N., R. 73 W., Sec. 1, T. 103 N., R. 73 W., Sec. 12, T. 103 N., R. 73 W., Sec. 36, T. 104 N., R. 71 W., Sec. 2-4, T. 104 N., R. 71 W., Sec. 8-10, T. 104 N., R. 71 W., Sec. 15-17, T. 104 N., R. 71 W., Sec. 19-21, T. 104 N., R. 71 W., Sec. 29-30, T. 104 N., R. 72 W., Sec. 14, T. 104 N., R. 72 W., Sec. 23-27, T. 104 N., R. 72 W., Sec. 31-32, T. 104 N., R. 72 W., Sec. 34-36, T. 104 N., R. 73 W., Sec. 36, T. 105 N., R. 71 W., Sec. 4-5, T. 105 N., R. 71 W., Sec. 8-9, T. 105 N., R. 71 W., Sec. 14-17, T. 105 N., R. 71 W., Sec. 21-26, T. 105 N., R. 71 W., Sec. 34-36, T. 106 N., R. 71 W., Sec. 3-6, T. 106 N., R. 71 W., Sec. 8-10, T. 106 N., R. 71 W., Sec. 14-16, T. 106 N., R. 71 W., Sec. 21-23, T. 106 N., R. 71 W., Sec. 27-28, T. 106 N.,

R. 71 W., Sec. 32-34, T. 107 N., R. 71 W., Sec. 31-33, T. 107 N., R. 72 W., Sec. 22-26, T. 107, R. 72 W., Sec. 30, T. 107 N., R. 72 W., Sec. 35-36, T. 30 N., R. 6 E., Sec. 3, T. 30 N., R. 6 E., Sec. 10-11, T. 31 N., R. 5 E., Sec. 2, T. 31 N., R. 5 E., Sec. 11-18, T. 31 N., R. 6 E., Sec. 22-23, T. 31 N., R. 6 E., Sec. 26-27, T. 31 N., R. 6 E., Sec. 34, T. 32 N., R. 2 E., Sec. 1, T. 32 N., R. 2 E., Sec. 12, T. 32 N., R. 3 E., Sec. 6-13, T. 32 N., R. 4 E., Sec. 7-9, T. 32 N., R. 4 E., Sec. 16, T. 32 N., R. 4 W., Sec. 17, T. 32 N., R. 4 E., Sec. 18, T. 32 N., R. 4 E., Sec. 21, T. 32 N., R. 4 E., Sec. 23-28, T. 32 N., R. 5 W., Sec. 4-6, T. 32 N., R. 5 E., Sec. 19, T. 32 N., R. 5 E., Sec. 28-30, T. 32 N., R. 5 E., Sec. 33-35, T. 32 N., R. 6 W., Sec. 1, T. 32 N., R. 6 W., Sec. 6, T. 32 N., R. 6 W., Sec. 8-12, T. 32 N., R. 7 W., Sec. 1, T. 32 N., R. 7 W., Sec. 7, T. 33 N., R. 1 W., Sec. 1-3, T. 33 N., R. 1 E., Sec. 3-12, T. 33 N., R. 1 W., Sec. 7-10, T. 33 N., R. 1 W., Sec. 12, T. 33 N., R. 1 W., Sec. 16-17, T. 33 N., R. 2 E., Sec. 7-8, T. 33 N., R. 2 W., Sec. 7-18, T. 33 N., R. 2 E., Sec. 17-18, T. 33 N., R. 2 E., Sec. 20, T. 33 N., R. 2 E., Sec. 26-29, T. 33 N., R. 2 E., Sec. 34-36, T. 33 N., R. 3 W., Sec. 7-8, T. 33 N., R. 3 W., Sec. 10-13, T. 33 N., R. 3 W., Sec. 16, T. 33 N., R. 3 W., Sec. 19-20, T. 33 N., R. 3 W., Sec. 22, T. 33 N., R. 4 W., Sec. 5-9, T. 33 N., R. 4 W., Sec. 11-18, T. 33 N., R. 4 W., Sec. 21, T. 33 N., R. 4 W., Sec. 23-24, T. 33 N., R. 5 W., Sec. 1-2, T. 33 N., R. 5 W., Sec. 7, T. 33 N., R. 5 W., Sec. 11-15, T. 33 N., R. 5 W., Sec. 22-23, T. 33 N., R. 5 W., Sec. 27-28, T. 33 N., R. 5 W., Sec. 32-33, T. 33 N., R. 7 W., Sec. 16-17, T. 33 N., R. 7 W., Sec. 22-23, T. 33 N., R. 7 W., Sec. 26-27, T. 33 N., R. 7 W., Sec. 34-36, T. 33 N., R. 8 W., Sec. 3-5, T. 33 N., R. 8 W., Sec. 10-13, T. 33 N., R. 8 W., Sec. 18, T. 34 N., R. 8 W., Sec. 31-33, T. 34 N., R. 9 W., Sec. 7, T. 34 N., R. 9 W., Sec. 16-18, T. 34 N., R. 9 W., Sec. 21-23, T. 34 N., R. 9 W., Sec. 25-26, T. 34 N., R. 9 W., Sec. 36, T. 34 N., R. 10 W., Sec. 2-3, T. 34 N., R. 10 W., Sec. 10-14, T. 35 N., R. 10 W., Sec. 20, T. 35 N., R. 10 W., Sec. 22, T. 35 N., R. 10 W., Sec. 28, T. 35 N., R. 10 W., Sec. 33-34.

**Undefined. These are "lands" which were not surveyed during the original Government Land Office survey of South Dakota. They are now inundated and appear to fall in what was the described river channel at that time.

BILLING CODE 4310-55-P



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Dated: May 30, 2001.

Marshall P. Jones, Jr.,
 Acting Assistant Secretary for Fish and
 Wildlife and Parks.

[FR Doc. 01-14169 Filed 6-11-01; 8:45 am]

BILLING CODE 4310-55-C



Federal Register

**Tuesday,
June 12, 2001**

Part III

Department of Education

**Office of Special Education and
Rehabilitative Services; List of
Correspondence; Notice**

DEPARTMENT OF EDUCATION**Office of Special Education and Rehabilitative Services; List of Correspondence**

AGENCY: Department of Education.

ACTION: List of correspondence from January 2, 2001 through March 31, 2001.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT:

Melisande Lee or JoLeta Reynolds.

Telephone: (202) 205-5507. If you use a telecommunications device for the deaf (TDD) you may call (202) 205-5465 or the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205-8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between January 2, 2001 through March 31, 2001.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities*Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations*

Topic Addressed: Use of Funds

- Letter dated March 13, 2001 to Maine Commissioner of Education, J. Duke Albanese, regarding whether a unit that functions as a separate legal

entity from the Maine Department of Education (MDE) should be included in MDE's Annual Single Audit.

- Letter dated February 13, 2001 to Alaska Commissioner of Education, Richard S. Cross, regarding a finding in a Federal Fiscal Year (FFY) 1996 audit report questioning the personal service expenditures allocated to the Special Education-Grants to States Federal program.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated January 19, 2001 (personally identifiable information redacted), regarding the obligation of States and local school districts to provide a free appropriate public education (FAPE) and opportunities for parent participation in a child's evaluation, eligibility, and educational placement.
- Letter dated March 1, 2001 (personally identifiable information redacted), regarding the extension of compensatory education services beyond age 21 awarded in settlement of litigation, the complaint mechanisms available under the IDEA, and the roles of Federal and State agencies that provide educational services.
- Letter dated March 30, 2001 to School Board Attorney John W. Bowen, regarding application of the requirements of the IDEA and of section 504 of the Rehabilitation Act of 1973 to Florida's Opportunity Scholarship Program legislation.

Topic Addressed: Child Find

- Letter dated March 30, 2001 to Colorado Department of Education Special Education Director, Dr. Lorrie Harkness, regarding (1) the responsibility to identify and evaluate children with Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder and (2) the definition of "educational records."

Topic Addressed: Procedural Safeguards

- Letter dated March 30, 2001 (personally identifiable information redacted), clarifying that a State may hold in abeyance those issues in a complaint that are currently being appealed in a judicial proceeding.

Topic Addressed: State Educational Agency General Supervisory Authority

- Letter dated March 19, 2001 to California Assistant Superintendent of Public Instruction, Alice Parker, regarding a State's obligation to monitor the compliance of local educational agencies (LEAs), and to take action in response to noncompliance.

- Letter dated March 30, 2001 to Pennsylvania Bureau of Special Education Director, Dr. Fran Warkowski, regarding a State's responsibility to resolve complaints in a way that provides individual relief and addresses systemic problems.

Topic Addressed: Participation in Assessments

- Letter dated January 19, 2001, (personally identifiable information redacted), regarding the use of a calculator as an accommodation or individual modification for the participation of students with disabilities in State and district-wide assessments.
- OSEP memorandum 01-06 dated January 17, 2001 providing guidance selected for its relevance to parents and families of students with disabilities about the participation of these students in State and district-wide assessments.
- Memorandum dated January 12, 2001 regarding the role and authority of the Individualized Education Program (IEP) team in the participation of children with disabilities in State and district-wide assessments of student achievement for children with disabilities.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Schoolwide Programs

- Letter dated January 12, 2001, regarding the inclusion of students with disabilities in schoolwide reform efforts, and advising LEAs that a portion of IDEA Part B funds can be combined with funds from Title I of the Elementary and Secondary Education Act of 1965 and with other Federal, State and local funds to carry out schoolwide programs that include children with disabilities, as long as students with disabilities receive services in accordance with a properly developed IEP and are afforded all of the rights and services guaranteed to children with disabilities under IDEA.

Part C—Infants and Toddlers with Disabilities*Sections 631-641*

Topic Addressed: Federal Interagency Coordinating Council

- Letter dated January 2, 2001 regarding principles of family involvement and suggested standards of practice developed by the Federal Interagency Coordinating Council (FICC) to encourage meaningful involvement of family members at all levels of policy and service delivery planning.

- Letter dated January 17, 2001 to TRICARE Management Activity Executive Director, H. James T. Sears, regarding the FICC's development of a service guide, *TRICARE and IDEA Part C: A Guide to Services*, that addresses the interface between TRICARE, the Department of Defense's military health system, and Part C of IDEA.

Other Letters Relevant To the Administration of IDEA Programs

Topic Addressed: Freedom of Information Act

- Letter dated March 27, 2001 to individual, (personally identifiable information redacted), regarding factors that are considered in determining whether fees can be waived under the Freedom of Information Act (FOIA).

Miscellaneous

Topic Addressed: Multiple Chemical Sensitivity

- Letter dated January 8, 2001 transmitting information to school personnel, parents, and other interested individuals regarding Multiple Chemical Sensitivity (MCS).

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using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-800-293-6498; or in the Washington, DC, area at (202) 512-1530.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: June 6, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01-14676 Filed 6-11-01; 8:45 am]

BILLING CODE 4000-01-U



Federal Register

**Tuesday,
June 12, 2001**

Part IV

Postal Service

39 CFR Part 551

**Semipostal Stamp Program; Request for
Proposals for Semipostal Stamps; Final
Rule and Notice**

POSTAL SERVICE**39 CFR Part 551****Semipostal Stamp Program****AGENCY:** Postal Service.**ACTION:** Final rule.

SUMMARY: This final rule creates implementation regulations for the Semipostal Authorization Act, which authorizes the Postal Service to issue and sell semipostal postage stamps. Semipostal stamps are intended to raise funds for causes determined by the Postal Service to be in the public interest and appropriate. The final regulations relate to the selection procedures for causes and recipient executive agencies, the offices and authorities responsible for making decisions related to causes and recipient executive agencies, the criteria to be applied in evaluating proposals for causes and recipient executive agencies, sales limitations, the calculation of amounts to be transferred to executive agencies, and the determination of costs to be offset from differential revenue.

EFFECTIVE DATE: June 12, 2001.**FOR FURTHER INFORMATION CONTACT:** Cindy Tackett, (202) 268-6555.**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Semipostal Authorization Act, Public Law 106-253, 114 Stat. 634 (2000) (hereinafter "Act"), authorizes the Postal Service to establish a 10-year program to sell semipostal stamps. The differential between the price of a semipostal stamp and the First-Class Mail® service rate, less an offset for the reasonable costs of the Postal Service, consists of an amount to fund causes that the "Postal Service determines to be in the national public interest and appropriate." By law, revenue from sales (net of postage and the reasonable costs of the Postal Service) is to be transferred to selected executive agencies within the meaning of 5 U.S.C. 105.

The Governors of the Postal Service are authorized to set prices for semipostal stamps according to a formula prescribed in the Act. Specifically, the Act prescribes that the price of a semipostal stamp is the "rate of postage that would otherwise regularly apply," plus a differential, that is, the difference between sales revenue and postage, not to exceed 25 percent. This is essentially the same formula prescribed by the Stamp Out Breast Cancer Act, Public L. 105-41, 111 Stat. 1119 (1997).

The Act provides that the Postal Service is to promulgate certain regulations via a notice and comment rulemaking. Specifically, the Postal Service must identify the "office or other authority within the Postal Service" to make decisions on the "appropriate causes and agencies" eligible to receive amounts becoming available from differential revenue less an offset for the reasonable costs of the Postal Service. The Postal Service is also directed to issue regulations on the "criteria and procedures" to be applied in making decisions on recipient executive agencies and causes. The Act further requires the Postal Service to identify "what limitations shall apply, if any, relating to the issuance of semipostals (such as whether more than one semipostal may be offered for sale at the same time)." Finally, the Postal Service's regulations must "specifically address how the costs incurred by the Postal Service * * * shall be computed, recovered, and kept to a minimum."

II. Comments on the Proposed Rule

On February 15, 2001, the Postal Service published a notice in the **Federal Register** (66 FR 10408) soliciting comments on a proposed rule to implement the Act. The Postal Service also published the notice on its Internet Web site at www.usps.com. The Postal Service received 73 comments responding to the solicitation for comments, many of which were received electronically through the Postal Service's Web site. The comments are grouped into similar themes and are addressed below.

Selection Criteria

Two commenters expressed support for the following general criteria for the Semipostal Stamp Program: (a) Semipostal stamps should benefit only congressionally authorized programs within U.S. Government executive agencies; (b) semipostal stamps should focus on programs that are characterized by a significant disparity between congressional authorizations and appropriations; (c) semipostal stamps should also look for programs for which there is a broad supportive network of private organizations that is willing and capable of assisting in local and national marketing; (d) semipostal stamps should have broad appeal to the American public and not be on programs and issues of narrow interest; and (e) the selection process should include estimating the revenue potential of a stamp through market surveys, evaluating the retention rates of commemorative and "awareness" stamps that have been issued on the

same subject, and evaluating the experience of other countries to determine the differences between successful and unsuccessful semipostal issues.

As a general matter, the Postal Service agrees that the types of factors mentioned above may be instructive and may be among the factors that could be used in the decision-making process; however, the Postal Service believes that those types of factors need not be formally inscribed in the regulations.

The same commenters also questioned the requirement in § 551.4 that causes must "further human welfare." The commenters stated that this term should be carefully defined to include causes or purposes that contribute to human welfare, such as a healthy environment or a sustainable level of biodiversity; alternatively, the requirement should be eliminated. The commenters also recommend that the requirement be removed from the list in § 551.4(d).

The Postal Service believes that the criterion of advancement of human welfare is quite broad, and can encompass a wide variety of subjects. Thus, the Postal Service does not interpret the requirement that proposals advance human welfare narrowly. To the contrary, the Postal Service intends to interpret this provision quite broadly. Topics such as a healthy environment or biodiversity appear on their face to be linked to the advancement of human welfare. This should assuage the commenters' concern. Consequently, the Postal Service does not believe a change in the regulation is necessary.

Cost Recovery

One commenter questioned whether the Postal Service would be able to recover its costs, and if not, whether ratepayers would be subsidizing the Semipostal Stamp Program. Another commenter recommended that strict auditing be used. The Postal Service believes that the regulations will provide the Postal Service with an adequate and effective means of preventing cross-subsidy. In particular, the Postal Service will track costs and revenues associated with the program, and will use data from comparable stamp issues to determine the additional costs attributable to semipostals. Furthermore, the Postal Service has reserved the right to withdraw semipostal stamps if sales or sales projections are lower than expected. In addition, the Act requires that the General Accounting Office prepare reports on the Semipostal Stamp Program. These measures provide

multiple means to protect against the risks cited by the commenters.

One commenter suggested that there should be exclusions for off-site meetings in resort areas and excessive spending on planning. The Postal Service is sensitive to these concerns, and § 551.8(f) incorporates several measures to minimize costs associated with the program. The Postal Service does not foresee deductions for the cost of off-site meetings, since decisions on semipostal stamps by the Citizens' Stamp Advisory Committee (CSAC) would be combined with that body's regular meetings. Thus, the costs of such meetings would ordinarily not need to be deducted against differential revenue under the standard set forth in § 551.8. Moreover, the Postal Service does not foresee the need for excessive spending. Indeed, in the case of the Breast Cancer Research Stamp, the costs as a proportion of total revenue transferred to the Department of Defense and the National Institutes of Health are very small, amounting to a small percentage of the funds transferred to date.

Two commenters expressed support for the policy to recover from differential revenue those costs that are attributable to the semipostal stamp that are not normally incurred for comparable commemorative stamps; however, these commenters oppose the provision in § 551.8(f)(2) that costs be minimized through issuance of one semipostal stamp at a time. To the extent this requirement prevents the Postal Service from having to dedicate additional resources to the Semipostal Stamp Program, the Postal Service believes that this provision serves as an appropriate means of minimizing costs, as required by the Act.

One commenter recommended that the cost profile used in § 551.8(c) should be identified before the sale of each stamp. The commenter believes that selection of a cost profile during or after the sales period could lead to inconsistencies in the amounts identified as recoverable costs. While the Postal Service agrees that it is generally sensible to decide on a cost profile before issuance of a stamp based on expectations of sales, the Postal Service believes it is reasonable to preserve discretion to change the cost profile if expectations of sales do not match actual experience. In such situations, it may be reasonable to draw comparisons between other commemorative issues exhibiting the same pattern, that is, where sales experience differs substantially from prior expectations. Naturally, such comparisons cannot be drawn until after the issuance of the semipostal stamp;

hence, it is reasonable to preserve discretion to select comparable stamps after the sales period begins. Thus, the Postal Service declines to adopt this suggestion.

One commenter suggested that advertising costs recoverable from differential revenue in § 551.8(e)(4) be clearly defined, so as to result in no confusion with advertising costs in § 551.8(g)(8). The advertising costs recoverable from differential revenue in § 551.8(e)(4) include those costs for advertising where the semipostal stamp is the only product featured in the advertising and for which no additional expenses are actually incurred. Section 551.8(g)(8) refers to advertising that is geared toward the image of the Postal Service as an entity. The Postal Service believes that this explanation addresses the commenter's concern.

One commenter recommended that § 551.8(d)(1) should be revised to include a threshold for costs considered too "inconsequentially small." The Postal Service believes that a maximum threshold is reasonable. Hence, § 551.8(d)(1) is amended so as to define the term "inconsequentially small" to include cost items not exceeding \$3,000 per invoice.

Voluntary Purchase

Two commenters expressed that customers should not be required to purchase semipostal stamps. The Postal Service agrees that the purchase of semipostal stamps should be strictly voluntary, and that postal retail units should have ample regular First-Class Mail postage stamps in stock at all locations where semipostal stamps are sold, so that no customers will feel compelled to purchase semipostal stamps. For emphasis, § 551.2 is amended to include a passage from 39 U.S.C. 416(c), which clearly states that the use of semipostal stamps is voluntary on the part of postal patrons.

Historical Events

One commenter submitting two comments objected to the exclusion of historical events in 39 CFR 551.4(d). The commenter expressed that the categorical exclusion of historical events was vague. The commenter further stated that historic-related national causes can further the national public interest and human welfare by educating the American people about their collective past. In the commenter's view, excluding historical events denies the opportunity to use semipostal stamps to fund the preservation of cultural resources and sites associated with those events. The Postal Service agrees that proposals as described by the

commenter could arguably fit within the statutory criteria. Accordingly, the term "historical events" is removed from the list of excluded causes in § 551.4(d).

Length of the Semipostal Stamp Program

One commenter suggested that the Postal Service operate the Semipostal Stamp Program for 6 months and then revisit the merits of the program after review of actual performance. The Postal Service notes that it has already established a track record with semipostal stamps through issuance of the Breast Cancer Research Stamp, which was issued in July 1998 and will continue to be sold to the public until July 29, 2002. The Postal Service's experience with the Breast Cancer Research Stamp demonstrates that semipostal stamps are accepted by the public and constitute an effective means of raising funds for selected causes. Consequently, the Postal Service declines to adopt the commenter's proposal.

Frequency

Two commenters expressed opposition to the requirement in § 551.5 that semipostal stamps may be offered for sale for less than 2 years to coincide with changes in the First-Class Mail single-piece first-ounce rate. The commenters stated that this provision should be eliminated on grounds of inequity to the beneficiary. The Postal Service is sensitive to these concerns, and intends to avoid situations where sales periods are shortened by underlying rate changes. This is not to suggest, however, that rate changes will never be implemented during the sales periods of future semipostal stamps. Past experience with the Breast Cancer Research Stamp suggests, however, that such situations should be kept to a minimum, because changing the underlying First-Class rate during the sales period of a semipostal generates confusion. This is because the postage value of semipostal stamps is based on their date of sale, not on their date of use, and there is no tracking system that would enable the Postal Service to measure differential revenue based on the date of use. Scheduling sales periods so as to coincide with changes in the First-Class Mail single-piece rate would accordingly enhance awareness among customers of the association of the underlying rate with the postage value of semipostal stamps. Thus, the Postal Service believes that § 551.5 is reasonable.

Breast Cancer Research Stamp

Several commenters suggested that the Postal Service continue to sell the Breast Cancer Research Stamp, presumably pursuant to its authority under 39 U.S.C. 416. Two commenters objected to the exclusion in § 551.4(d) of “any cause that has been previously supported by a semipostal stamp, including the stamp issued pursuant to 39 U.S.C. 414 [the authorizing statute for the Breast Cancer Research Stamp.]” One commenter states that this restriction extends beyond the Act.

The Postal Service notes that a categorical rule limiting the issuance of semipostals provides a means to diversify the Semipostal Stamp Program and ensures that no one cause receives the benefits of the program to the exclusion of others. However, the Postal Service believes that the CSAC could take account of this concern in selecting causes and recipient executive agencies. Therefore, the Postal Service will remove the limitation in § 551.4(d) providing that former causes funded by prior semipostal stamps, including the semipostal authorized by 39 U.S.C. 414, are categorically excluded from consideration.

Date of Commencement

Two commenters recommended that the Postal Service specify definitively that the 10-year sales period commences on August 1, 2002, immediately after the conclusion of the Breast Cancer Research Stamp in July 2002. As a general matter, the Postal Service intends to begin issuing semipostal stamps in mid-2002; however, the Postal Service does not wish to commit itself to issuing the first semipostal until it has a better idea of whether any rate changes are contemplated in that period, and whether the program would be better suited to begin after a rate change, rather than immediately prior to the date of implementation. Hence, the Postal Service declines to adopt the commenters’ suggestion.

Number of Semipostal Stampss

Five commenters suggested that the Postal Service reconsider § 551.5(b), which provides that only one semipostal stamp will be offered for sale at a time. The commenters suggested that the Postal Service consider selling several semipostal stamps simultaneously. Two commenters suggested that the standard for discontinuing sales should be the standard in § 551.5(d), which establishes criteria for the discontinuation of semipostal stamps. Two other commenters suggested

issuing a new semipostal every year, with each offered for sale for a 2-year period.

The Postal Service appreciates these concerns, but submits that these interests are outweighed by other factors. In particular, the Postal Service believes that issuing more than one semipostal stamp will increase the complexity of the program from the perspective of both the postal retail employees and customers. This, in turn, could diminish the overall effectiveness of the program. Secondly, the Postal Service has scarce resources to commit to the Semipostal Stamp Program. Increasing the number of semipostal stamps would increase the administrative burden on the Postal Service and ultimately burden existing staff and limited resources. This, in turn, could require more dedicated resources to be committed to the task, and ultimately raises the proportion of costs to be offset against differential revenue. Finally, issuing multiple semipostals at the same time could lead to competition among semipostal stamps, and ultimately defeat the success of certain semipostal causes. Therefore, the Postal Service declines to adopt the commenters’ suggestion.

Fixed Percentages for Recipient Executive Agencies

One commenter suggested that the proposed rule be amended so that agencies receive a specified percentage of the gross receipts from sales. The Act requires the Postal Service to deduct its reasonable costs incurred in connection with the program. Guaranteeing specific amounts could result in situations in which the Postal Service subsidizes amounts transferred to other agencies through ratepayer revenue. This, in the Postal Service’s view, does not appear to be consistent with the spirit of the Act. Hence, the recommended change is not adopted.

Interested Persons

One commenter stated that the relationship between interested persons and recipient executive agencies in § 551.3(a) is unclear. The commenter notes that “descriptions of possible collaborations in the actual request for proposals could significantly increase the involvement across federal agencies and partnering organizations.” Section 551.4 provides that interested persons include, but are not limited to, “individuals, corporations, associations, and executive agencies under 5 U.S.C. 105.” The same meaning naturally extends to the term “interested persons” as that term is used in § 551.3. Furthermore, the regulations contain no

limitation against collaboration. Thus, the Postal Service believes that this explanation clarifies the rule.

CSAC

One commenter observed that there is no description of the CSAC in § 551.3, and suggested that a description of the composition and function of that body would be helpful. Information about the CSAC is available on the Postal Service’s Web site, www.usps.com, and regulations pertaining to the CSAC are published in § 644.5 of the Administrative Support Manual. To avoid unnecessary duplication, the Postal Service believes that the regulations describing the CSAC should not be printed in the rule pertaining to semipostal stamps; however, the Postal Service has amended § 551.3 to include a reference to the regulations describing the CSAC. The Postal Service further notes that a description of the CSAC was included in footnote 1 of the supplementary information section of the proposed rule.

Two commenters stated that the CSAC is not the appropriate body to make recommendations on causes and recipient executive agencies to the postmaster general. The commenters instead recommended that the responsibility be assigned to a separate body consisting of fundraising and marketing experts. As an alternative, the commenters suggested that two additional appointments be made to the CSAC to represent fundraising expertise.

The Postal Service submits that the CSAC is well equipped to assume responsibility for the recommendation of causes and recipient executive agencies. CSAC membership represents a diverse and broad spectrum of American society, and CSAC members can be entrusted to use their judgment, experience, and talents to achieve the statutory objectives of the Act. The CSAC has had ample experience in selecting themes for commemorative stamps, many of which have been aimed at raising public awareness of important national interests. Thus, the CSAC already assumes related responsibilities through the selection of designs for commemorative stamps, and the Postal Service is confident that CSAC members can apply the same talents in the context of semipostal decision-making. Furthermore, establishing a separate panel of experts in marketing and fundraising would add substantially to the costs of administering the program, and would ultimately reduce the funds available for causes. A new committee would entail substantial planning and coordination and involve travel and

related expenses, which also would consume additional Postal Service administrative staff and resources. The Postal Service also declines to adopt the suggestion to increase the size of the CSAC. The addition of two persons would add to the expenses to be deducted from differential revenue. Moreover, existing CSAC members should be well equipped to make judgments on the feasibility of proposals, particularly given that interested persons submitting proposals are encouraged to provide supporting information demonstrating that the proposal would benefit the public interest.

CSAC Recommendations

Two commenters stated that the CSAC should be required to recommend more than one cause to the postmaster general § 551.3(d). The Postal Service does not believe that such a requirement is necessary or appropriate. The CSAC can make recommendations and prioritize them as it determines in its discretion. A rule requiring a specific number of recommendations could result in a situation where the CSAC is forced to make a recommendation notwithstanding its belief that none of the eligible proposals meet the statutory objectives. The Postal Service submits that this result is not intended by the Act, which confers discretionary authority, and not a compulsory obligation, on the Postal Service to issue semipostal stamps.

Two commenters suggested that the recommendation of causes and designs be handled as two separate actions, in order to facilitate consultations with the proposal beneficiary on the design to be developed. The Postal Service declines to adopt this proposal as part of its regulations. Such a requirement could contribute to delay. The CSAC meets four times per year, and in some cases consultations could cause delays in production and distribution schedules. Moreover, the Postal Service does not wish to commit itself or the CSAC to engaging in consultations with proposal submitters on stamp designs.

Pricing

Two commenters stated that § 551.6 should specify that the differential is not to exceed 25 percent of the underlying rate of postage. The Postal Service agrees that this change comports with the statutory language, and has made corresponding changes to § 551.6.

III. Comments Outside the Scope of the Rulemaking

A number of commenters also addressed issues beyond the scope of

the proposed rule. These are summarized below.

Nine commenters expressed favorable views about semipostal stamps generally. The Postal Service appreciates these views and encourages interested persons to consider responding to future requests for proposals.

Twenty-one commenters expressed that the Postal Service should not offer semipostal stamps. Those opposed to semipostal stamps cited a number of concerns. Some commenters suggested that it would be inappropriate for the Postal Service to select causes, since, in their view, it would show favoritism of certain causes or groups over others. Some commenters expressed concern that the Postal Service would have to defend decisions on semipostals. Some commenters were also concerned that controversial causes would be featured on semipostal stamps, and this would lead to litigation and public disapproval. Some commenters suggested that Congress should make decisions on causes. Other commenters suggested that the Postal Service should instead focus on other priorities, such as improving mail delivery service. Some commenters were concerned about the cost of the program. One commenter noted that semipostal stamps are unfair to stamp collectors.

The Postal Service is aware of the sentiments expressed in the comments, but notes that the regulations are based on legislation that Congress enacted, and thus comments disfavoring the concept of semipostal stamps are not within the scope of the rulemaking. The Postal Service further notes, however, that the regulations are intended to promote sound decision-making with regard to the selection of causes and recipient executive agencies, which should provide ample protection against many of the concerns raised by the commenters.

One commenter suggested that semipostal stamps raise funds that go towards political parties. Another commenter raised a related issue by suggesting that funds be transferred to "legitimate 501(c)(3) organizations." These proposals are not consistent with the Act, since the Act requires that funds must be transmitted to executive agencies, as defined by 5 U.S.C. 105. Political parties and tax-exempt 501(c)(3) nonprofit organizations are not executive agencies under 5 U.S.C. 105; hence they are not eligible to receive funds directly through the Semipostal Stamp Program.

One commenter recommended that vending packet machines include a brief explanation of the semipostal nature of

the stamps. The Postal Service already has implemented, and will continue to implement, measures to promote awareness of the postage value of semipostal stamps. Currently, the Postal Service promotes awareness of the postage value of stamps by printing a notice on the selvage of semipostal sheets that clearly states that each stamp is valid for postage. The Postal Service will continue these means of raising awareness of the dual purpose of semipostal stamps.

Several commenters suggested ideas for semipostal stamps, including the following:

- One commenter suggested a NASCAR semipostal stamp to honor the drivers who have passed away.
- Two commenters suggested a semipostal stamp for hunger.
- One commenter suggested a gay women's Irish Catholic/German American Voting Rights fund.
- One commenter suggested a prostate research stamp.
- One commenter suggested an Alzheimer's disease semipostal stamp.
- Two commenters suggested a Dale Earnhardt commemorative stamp to benefit the Carolinas Foundation.
- Five commenters suggested a semipostal stamp to fund a companion animal spay-neuter initiative.
- One commenter suggested a generic childhood cancer semipostal stamp.

The Postal Service appreciates the public's interest in ideas for future semipostal stamps, but notes that these comments are premature at this time, as the proposed rule merely sought suggestions on, *inter alia*, the procedures for selection of causes and agencies for future semipostals. The selection process for a new semipostal stamp will be announced in a separate notice published in the **Federal Register**, at which time interested persons may submit proposals for new semipostals in accordance with 39 CFR Part 551. The Postal Service will welcome conforming proposals on causes at that time.

A number of commenters also raised miscellaneous issues unrelated to semipostal stamps. One commenter raised questions with regard to stamps featuring the image of Martin Luther King, Jr. Another commenter asked for information on the requirements for designing stamps. One commenter asked about mailing self-stamped envelopes to Ontario. One commenter asked for a hardcopy of the proposed regulations. Three commenters expressed opposition to stamps featuring designs honoring trappers and trapping. One commenter suggested that the First-Class Mail rate be changed in

greater than 1-cent increments. One commenter suggested printing stamps featuring the faces of missing children. One commenter suggested that the Postal Service suspend Saturday delivery in lieu of raising postage rates. One commenter requested information on purchasing stamps through the Postal Service's Web site. One commenter raised concerns about the privacy of her correspondence. One commenter raised concerns about postal rates and operating efficiency. One commenter expressed concern about delivery of mail to households. One commenter sent a published article related to the variable pay program for postal management.

The Postal Service values public comment on its affairs and appreciates receiving information from those doing business with the Postal Service, but notes that these comments are beyond the scope of the rulemaking.

IV. Conclusion

In accordance with 39 U.S.C. 416, the Postal Service hereby adopts the following amendments to the Code of Federal Regulations.

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service amends 39 CFR chapter I by revising the heading for subchapter G and adding part 551 to subchapter G to read as follows:

Subchapter G—Postage Programs

PART 551—SEMIPOSTAL STAMP PROGRAM

Sec.

- 551.1 Semipostal Stamp Program.
- 551.2 Semipostal stamps.
- 551.3 Procedure for selection of causes and recipient executive agencies.
- 551.4 Submission requirements and selection criteria.
- 551.5 Frequency and other limitations.
- 551.6 Pricing.
- 551.7 Calculation of funds for recipient executive agencies.
- 551.8 Cost offset policy.

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 414, and 416.

§ 551.1 Semipostal Stamp Program.

The Semipostal Stamp Program is established under the Semipostal Authorization Act, Public Law No. 106–253, 114 Stat. 634 (2000). The office of Stamp Services has primary responsibility for administering the Semipostal Stamp Program. The office of the vice president, Finance, Controller, has primary responsibility

for financial aspects of the Semipostal Stamp Program.

§ 551.2 Semipostal stamps.

Semipostal stamps are stamps that are sold for a price that exceeds the postage value of the stamp. The difference between the price and postage value of semipostal stamps, also known as the differential, less an offset for reasonable costs, as determined by the Postal Service, consists of a contribution to fund causes determined by the Postal Service to be in the national public interest and appropriate. Funds are to be transferred to selected recipient executive agencies, as defined under 5 U.S.C. 105. The office of Stamp Services determines the print quantities of semipostal stamps. The use of semipostal stamps shall be voluntary on the part of postal patrons.

§ 551.3 Procedure for selection of causes and recipient executive agencies.

The Postal Service is authorized to select causes and recipient executive agencies to receive funds raised through the sale of semipostal stamps. The procedure for selection of causes and recipient executive agencies is as follows:

(a) In advance of the issuance of a semipostal stamp, the office of Stamp Services will publish a request for proposals in the **Federal Register** inviting interested persons to submit proposals for a cause and recipient executive agencies for a future semipostal stamp. The notice will specify the beginning and ending dates of the period during which proposals may be submitted. The notice will also specify the approximate period in which the semipostal stamp for which proposals are solicited is to be sold. The office of Stamp Services may publicize the request for proposals through other means, as it determines in its discretion.

(b) Proposals will be received by the office of Stamp Services, which will review each proposal under § 551.4.

(c) Those proposals that the office of Stamp Services determines satisfy the requirements of § 551.4 will be forwarded for consideration by the Citizens' Stamp Advisory Committee, which is described in Administrative Support Manual (ASM) section 644.5. For availability of ASM 644.5, contact the Office of Stamp Services (202) 268–2319.

(d) The Citizens' Stamp Advisory Committee will review eligible proposals forwarded by the office of Stamp Services. Based on the proposals submitted, the Citizens' Stamp Advisory Committee will make recommendations on a cause and eligible recipient

executive agency(ies) to the postmaster general. If no eligible proposals are recommended, the Postal Service will solicit additional proposals through publication of a notice in the **Federal Register** and through other means as it determines in its discretion.

(e) Meetings of the Citizens' Stamp Advisory Committee are closed, and deliberations of the Citizens' Stamp Advisory Committee are predecisional in nature.

(f) The postmaster general will act on the recommendations of the Citizens' Stamp Advisory Committee. The decision of the postmaster general shall consist of the final agency decision.

(g) The office of Stamp Services will notify the executive agency(ies) in writing of a decision designating the agency(ies) as recipients of funds from a semipostal stamp.

(h)(1) A proposal submission may designate one or two recipient executive agencies to receive funds, but if more than one executive agency is proposed, the proposal must specify the percentage shares of differential revenue, net of the Postal Service's reasonable costs, to be given to each agency. If percentage shares are not specified, it is presumed that the proposal intends that the funds be split evenly between the agencies. If more than two recipient executive agencies are proposed to receive funds and the proposal is selected, the proposal is treated as prescribed by paragraph (h)(3) of this section.

(2) If more than one proposal is submitted for the same cause, and the proposals would have different executive agencies receiving funds, the funds would be evenly divided among the executive agencies, with no more than two agencies being designated to receive funds, as determined by the vice president and consumer advocate.

(3) Within 10 days of receipt of a notice indicating that it has been selected to receive funds, a selected agency could request a proportionately larger share if it can demonstrate that its share of total funding of the cause from other sources (excluding any additional funds available as a result of the semipostal stamp) exceeds that of the other recipient executive agency. The request must be in writing and must be sent to the manager of Stamp Services. In those cases, the determination regarding the proportional share to be divided among the recipient executive agencies is made by the Postal Service's vice president and consumer advocate.

(i) As either a separate matter, or in combination with recommendations on a cause and a recipient executive agency(ies), the Citizens' Stamp

Advisory Committee will recommend to the postmaster general a design (i.e., artwork) for the semipostal stamp. The postmaster general will make a final determination on the design to be featured.

§ 551.4 Submission requirements and selection criteria.

(a) Proposals on recipient executive agencies and causes must satisfy the following requirements:

(1) Interested persons must timely submit an original and 20 copies of the proposal. For purposes of this section, interested persons include, but are not limited to, individuals, corporations, associations, and executive agencies under 5 U.S.C. 105. Interested persons submitting proposals are also encouraged to submit an Adobe Acrobat (.pdf) file saved on a 3.5 inch diskette or CD-ROM diskette containing the entire contents of the submission. In extraordinary circumstances, the office of Stamp Services may, in its discretion, consider a late-filed proposal.

(2) The proposal submission must be signed by the individual or a duly authorized representative and must provide the mailing address, phone number, fax number (if available), and E-mail address (if available) of a designated point of contact.

(3) The submission must describe the cause and the purposes for which the funds would be spent.

(4) The submission must demonstrate that the cause to be funded has broad national appeal, and that the cause is in the national public interest and furthers human welfare. Respondents are encouraged to submit supporting documentation demonstrating that funding the cause would benefit the national public interest.

(5) The submission must be accompanied by a letter from an executive agency or agencies on agency letterhead representing that:

(i) it is an executive agency as defined under 5 U.S.C. 105,

(ii) it is willing and able to implement the proposal, and

(iii) it is willing and able to meet the requirements of the Semipostal Authorization Act, if it is selected. The letter must be signed by a duly authorized representative of the agency.

(b) Proposal submissions become the property of the Postal Service and are not returned to interested persons who submit them. Interested persons who submit proposals are not entitled to any remuneration, compensation, or any other form of payment, whether their proposal submissions are selected or not, for any reason.

(c) The following persons are disqualified from submitting proposals:

(1) Any contractor of the Postal Service that may stand to benefit financially from the Semipostal Stamp Program; or

(2) Members of the Citizens' Stamp Advisory Committee and their immediate families, and employees or contractors of the Postal Service, and their immediate families, who are involved in any decision-making related to causes, recipient agencies, or artwork for the Semipostal Stamp Program.

(d) Consideration for evaluation will not be given to proposals that request support for the following: Anniversaries; public works; people; specific organizations or associations; commercial enterprises or products; cities, towns, municipalities, counties, or secondary schools; hospitals, libraries, or similar institutions; religious institutions; causes that do not further human welfare; or causes determined by the Postal Service or the Citizens' Stamp Advisory Committee to be inconsistent with the spirit, intent, or history of the Semipostal Authorization Act.

(e) Artwork and stamp designs should not be submitted with proposals.

§ 551.5 Frequency and other limitations.

(a) The Postal Service is authorized to issue semipostal stamps for a 10-year period beginning on the date on which semipostal stamps are first sold to the public under 39 U.S.C. 416. The 10-year period will commence after the sales period of the Breast Cancer Research Stamp is concluded in accordance with the Stamp Out Breast Cancer Act, as amended by the Semipostal Authorization Act. The office of Stamp Services will determine the date of commencement of the 10-year period.

(b) The Postal Service will offer only one semipostal stamp for sale at any given time during the 10-year period.

(c) The sales period for any given semipostal stamp is limited to no more than 2 years, as determined by the office of Stamp Services.

(d) Prior to or after the issuance of a given semipostal stamp, the Postal Service reserves the right to withdraw the semipostal stamp from sale, or to reduce the sales period, if, *inter alia*:

(1) Its sales or revenue statistics are lower than expected,

(2) The sales or revenue projections are lower than previously expected, or

(3) The cause or recipient executive agency does not further, or comply with, the statutory purposes or requirements of the Semipostal Authorization Act. The decision to withdraw a semipostal stamp is to be made by the postmaster

general, after review of supporting documentation prepared by the office of Stamp Services.

§ 551.6 Pricing.

(a) The Semipostal Authorization Act prescribes that the price of a semipostal stamp is the "rate of postage that would otherwise regularly apply, plus a differential not to exceed 25 percent." For purposes of this provision, the First-Class Mail[®] single-piece first-ounce rate of postage will be considered "the rate of postage that would otherwise regularly apply."

(b) The prices of semipostal stamps are determined by the Governors of the United States Postal Service in accordance with the requirements of 39 U.S.C. 416.

§ 551.7 Calculation of funds for recipient executive agencies.

(a) The Postal Service is to determine its reasonable costs in executing its responsibilities pursuant to the Semipostal Authorization Act, as specified in § 551.8. These costs are offset against the revenue received through sale of each semipostal stamp in excess of the First-Class Mail single-piece first-ounce rate in effect at the time of purchase.

(b) Any reasonable costs offset by the Postal Service shall be retained by it, along with revenue from the sale of the semipostal stamps, as recorded by sales units through the use of a specially designated account.

(c) The Postal Service is to pay designated recipient executive agency(ies) the remainder of the differential revenue less an amount to recover the reasonable costs of the Postal Service, as determined under § 551.8.

(d) The amounts for recipient executive agencies are transferred in a manner and frequency determined by mutual agreement, consistent with the requirements of 39 U.S.C. 416.

§ 551.8 Cost offset policy.

(a) Postal Service policy is to recover from the differential revenue for each semipostal stamp those costs that are determined to be attributable to the semipostal stamp and that would not normally be incurred for commemorative stamps having similar sales; physical characteristics; and marketing, promotional, and public relations activities (hereinafter "comparable stamps").

(b) Overall responsibility for tracking costs associated with semipostal stamps will rest with the office of the vice president, Finance, Controller. Individual organizational units

incurring costs will provide supporting documentation to the office of the vice president, Finance, Controller.

(c) For each semipostal stamp, the office of the vice president, Finance, Controller, shall, based on judgment and available information, identify the comparable commemorative stamp(s) and create a profile of the typical cost characteristics of the comparable stamp(s) (e.g., manufacturing process, gum type), thereby establishing a baseline for cost comparison purposes. The determination of comparable commemorative stamps may change during or after the sales period, if the projections of stamp sales differ from actual experience.

(d) Except as specified, all costs associated with semipostal stamps will be tracked by the office of the vice president, Finance, Controller. Costs that will not be tracked include:

(1) Costs that the Postal Service determines to be inconsequential, small, which include those cost items not exceeding \$3,000 per invoice;

(2) Costs for which the cost of tracking would be burdensome (e.g., costs for which the cost of tracking exceeds the cost to be tracked);

(3) Costs attributable to mail to which semipostal stamps are affixed (which

are attributable to the appropriate class and/or subclass of mail); and

(4) Administrative and support costs that the Postal Service would have incurred whether or not the Semipostal Stamp Program had been established.

(e) Cost items recoverable from the differential revenue may include, but are not limited to, the following:

(1) Packaging costs in excess of the cost to package comparable stamps;

(2) Printing costs of flyers and special receipts;

(3) Costs of changes to equipment;

(4) Costs of developing and executing marketing and promotional plans in excess of the cost for comparable stamps; and

(5) Other costs specific to the semipostal stamp that would not normally have been incurred for comparable stamps.

(f) The Semipostal Stamp Program incorporates the following provisions that are intended to maximize differential revenues available to the selected causes. These include, but are not limited to, the following:

(1) Avoiding, to the extent practicable, promotional costs that exceed those of comparable stamps;

(2) Establishing restrictions on the number of concurrently issued semipostal stamps; and

(3) Making financial and retail system changes in conjunction with regularly scheduled revisions.

(g) Other costs attributable to semipostals but which would normally be incurred for comparable stamps would be recovered through the postage component of the semipostal stamp price. These include, but are not limited to, the following:

(1) Costs of stamp design (including market research);

(2) Costs of stamp production and printing;

(3) Costs of stamp shipping and distribution;

(4) Estimated training costs for field staff, except for special training associated with semipostal stamps;

(5) Costs of stamp sales (including employee salaries and benefits);

(6) Costs associated with the withdrawal of the stamp issue from sale;

(7) Costs associated with the destruction of unsold stamps; and

(8) Costs associated with the incorporation of semipostal stamp images into advertising for the Postal Service as an entity.

Stanley F. Mires,

Chief Counsel, Legislative.

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BILLING CODE 7710-12-U

POSTAL SERVICE**Request for Proposals for Semipostal Stamps****AGENCY:** Postal Service.**ACTION:** Notice of request for proposals.

SUMMARY: Pursuant to 39 U.S.C. 416, and 39 CFR Part 551, the Postal Service is requesting proposals from interested persons on causes and recipient executive agencies for two future semipostal stamps. The first is expected to be issued for a 2-year period beginning in mid-2002, and the second is expected to be issued for a 2-year period beginning in mid-2004.

DATES: The office of Stamp Services must receive an original and 20 copies of each proposal on or before August 31, 2001, at 4:00 p.m. eastern time. Interested persons are encouraged to send their proposals early, and should budget time for proposals to be distributed by internal mail systems.

ADDRESSES: Proposals should be mailed or delivered to the Manager, Stamp Services, ATTN: Semipostal Stamp Program, 475 L'Enfant Plaza SW, Room 5670, Washington, DC 20260-2435.

FOR FURTHER INFORMATION CONTACT: Liz Altobell, (202) 268-2319.

SUPPLEMENTARY INFORMATION: The Semipostal Authorization Act, Public Law 106-253, 114 Stat. 634 (2000) (hereinafter "Act"), authorizes the Postal Service to establish a 10-year program to sell semipostal stamps. The Act prescribes that the price of a semipostal stamp is the "rate of postage that would otherwise regularly apply," plus a differential, that is, the difference between sales revenue and postage, not to exceed 25 percent. The differential between the price of a semipostal stamp and the First-Class Mail® service rate, less an offset for the reasonable costs of the Postal Service, consists of an amount to fund causes that the "Postal Service determines to be in the national public interest and appropriate." By law, revenue from sales (net of postage and the reasonable costs of the Postal Service) is to be transferred to a selected executive agency or agencies within the meaning of 5 U.S.C. 105.

In a notice published in the **Federal Register**, the Postal Service has adopted 39 CFR Part 551, which consists of regulations implementing the Act. Pursuant to 39 CFR 551.3, the Postal Service invites interested persons to submit proposals for causes and

recipient executive agencies for two semipostal stamps. The first semipostal stamp is expected to be sold to the public for a 2-year period beginning in mid-2002, and the second semipostal stamp is expected to be sold to the public for a 2-year period beginning in mid-2004.

Proposals submitted in response to this notice will be examined by the office of Stamp Services for consistency with the requirements in 39 CFR Part 551. Those proposals determined by the office of Stamp Services to satisfy the requirements of 39 CFR 551.4 will be forwarded to the Citizens' Stamp Advisory Committee (CSAC). The CSAC intends to consider eligible proposals at upcoming regularly scheduled meetings. The Postal Service expects that the CSAC will make recommendations to the postmaster general later in 2001, followed by a final decision by, and announcement from, the postmaster general. The Postal Service discourages contacting the office of Stamp Services by telephone to inquire about the status of proposals. Announcements concerning semipostal stamps will be posted on the Postal Service's Web site in the philatelic news area on www.usps.com, and interested persons should monitor postings on this Web site for further information on the selection of causes and recipient executive agencies.

Interested persons should consult the regulations in 39 CFR Part 551, as they specify the requirements for proposals. They should also take note that section 551.4 lists the specific requirements for proposals, which include, *inter alia*, the following:

- An original and 20 copies of the proposal must be timely submitted. If possible, an Adobe Acrobat (.pdf) file should be submitted, saved on a 3.5-inch diskette or CD-ROM diskette, containing the entire contents of the submission.
- The proposal submission must be signed by the individual or a duly authorized representative and must provide the mailing address, phone number, fax number (if available), and E-mail address (if available) of a designated point of contact.
- The submission must describe the cause and the purposes for which the funds would be spent.
- The submission must demonstrate that the cause to be funded has broad national appeal, and that the cause is in the national public interest and furthers

human welfare. Respondents should submit supporting documentation demonstrating that funding the cause would benefit the national public interest.

- The submission must be accompanied by a letter from an executive agency (or agencies) on agency letterhead representing that it is an executive agency as defined under 5 U.S.C. 105, it is willing and able to implement the proposal, and it is willing and able to meet the requirements of the Act, if it is selected. The letter must be signed by a duly authorized representative of the agency.

- Consideration for evaluation will not be given to proposals that request support for the following: Anniversaries; public works; people; specific organizations or associations; commercial enterprises or products; cities, towns, municipalities, counties, or secondary schools; hospitals, libraries, or similar institutions; religious institutions; causes that do not further human welfare; or causes determined by the Postal Service or the CSAC to be inconsistent with the spirit, intent, or history of the Act.

- Artwork and stamp designs should not be submitted with proposals.

Interested persons should also pay particular attention to 39 CFR 551.3(h), which details procedures for identification of recipient executive agencies.

Proposal submissions become the property of the Postal Service and are not returned to persons who submit them. Persons who submit proposals are not entitled to any remuneration, compensation, or any other form of payment, whether their proposal submissions are selected or not, for any reason.

Proposals will not be considered from any contractor of the Postal Service that may stand to benefit financially from the Semipostal Stamp Program; or members of the CSAC and their immediate families, and employees or contractors of the Postal Service, and their immediate families, who are involved in any decision-making related to causes, recipient agencies, or artwork for the Semipostal Stamp Program.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 01-14749 Filed 6-11-01; 8:45 am]

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Federal Register

**Tuesday,
June 12, 2001**

Part V

The President

**Memorandum of May 31, 2001—
Delegation of Authority Under Section
703 of the Security Assistance Act of
2000**

Presidential Documents

Title 3—

Memorandum of May 31, 2001

The President

Delegation of Authority Under Section 703 of the Security Assistance Act of 2000

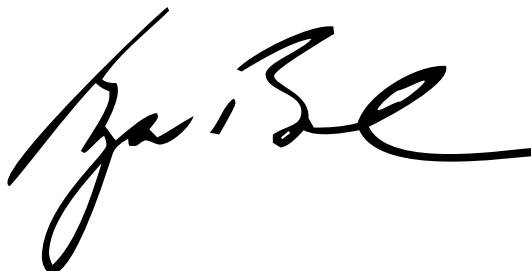
Memorandum for the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Defense the authority vested in me under section 703 of the Security Assistance Act of 2000 (Public Law 106–280).

The authority delegated by this memorandum may be redelegated not lower than the Assistant Secretary level.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, May 31, 2001.

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